



# Draft Road Safety (Vehicles) Regulations 2021 and Regulatory Impact Statement – VACC Response

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## 1. Introduction

The Victorian Automotive Chamber of Commerce (VACC) thanks the Department of Transport (DoT) for the opportunity to comment on the draft Road Safety (Vehicles) Regulations 2021 and the accompanying Regulatory Impact Statement (RIS).

### 1.1. About this document

The automotive retail industry relies upon a regulatory framework that is clear in its edict and application. While the changes proposed in the RIS document are specific to regulatory sunset, the document is also much broader in nature and covers many aspects of the automotive retail, sale and service sector. VACC's response, therefore, addresses a wide variety of matters raised in the RIS, including specific, proposed changes.

Further, it is important to note that as outlined below, VACC challenges several assertions made in the RIS, and believes they do not take full account of the complexities of the broader automotive, road safety and regulatory context.

VACC has addressed the narrative and recommendations in the consultation document on a theme-by-theme basis, rather than responding piecemeal, page by page. This allows each topic to be discussed in detail and for VACC's position to be explained in a structured way.

In light of the above, the following submission provides VACC's response to the issues and questions raised in the RIS document.

### 1.2. The automotive industry and the role of VACC

VACC is Victoria's peak automotive industry association, representing the interests of over 5,000 members in 20 retail automotive sectors that employ more than 50,000 Victorians. VACC members include:

- New and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery).
- Repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines).
- Vehicle servicing (service stations, vehicle washing, rental, windscreens).
- Parts and component wholesale/retail and distribution and after-market manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture).
- Automotive dismantlers and recyclers.
- Vehicle rental.

VACC works closely with its corresponding Motor Trade Associations, who represent the automotive industry in their respective states.

The automotive industry contains approximately 75,521 businesses registered nationally, the vast majority of whom (96.6 percent) are small family-owned and operated businesses.<sup>1</sup> For the year ended June 2019, aggregate employment for the industry was recorded at 384,810 people. In gross domestic product (GDP), the automotive industry, as a whole, accounted for approximately \$39.35 billion or 2.1 percent of Australia's annual GDP in current prices in 2019/20.<sup>2</sup>

The automotive service and repair industries overall are very competitive, resulting in slim profit margins. Consumer behaviour limits the capacity of industry to raise prices, and large multinationals (auction houses, insurance companies, the oil industry, supermarkets and vehicle manufacturers) heavily influence consumer behaviour and price. The cost of doing business is high, due in part, to the regulatory burden and rapid vehicle technology advances that require high-level skills and expensive technology in the repair/service process. The once-local vehicle market is now a truly international market with the advent of the digital age.

<sup>1</sup> MTAA, Directions in Australia's Automotive Industry Report 2021 (MTAA 2021) 8[2].

<sup>2</sup> Ibid 17 [1-3].

The Licensed Motor Car Trader (LMCT) industry sectors, whom VACC represents, includes sophisticated multi-franchise companies retailing new and used cars, motorcycle dealers, commercial vehicles dealers, farm machinery and automotive dismantlers. Predominantly these LMCT businesses are comprised of fewer than 20 employees with a reasonable proportion of micro businesses who employ fewer than five people. All rely on VACC to ensure compliance with a broad range of legislative requirements. VACC relies on feedback from those members to ensure adequate and informed representation.

Other industry divisions of VACC reflect other parts of the motor trade, including dismantlers, repairers of all types and specialist divisions. Together, VACC covers most aspects of the automotive sector. This means that this response presents a unified and comprehensive view, considering the parallel, and sometimes, competing interests of the VACC membership. That said, this submission is truly representative of the automotive industry in Victoria as VACC believes we speak, with authority, as the leading representative of our industry in Victoria.

### 1.3. Alignment of interests

The interests of the Victorian Government and the VACC are, in many senses, closely aligned.

**The Victorian community relies on government to provide a fair environment for businesses to operate in support of road safety and economic goals for the State.**

**Industry participants rely upon VACC to work with all levels of government to create effective and efficient legislation and regulations.**

These goals are best achieved by consultation processes such as the one to which this document responds.

We ask that the Department of Transport considers our response as carefully as we have considered the RIS, and the proposed regulatory changes, noting that our submission is based both on the diverse interests of our members, and the best outcomes for all Victorians.

## 2. Major topic – Unregistered and Written-off Vehicles

### 2.1. Background to written-off vehicles (pg. 64)

The claim is made by the author that the ability to register and repair written-off vehicles has historically been justified as providing the community with a source of cheap, late model vehicles.

This statement is at odds with the Victorian Gazette No. s 31 15/02/2002, where it is stated that the objective of the Written-Off Vehicle Register (WOVR) is to reduce professional vehicle rebirthing by using the identities of written-off vehicles.

It is VACC's view that the WOVR is now predominately used as an underwriting tool for the automotive general insurance sector. The WOVR has demonstrably not met its objective in eradicating vehicle theft since its introduction in 2001 (See Road Safety (Further) Amendment Bill 2001).

The responsibility of repairing a vehicle falls to the repairer, while the scope of the repair work is determined and controlled by the insurance assessor. In addition, the role of the insurer in assessing a vehicle after a motor vehicle accident remains for the purpose of the WOVR a serious conflict of interest. Most assessors are employed by insurance companies where assessors are more concerned with ensuring a better cost for the insurance company than about the correct assessment, determination and classification of a vehicle after it has been involved in an accident. Assessors are the crucial link between the consumer and insurer, who currently have unlimited discretion, provided by the law, to sign-off on vehicles that are transferred onto the WOVR, either correctly or incorrectly. This issue is covered in more detail below.

## 2.2. Authority to assess a vehicle as a write-off (p65)

The RIS states that:

*VicRoads has advised it is current practice for Insurers to use their own in-house assessors or outsource the assessment of damaged vehicles to panel repairers who assess the vehicle as an RWO.*

The RIS also claims that

*The panel repairers may then buy the RWOs cheaply through auction for repair.*

### 2.2.1 Background

Rules relating to vehicle write-offs in Victoria are found in the Road Safety Act 1986 (RSA). Section 16C of the RSA specifies subject matter for regulations including the requirements to be complied with before a vehicle may be entered on the register of written-off vehicles, including procedures for making or refusing to make entries on that register. As a result, VicRoads is entitled, by the current law, to rely on a determination made by an insurer or self-insurer under section 16C(1)(b) of the RSA that a written-off vehicle is either a statutory write-off (SWO) or a repairable write-off (RWO) under section 16D(2)(a).

Section 16D(2a) of the RSA states that, in entering a motor vehicle on the register of written-off vehicles, the Secretary is entitled to rely on a determination made by an insurer or self-insurer under section 16C(1)(b) that a written-off vehicle is a statutory write-off or a repairable write-off and is not required to make any enquiries of the Secretary's own in relation to the matter before entering the motor vehicle on the register. The Road Safety (Vehicles) Regulations 2021 confirms that in 2020 there were 35,361 RWO and 14,191 SWO recorded on the register.<sup>3</sup>

### 2.2.2 Issue

Section 16 of the RSA provides unquestionable power and authority to an insurer for a decision under section 16 of the RSA. The intention of section 16 in the RSA had the original purpose to maintain safe vehicles on Victoria's roads – a primary objective of VicRoads to this day. However, the exclusive power of insurers potentially works against the problem VicRoads is attempting to address.

#### **Role of panel repairers is mis-stated**

VACC refutes the statement in the RIS that insurers "outsource the assessment of damaged vehicles to panel repairers who assess the vehicle as a RWO".<sup>4</sup> The author misrepresents the meaning of the key word 'assess' as understood by the insurance industry. The word "assess" holds a specific meaning, in so far as the vehicle is concerned after an accident. VACC draws attention to this inaccurate, and potentially misleading, statement in the RIS and the conclusions that are then erroneously drawn.

Simply put, a repairer cannot 'assess' a vehicle as an RWO, as the author suggests. A repairer operates a panel repair business and may be an approved panel repairer for an insurer when an insurer is involved in the repairs. When a policy holder lodges a claim, and within certain parameters, the insurer may refer them to a repairer. Only then, and only by agreement with the insurer, the panel repair business may be authorised to approve claims and start repairs of damage (for example any repair under \$1,500 and covered by the insurance policy). However, the panel repairer cannot assess the vehicle as an RWO or SWO. If the damage is over \$1,500 or there are other issues, a panel repairer would prepare an estimate for the insurer. If accepted by the insurer, the insurer authorises the panel repairer to undertake the repairs.

The panel repair business, when an insurer is involved, provides a claims handling and settling service when they provide repair services to satisfy the insurer's liability. The panel repair business

<sup>3</sup> Road Safety (Vehicles) Regulations 2021 – Regulatory Impact Statement p.g 64.

<sup>4</sup> Road Safety (Vehicles) Regulations 2021 – Regulatory Impact Statement p.g 65.

does so as a representative of the insurer. This is due to an insurance fulfilment provider, the panel repair business is treated as acting on behalf of the insurer by section 910D of the *Corporations Act 2001*.

Panel repairers will, however, provide an 'estimate' on the damage sighted and provide this to the insurer if there is an insurance claim lodged. The insurer then, and as per section 16 of the RSA, has full and unfettered discretion regarding what they do with the damaged vehicle. In the situation where a vehicle is towed to a panel repairer, and the panel repairer believes the vehicle is unable to be repaired, a panel repairer cannot determine to write-off the vehicle. In that case, the repairer will return a blank estimate with a short paragraph to the insurer to advise the insurer the vehicle should be inspected, given the extent of the damage, prior to an estimate being completed. At no stage can a repairer decide to

a) 'assess' the vehicle and authorise the repairs (unless a prior agreement is in place with limits)

or

b) 'assess' the vehicle and determine that the extent of the damage is such that the vehicle's fair salvage value plus the cost of repairing it would be more than its fair market value immediately before the event or circumstances that caused the damage.<sup>5</sup>

The RIS incorrectly asserts that panel repairers have the authority to assess vehicles, which provides a false sense of power afforded to panel repairers and consumers. Regulation is clear in this regard: panel repairers do not have the authority as stated in the RIS by the author.

### **Role of insurers is inappropriate**

VACC argues that section 16 of the RSA and the Road Safety (Vehicle) Regulations 2021, should be reviewed as part of this consultation process, with the intent of removing the unfettered discretion insurers have in determining if a vehicle is a RWO or SWO. Allowing absolute power to an insurer causes problems that have adverse consequences on consumers and small business alike. Without a set of business rules to provide clear expectations of the use of the regulations, in conjunction with the RSA, the current situation allows for potential misuse of the RSA by an insurer. The issues discussed in the Road Safety (Vehicle) Regulations 2021 regarding the written-off vehicle, are relevant, however, a deeper analysis and review must be taken to address inherent weaknesses in section 16 that may be used at the sole discretion and, potentially, the sole benefit of the insurer.

It is accepted that the criteria for determining a RWO or a SWO has evolved over time, yet it appears overly simplistic when applied to modern vehicles and the various methods through which a vehicle can and should be repaired. In addition, it is well known that a vehicle recorded on the WOVR as an RWO attracts a higher salvage value than a vehicle recorded as an SWO, and therefore it is in the insurers best interest to classify the vehicle as an RWO even if it was repairable or worse still a legitimate SWO.

See "*Appendix – Examples of Mis-Classification on WOVR*" for examples of mis-classification of repairable write-offs by insurers.

### **Need for objective, qualified assessment**

To that point, VACC argues that the criteria should be further developed to ensure the appropriate application of engineering principles are applied in the assessment process, ensuring structural integrity and addressing other concerns with the vehicle. The criteria currently falls short of what is needed by the industry, including a risk it is being applied incorrectly, to the consumers' detriment. This issue is further compounded given the diversity of skills commanded by the modern-day assessor, including at times, ad-hoc training and qualifications are far from the provision and application of professional engineering standards.

<sup>5</sup> Road Safety Act 1986 (Vic) s 16C(1)(b).

## Role of panel repairers

The RIS suggests that *“the panel repairers may then buy the RWOs cheaply through auction for repair.”*<sup>6</sup> That does not reflect the business model for panel repairers, nor general practice in the industry. On reading the RIS, it appears the author is inferring bad behaviour by Victorian panel repairers. Such statements are unfair, unfounded, and frankly disrespectful to the panel repair industry in Victoria. For clarity the VACC asserts that it is not in the panel repairers’ best interest to write-off a vehicle that should, and could, be safely repaired.

## Impact of poor regulatory design on consumers

The panel repair industry has seen vehicle owners receive underfunded cash settlements from insurers. The vehicle owner who then attempts to push back, refusing to accept the cash settlement can be punished by the insurer due to the unfettered discretion of section 16 of the RSA. The insurer can change their mind and write the vehicle off with consumers often unaware of the rationale, or consequences, of these actions. This occurs because there is no process, or individual, who checks to ensure the insurer is completing the WOVV correctly (or even assessing the vehicle correctly) given that the internal assessor’s duty to their employer is more likely to prevail.

When a vehicle can be safely repaired, but the cost of the repairs is close to the market value of the vehicle, insurers can ‘change their mind’ and a vehicle owner may be unaware the course of action has been changed. Further examples of this can be provided on request.

These scenarios are compounded given VicRoads acts only as an administrator to the WOVV, and as per section 16D(2A) of the RSA, VicRoads and DoT are entitled to rely on a determination made by an insurer. They are not required to make enquiries in relation to the matter before entering the vehicle on the register.

The insurer’s unfettered discretion is further supported by section 16E(2) of the RSA, which should provide a fair appeal process for the vehicle owner, yet falls short of its intended purpose under the RSA. The appeal process under section 16E(2) of the RSA is, in VACC’s opinion, being misused by VicRoads and the DoT when a vehicle owner lodges an appeal and the Secretary decides to refuse to amend an entry on the WOVV; or if the Secretary refuses to remove an entry from the WOVV. Whilst the appeals process under the RSA is currently misused and broken, the VACC believe it has the opportunity to once again be enforced fairly and objectively as per its intended purpose under the RSA.

## Consumer disadvantage in practice

In a letter to VACC from DoT, DoT confirmed they will, and can, rely solely on section 16D(2A) of the RSA and support the determination of the insurer without completing a comprehensive review of the decision themselves. The written response by a Principal Lawyer working for the DoT states: *“the Respondent (DoT) considers that your client’s appeal is doomed to fail”*, without providing adequate evidence and transparency for their loose commentary.

VACC is disappointed with the response and demeanour of the Principal Lawyer representing the DoT, where the vehicle owner is clearly dismissed without procedural fairness. The behaviour exhibits an intent to take hostile action against a vehicle owner in retribution for lodging an appeal under the RSA. This behaviour is unacceptable and gives cause for the vehicle owner to feel vulnerable and victimised. (See letter in Appendix Section 9.)

It is also evident that the current legislation and regulations provide the insurer an unfettered discretion given that no one is “checking” or ensuring the insurer is behaving appropriately. This power afforded to the insurer is concerning, and promotes a scenario whereby 49,552 vehicles in

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6 Road Safety (Vehicles) Regulations 2021 – Regulatory Impact Statement p.g 65.

2020 were determined as RWO or SWO in Victoria. Only five per cent of these were reregistered.<sup>7</sup> An insurer's due diligence and internal processes used to determine a vehicle as a RWO or SWO is inconsistent from one insurer to another; and from one vehicle to another – irrespective of what criteria is legislated. The detriment to the vehicle owner is limitless. They can immediately lose their right to have the vehicle repaired when it is actually repairable. The vehicle owner also becomes financially disadvantaged and removed from their vehicle prematurely, without choice, due to the ineffectiveness of the legislative and related regulatory provisions.

### **Example of how consumer disadvantage works**

The hypothetical example below illustrates several issues with the insurer's unfettered discretion under section 16 of the RSA.

#### ***Stella's case study***

*Stella was comprehensively insured when she lost control of her vehicle in the rain and hit a brick wall in March 2021. The vehicle was able to be safely driven after the accident. However, given the damage the vehicle sustained in the accident, Stella submitted her claim for repair and paid the excess amount. Stella received an email from her insurer in early April 2021 requesting her bank details to enable them to deposit the repair amount into her account. Stella did not respond to the email that night. The next day she received a phone call and the insurer advised Stella her vehicle was assessed by the insurer's assessor and the amount for the repairs will be "cash settled" and paid into her account. Stella was not provided with a specific reason why the insurer could not authorise the repairs to her repairer even when she had choice of repairer on her policy. Stella was only advised by her insurer that the insurer does not have a working relationship with the repairer and the insurer can choose how they settle her claim, and their choice is via cash settlement. Stella was slightly confused and did not know what to do, and really needed her vehicle back as she was going to drive from Melbourne to Sydney in two weeks and wanted her vehicle repaired prior to going. Not to delay the repairs, Stella emailed the insurer her bank details and advised her repairer once she is paid for the repairs, she will contact her repairer to start the repairs.*

*Stella is under the impression the cash settled amount would be the same as that quoted by her repairer. The fact that the repairer does not work directly for the insurer is incidental to Stella.*

*Seven days later Stella is yet to receive the payment into her account. During this time Stella was still driving the vehicle. On the 10th day Stella received an SMS asking her to call the insurer, which she did. Only then was she told that her vehicle had been written-off, that the registration had already been cancelled and that she had no option to have the car repaired. Stella was in shock.*

*The vehicle only had a few scratches and a dent on the passenger front guard. The amount for the repairs was \$5,000.00 and the car was insured for \$10,000.00. Stella knew the car was in excellent condition and still roadworthy and could not understand that the vehicle was now classified as a write-off. How could the assessor, working for the insurer, make this decision without even looking at the car (the vehicle was assessed only via "desktop" meaning the insurer and the assessor did not physically see the vehicle). Stella was so frustrated with her insurer that she took the vehicle to two other repairers and both repairers advised Stella the vehicle is repairable, and they could not understand why the insurer changed their mind to now classify the vehicle as a write-off.*

*Stella requested answers from her insurer but was given no response and little to go on. She then formally requested her insurer provide her all information that her insurer relied on in handling her claim as per Part 12 of the General Insurance Code of Practice 2020. Stella established that her insurer at the time of her claim had decided to write-off the vehicle as they suspected the type and colour of paint on her vehicle was not a standard paint or colour and they were worried Stella (post the repairs) would not be happy with the repaired vehicle. Stella knew this as she obtained the claim notes from the assessor left on her file. The insurer could safely repair her vehicle but to*

<sup>7</sup> Road Safety (Vehicles) Regulations 2021 – Regulatory Impact Statement p.g 64.

*avoid a possible complaint from Stella once the vehicle had been repaired and in relation to the paint, and the fact the insurer had no working relationship with her repairer, the insurer decided to write-off her vehicle, even after advising her they were going to cash settle her repairs. The insurer's claim note further outlined that given the high fees they pay to the Australian Financial Complaints Authority (AFCA) if a vehicle owner lodges a dispute with AFCA, being anywhere from (\$100 to \$13,000) the insurer decided it was commercially the best option for them that the 'vehicle be written-off'.*

VACC argues that the Road Safety (Vehicles) Regulations 2021 require certain details to be prescribed by regulation to enable the written-off vehicle legislation, under the RSA, to operate effectively for all parties involved. The lack of accountable regulations, business rules and independent compliance checks and balances severely restricts the operation of the RSA section 16 and the vehicle registration system.

VACC consistently receives calls from vehicle owners when their vehicle has been written-off because they do not understand why, or they have not been notified of such a decision in a timely fashion (meaning they unknowingly drive the vehicle illegally), or they strongly disagree with the assessment. In our experience, issues around transparency, provision of information and car repairs are never more problematic than in the context of written-off vehicles and the current section 16 provisions of the RSA.

VACC raises this issue within the scope on the review of the RIS and on the basis that the current regulations are insufficient in providing reasonable consumer protections. The current regulations are potentially aiding the improper use of insurer market power, which has compounding and damaging impacts on consumers and small businesses in the motor repair sectors.

### **2.3. Trading of repairable write-offs (p65)**

The RIS cites VicRoads data showing:

Booking rates by individuals to have RWOs inspected for 2019 were:

1 individual booked 109 vehicles and was not an LMCT;

100 individuals each booked more than eight vehicles;

Section 7A of the Motor Car Traders Act 1986 states that:

*Deemed trading in motor cars*

*(1) A person who buys, sells or exchanges, or offers to buy, sell or exchange, 4 or more motor cars in any period of 12 months (whether as a principal or as an agent) is deemed to be a motor car trader carrying on a business of trading in motor cars*

The implication is that the 'individuals' are not LMCTs. If this is the case, VACC finds this data particularly alarming and is surprised that this serious breach of the law has been able to occur. Such a breach may also result in significantly increased risk to road safety. VACC urges the Department to share the available data and pursue offenders via Consumer Affairs Victoria and other compliance agencies. An immediate review of who is acquiring stock from salvage auctions (and where it ends up) must take place to identify any intentional manipulation of the Motor Car Traders Act, 8 Crimes Act or Environmental Regulations 2017, and identify unlicensed and potential organised crime operatives, including the role of the auction houses in breaching section 50 A of the Act.<sup>9</sup>

<sup>8</sup> Under the MCTA only 4 vehicles per annum. There is a strong argument that it is actually 1 car per annum. Section 7 A (1) of the MCTA states that 'A person who buys, sells or exchanges, or offers to buy, sell or exchange, 4 or more motor cars in any period of 12 months (whether as a principal or as an agent) is deemed to be a motor car trader carrying on a business of trading in motor cars'

<sup>9</sup> MCTA section 50A Offence to aid or abet an unlicensed trader' makes it an offence to aid or abet.

## 2.4. Unregistered vehicles

### Question 2 – Page 119

*Are there any other alternatives for dealing with the tampering of the VIN or Chassis number or engine ID in relation to unregistered vehicles?*

VACC believes that this issue would be resolved by only permitting the sale of unregistered vehicles to LMCTs.

## 2.5. WoVR vehicle age limit

### Appropriate age threshold for written-off vehicles - Question 1 – Page 113

Nature and extent of the problem in relation to the Written-off Vehicles – Page 63-67

Options around write-offs over 15 years of age identified by the Department. 146-151

Removing the provision that restricts vehicles over 15 years of age from being recorded on WOVR; P 117

Impacts on small business and competition. P 187

*Option 1 (the proposed regulatory reform option) would require written-off light motor vehicles, regardless of age, to be recorded and registered on the WOVR.*

*Do you believe that there is a more appropriate threshold in terms of age of vehicle (apart from 15 years and over) that is relevant for dealing with risks for safety, consumer purchasing decisions and re-birthing in relation to RWOs? What are the factors that determine this threshold?*

The owner of an accident damaged vehicle that has been assessed as a repairable write-off, but, being over 15 years old, is not assessed, may receive an insurance payout and the owner continues to drive the vehicle. The insurer relies on the owner of the vehicle to dispose of the vehicle, however, no record is available to government, nor to any future buyers.

The current 15-year threshold subsequently creates the perverse outcome that a younger vehicle that is written-off, and not legally repaired, will become industrial waste and must be disposed of appropriately under the Environment Protection Act 2017, while an otherwise identical vehicle, but older vehicle may continue to be registered and driven.

VACC can see no logical reason for the 15-year threshold, other than administrative convenience at the time the scheme was established. The WOVR creates a framework for appropriate management and handling of vehicles that should no longer be registered for road use, protecting the interests of purchasers and the road using public.

We note that there is a significant administrative burden for automotive dismantlers under Regulation 85 of the Road Safety (Vehicle) Regulations 2020 & Regulation 86 for LMCTs. Dismantlers would be required to complete the registration and transmission of the write-off report and maintain auditable records of this process.

## 2.6. Removing accident damaged vehicles from the road

### Question 6a – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*If there is an over-representation of older vehicles in accidents in Victoria, should regulation be developed to remove these accident damaged vehicles from the road?*

As described above, the WOVR should be extended to cover vehicles of all ages, requiring accident damaged vehicles to be assessed and, if found to be unsuitable for repair, be removed from the road. Older vehicles that have been repaired in accordance with manufacturer or industry best practice guidelines and continue to meet roadworthy requirements should not be removed or deregistered.

The lack of data provided in the RIS relating to the cause and effect of older accident damage does not substantiate a reason for the introduction of further regulation. Furthermore, VACC believes that registered vehicles over the age of five years should undergo annual roadworthiness inspections to ensure they are roadworthy.

If such a regulation is developed, then a system must be put in place to decommission and dismantle those vehicles fully in accordance with the Environmental Protection Act.

## 2.7. WoVR exemptions for licence category

### Question 6b – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Are there other factors that should be considered when remaking regulations relating to the written-off vehicles scheme? For example, should vehicles that are accident damaged and on the club permit scheme be exempt from requirements in relation to being repaired and re-registered?*

Any vehicle deemed a repairable write-off, regardless of age, should have the opportunity to undergo proper repair and assessed as safe to be reregistered if the purchaser requires.

In the example given, registering a vehicle on the Club Permit Scheme does not limit where or how it is driven and does not change the safety requirements for the vehicle in order to protect the interests of the community.

## 2.8. WoVR exemptions for other reasons

### Question 6c – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Are there any other categories of vehicle registration that need to be considered for exemption from the written-off vehicles scheme in the same way?*

VACC supports the following exclusions from the WOVR:

- Any vehicle that has cosmetic hail damage only as this does not affect vehicle safety.
- Genuine vintage, collectable and historic vehicles that can be safely repaired. These vehicles will otherwise be captured by any extension of the 15-year age threshold for WOVR. VACC notes that the extension of the WOVR to this group will mean that these vehicles will require a Vehicle Inspection Validator (VIV) inspection before being returned to the road, adding a safety check that does not currently exist.
- Any vehicle that has sentimental or emotional attachment, provided they can be repaired safely.

## 2.9. WoVR repairable criteria

### Question 7 – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Should repairable write-off criteria be amended to re-classify some categories of damaged vehicles to statutory write-off?*

There is a strong view that the RWO category should remain. It is a vexed issue and impacts a wide-range of the automotive repair sector, including VIC, mechanical, electrical and collision repairers, licensed vehicle testers (LVTs), authorised new car dealer service departments, tyre dealers providing wheel alignment services and new and used parts distributors including vehicle dismantlers. The economic impact on industry if the repairable write-off category were to be removed is estimated at \$17,773,560 per annum. This figure is based on the VIV inspection fee, structural reports, SRS reports, wheel alignments, mechanical and electrical repairs, new and used parts, and roadworthy checks. However, it does not include the cost of collision repairs and VIV reinspection fees.

Of the 9,404 RWOs inspected in 2019 and 2020 respectively<sup>10</sup>, less than half were certified for registration, which indicates the Vehicle Validation system is working as intended, ensuring vehicles are returned to roads in a safer condition. This is further evidence that there is no market failure, nor a need for significant reform regarding the repairable write-off category.

VACC is aware that incorrect categorisation is widespread and that there are inappropriate incentives for categorisation within the current scheme. VACC has evidence of vehicles that were classified as RWOs that met the legal criteria of SWOs.<sup>11</sup> A selection of these is shown in Appendix 9.2.

The weakness with the categorisation is not in the definition of statutory and repairable write-offs, but in the way that the distinction is applied and misused.

## 2.10. VIV inspector qualifications

### Question 8a – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*What level of qualifications/experience should VIV inspectors have and what training should they undertake upon joining the scheme?*

VACC proposes that the minimum qualification should be a Certificate III in automotive light vehicle technology, with an additional requirement to undergo the same structural awareness course LVTs are required to complete.

VIV inspectors also need to be fully aware of environmental protections and WorkSafe obligations. This might be demonstrated via training or audit.

A person involved with VIV inspections must also satisfy the fit and proper persons check as required for LVTs and LMCTs.

## 2.11. VIV involvement in repair process

### Question 8b – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Should a VIV inspector be involved in the end-to-end repair process? What would the key elements be?*

VACC proposes that anyone seeking to repair a RWO should first have the vehicle inspected by a VIV prior to booking the vehicle in for repair by a registered business. The re-registration inspection should then be undertaken by the same VIV. This is essential to ensure that the VIV has full knowledge of the initial damage to the vehicle.

## 2.12. VIV licensing

### Question 8c – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Should VIV inspectors be licensed for the purpose of inspecting repairs of written-off vehicles that have been in an accident and are requiring re-registration?*

VACC believes it is essential VIV inspectors are licensed under a similar arrangement to LVTs, arguing there needs to be regulatory oversight to ensure compliance with the rules.

10 Road Safety (Vehicles) Regulations 2021 – Regulatory Impact Statement p.g 64.

11 See Appendix for RWOs purchased at salvage auction that are clearly Statutory Write-offs

### 2.13. Consumer protection with write-offs

#### Question 9a – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Are you aware of information or protection provided to consumers regarding vehicles that have been written-off and requiring re-registration?*

Regulation 87 of the Roads Safety Regulations makes the statement:

*Reg 87 Obligation to disclose information to purchaser of written-off vehicle (1) A person who sells a written-off vehicle must inform the purchaser in writing whether the vehicle is entered on the register of written-off vehicles or on an interstate written-off vehicle register.*

Regulation 87 'applies to a person', subsequently, this includes the private-to-private vehicle sales market. VACC advises that the private-to-private market is currently at 68 per cent of the sales market. The lack of transparency for purchasers of vehicles is viewed to be in the private-to-private market, not the regulated LMCT market where prescribed legislation hold the LMCT to account.

For vehicles that are SWOs, no re-registration is possible, but section 89 requires a wrecker or LMCT to affix notices or labels on write-offs.

VACC notes there is a significant administrative burden for vehicle dismantlers under Regulation 85 of the Road Safety (Vehicle) Regulations 2020 and Regulation 86 for LMCTs. Dismantlers would be required to complete the registration and transmission of the write-off report and maintain auditable records of this process.

### 2.14. Consumer information regarding write-offs

#### Question 9b – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*What and how is information or protection provided to consumers regarding vehicles that have been written-off and are wanting to be re-registered?*

LMCTs provide this information via the Used Car Data Sheet (Reg 11 & 12 section K of the Motor Vehicles Traders Regulations)

Consumers purchasing a RWO from a LMCT are also advised if the seller uses the VACC Contract For Sale for used cars.

### 2.15. Resale of write-offs

#### Question 9c – Page 27

Options analysis of the policy issue for consultation in relation to RWOs. Pages 146-152

*Should repairable write-offs only be sold to a certain class of person/entities (e.g., LMCT dealer?)*

The current regulations have created a situation where significant illegal activity, environmental malpractice and the deception of consumers are facilitated. VACC strongly believes that written-off vehicles (RWO and SWO) must only be sold to licensed entities (either LMCT or Second Hand Dealer).

The situation with repairable write-offs is highlighted in our response. Most vehicles categorised as repairable are not successfully re-registered and, if they are, are involved in proportionally more incidents than their peers, though there is no evidence cited or available that this is a result of these vehicles being defective. VACC does not believe that the current RWO regulations achieve the goals of regulation. Should the category be retained, restricting the resale of such vehicles to LMCT or SHD licence holders would go some way to reducing the problem.

With statutory write-offs, under the new Environmental Laws Act 2017 from 1 July 2021, salvage vehicles will be considered /classified as an industrial waste. We note that:

- As industrial waste, End-of-Life Vehicles (ELVs) must only be disposed of at a place that is authorised to accept them (a 'lawful place'), and persons that generate ELVs must take reasonable steps to ensure that the receiver is authorised to receive them.
- In the exposure draft regulations, waste and resource recovery facilities that receive ELVs will need an EPA permission to operate.
- Facilities will have three months after the new laws commence to apply for their licence (or permit), while smaller scale facilities will have 6 months after the new laws commence, to register.

The release of one quarter of RWOs, most of which are not re-registered, into private hands will lead to a significant proportion of these being illegally disposed. It is estimated that in Victoria 63,000 tonnes of automotive waste goes to landfill annually.<sup>12</sup>

VACC further notes that private sale facilitates rebirthing. This happens when the acquirer of the RWO acquires (by theft) a sufficiently similar vehicle that allows the identity of the write-off to be transferred to the stolen vehicle.

## 2.16. Criteria for Re-Registration

Nature and extent of the problem in relation to the Written-off Vehicles – Pages 63-70

Options around written-off vehicles identified by the Department. Pages 109-112

Option analysis of safety, consumer protection and re-birthing problems for write-offs over 15 years of age. Pages 130-132

*Options outlined within the RIS:*

**Option 1** – *Allow vehicles which are assessed as repairable write-offs (regardless of age) to be eligible for registration but those 30 years of age and over to be only eligible for the Club Permit scheme with VIV and RWC certificate provided*

**Option 2a** – *Allow vehicles which are assessed as repairable write-offs (regardless of age) and meet the following criteria to be eligible for full registration including:*

*Have no non-repairable damage elements:*

- *roof*
- *a pillar*
- *firewall*
- *longitudinal structural rails*
- *floorpan*
- *suspension components*
- *mechanical components (e.g. the engine block, transmission case, differential housing and/or the axle housing)*
- *excessive fire, stripping, water or structural damage*
- *any or all the activation or deployment of supplementary restraints (e.g., airbags and/or seatbelts)*

*PLUS;*

*fit one of the exempt categories:*

- *hail damaged, where you were the registered operator immediately before the vehicle was hail damaged (contact your insurer) (may be covered by Victoria exempting these vehicles entirely from being recorded on WOVR if hail damage only)*

12

VACC ELV Research (2017) data provided by MWRR.

- *inherited in a will or letters of administration*
- *registered in the person's name for more than 28 days before the damage that caused it to be written-off.*

**Option 2b** – *Restrict repairable written-off vehicles (regardless of age) from being registered in Victoria with exemption provisions (as per 2a) and the introduction of a licensed repairer scheme*

**Option 3** – *Permit repairable written-off vehicles (regardless of age) to be registered in Victoria and lower the damage criteria threshold for classifying vehicles as statutory write-offs.*

**Option 4** – *Permit repairable written-off vehicles (regardless of age) to be registered in Victoria and enhance the current end to end repair process and updates received by VIV inspectors*

**Option 5** – *Prevent all vehicles that are assessed as a write-off (regardless of age) from being eligible for registration, excluding hail damaged vehicles*

**Option 6** – *Prevent all vehicles that are assessed as a write-off (regardless of age) from being eligible for registration.*

The repair process for a vehicle deemed a RWO under the current regulations would be strengthened if a mandatory requirement was implemented seeing any repair on a RWO must be performed by a registered automotive repair business. This would provide greater assurance that vehicles have been channelled through the appropriate repair process.

We note that the administrative burden on VicRoads and VIV inspectors, such as keeping a repair diary and the taking of photographs during the repair process will be reduced significantly once migration to eCertificate is completed.

Important information about the VIV programme

Of the 50 original VIV Inspection centres, only 10 remain in Victoria, all of whom are VACC members. On average, based on industry feedback, the wait for a vehicle VIV inspection is three months.

VACC has received several enquiries from members wanting to become a VIV in recent months, however due to the sunsetting of the regulations, VACC has advised applicants to delay until the new regulations have been finalised.

### 3. Club permit Scheme

#### 3.1. National alignment of scheme

New provisions with regards to the Club Permit Scheme (CPS) including:

- increasing the age of vehicles required to be on the CPS from 25 to 30 years;
- requiring evidence to accompany applications for Club Permits as requested by the Secretary;
- providing for new penalties for offences of general conditions and operating conditions of club book permit and new penalties for specific offences for logbook obligations for club permit;
- Introducing a provision for the Secretary to return incomplete club permit applications.
- Identification of options with regards to the problem of lack of alignment with nationally supported age of vehicles on the CPS. Pages 121-122
- Impacts on small business and competition. Page 188

*Option 1 outlined within the RIS (the proposed regulatory reform option) would increase the age of vehicles on the Club Permit Scheme to those 30 years or older, excluding vehicles classified as decommissioned buses and greater than 20 years of age or decommissioned ex-military and greater than 25 years of age.*

Specialty Vehicles Australia (SVA) does not see an issue with this change. They believe it is in the interest of all road users throughout Australia to have a unified set of standards and regulations.

### 3.2. Definition of replica vehicle

Identification of options with regards to the problems of lack of definition of replicas for the purpose of Club Permit Scheme (CPS) eligibility. Page 124

Options analysis of problems around lack of definition of replica for the purpose of the CPS. Pages 143-146

*Options outlined within the RIS:*

*Option 1 - (proposed) Introduce a definition of replica in relation to a club eligible vehicle to mean "a light motor vehicle that is an individually constructed vehicle that resembles, as close as practicable, the appearance and dimensions of the equivalent production vehicle."*

*Option 2 - Remove all replicas from the Club Permit Scheme*

SVA believes having a definition of replica, like the one proposed, may still create a grey area in the regulations. The current wording ('as close as practicable') still allows for differing opinions that may create confusion within the Department and the wider motoring community.

The SVA would like to propose all Individually Constructed Vehicles (ICVs) be eligible for the CPS based on the following:

- Remove the need for a replica definition, effectively removing a 'grey' area. This now becomes a black or white point that can be easily understood and enforced by all parties.
- Based on feedback from VACC members, the use of ICVs is in line with historic vehicle use (i.e. low number of days of use and low kilometres travelled) and therefore should be eligible for similar treatment.

### 3.3. Individually Constructed Vehicles

**Question 5a – Page 26**

Options analysis for replicas with regards to eligibility for the CPS. Pages 144-146

*Should Individually Constructed Vehicles that are not 30 years old, but replicate the appearance of an original recognised production vehicle that is over 30 years old, be eligible for the Club Permit Scheme? For example, should an Individually Constructed Vehicle built in 2020 that replicates the appearance of a 1962 Shelby Cobra be permitted access to the Club Permit Scheme?*

All ICVs (irrespective of age) that wish to go on the CPS, should receive a 'M' plate rather than an 'H'. This provides a visual distinction between a ICV of age less than 30 years and historic vehicle.

### 3.4. Definition of replicas

**Question 5b – Page 26**

Identification of options with regards to the problems of lack of definition of replicas for the purpose of CPS eligibility. Page 124

*Is the proposed definition for a replica vehicle for the purposes of CPS eligibility clear?*

With the modern regulation requirements of an ICV and part availability, trying to replicate the appearance and dimensions of a CPS eligible vehicle is becoming more and more difficult. Therefore, by having the 'as close as practicable' still allows for differing interpretation between members of the division and the wider motoring community. With this in mind, the SVA proposes the ability for all ICVs to be eligible for the CPS (as per comments for 'Proposed Regulations – Page 21' & 'Consultation Question 5a – Page 26')

### 3.5. Safety of replicas

An issue not covered in the RIS is the regulatory requirements of 'replicas' under this scheme.

By not having a clearly specified approval path, the system is open to interpretation and abuse, which may reduce the engineering quality and safety standard adherence of replica vehicles.

VACC's proposal of allowing all ICVs access to the CPS post engineering and VicRoads' sign-off, would close any administrative loop holes and increase the safety standards of vehicles entering CPS.

## 4. Motor trikes

### 4.1. Registration as motorcycles

#### Question 15 – Page 28

*Should motor trikes be registered as motorcycles in Victoria and why or why not?*

VACC proposes that trikes should be registered as a motorcycle. There are a number of compelling reasons for this:

- We are advised by motorcycle dealers that trikes are a variant of a two wheeled motorcycle
- Trikes can only carry a rider and 1 passenger, as for a motorcycle
- Trikes can only be ridden with a motorcycle licence
- Motorcycle retailers sell trikes as part of their motorcycle range
- Motorcycle dealers and motorcycle repairers service trikes.

VACC therefore argues there is no reason not to register such vehicles as motorcycles.

### 4.2. Registration fees

Problems with inconsistent licensing and registration of motor trikes – Pages 88-91

Options around motor trikes identified by the Department. Pages 119-120

Options analysis of the policy issue for consultation with motor trike registration. Pages 157-159

#### Question 16 – Page 28

*As mentioned in the RIS - Base case - Motor trikes to be registered as light vehicles*

**Option 1** – *motor trikes to be registered as motorcycles and charged at 20% percent of the base registration fee*

**Option 2** – *motor trikes to be registered as motorcycles and charged at 30% percent of the base registration fee*

*Should motor trikes registration fees be the same as 2-wheel motorcycle registration fees and why or why not?*

Motor trikes registration fees should be the same as 2-wheel motorcycle registration fees. VACC's logic for this is:

- Motor trikes can only carry a rider and 1 passenger
- Motor trikes can only be ridden with a motorcycle licence
- The size and weight of motor trikes are similar to motorcycle and side car
- This will therefore simplify and unify regulation.

### 4.3. Number plates

#### Question 17 – Page 28

*Should motor trikes be permitted to display 6-character number plates or should they be restricted to the current 5-character limit that applies to motorcycles?*

The current 5-character number should apply to motor trikes as applies to motorcycles for the following reasons:

- Vehicles in the same registration category should have the same plate style and this would mean that motor trikes would align with motorcycles.
- There would be no issue in identifying motor trike vehicles based on the current motorcycle registration plate format.
- This will also align the motor trike design as part of the overall motorcycle landscape.
- This will therefore simplify and unify regulation

## 5. Certificates including Roadworthy

### 5.1. Roadworthy requirement

#### Questions 10 to 14– Page 28

Policy issue for consultation with regards to roadworthiness certification. Pages 152-156

*When should a roadworthy check be required?*

*What are the important factors to consider in determining when a roadworthy check should be required?*

*At what age of vehicle should roadworthy checks apply?*

*After completion of initial roadworthy check, are there proxies for a roadworthy during the life of the vehicle?*

*Is there a threshold number of Kms under which a vehicle can be exempt from a roadworthy check? Please explain the key factors for your determination of this threshold.*

It is VACC's position that the base case remains at a minimum, that is a Road Worthy Certificate (RWC) is required whenever a vehicle is sold, or if it is re-registered to clear some defect. However, as vehicles age, VACC recommends annual inspections to ensure they remain consistent with the roadworthiness requirements.

#### **New car warranty is not synonymous with roadworthy requirements**

The RIS correctly identifies the importance of the roadworthy in promoting road safety. Although phrased in a somewhat unclear statement, which is based on conceptual rather than on-road evidence, the point is made that:

*There is an increased risk of road deaths and serious injuries if vehicles are checked for roadworthiness when being transferred at a lower rate. (p153)*

However, VACC is very concerned that the RIS then implies there is a connection between servicing and warranty, or safety inspections.

On p114, Option 1c suggests that an RWC be required for vehicles over five years old because this:

*corresponds to the typical standard warranty in the market, as shown in Table 25*

Further, on p153 the RIS makes another implied connection between warranty, warranty servicing and the value of a safety inspection:

*Under the base case (the current interim Regulations), retaining RWC requirements on transfer for all light vehicles is expected to pick up and address any safety defects identified in the RWC assessment for all vehicles, irrespective of age, whether the vehicle is under warranty, how many kilometres it has been driven, or its service history.*

Finally, on p154, the RIS says:

*Options 1a, 1b and 1c would each have a progressively slightly lower level of effectiveness as compared to the base case as they would not cover any residual vehicle defects not picked up under manufactures' (sic) warranty for vehicles under 1 year, 3 years and 5 years of age, respectively.*

Any connection between warranties, warranty servicing and the roadworthiness of a vehicle is entirely misplaced. There are four primary reasons for this:

1. Servicing is always undertaken by a provider on behalf of the vehicle owner, not the regulator. If this work also has a regulatory compliance function, then the position of the provider of service is impossibly compromised.
2. The vehicle owner is under no regulatory or commercial obligation to undertake vehicle servicing fully in compliance with the warranty conditions, or at all.
3. Vehicle owners, as customers of the service provider, can direct the service provider to deviate from the warranty service requirements and it is then for the service provider to ensure that they do not break other laws regarding quality of work. This means that they may be able to avoid liability by omitting to undertake safety related work as a result of client instruction even if they cannot avoid liability by committing unsafe work.
4. The scope and purpose of the warranty service is to maintain the vehicle in operating condition for the duration of the warranty and to rectify some (rarely all) defects identified. There is no regulatory obligation for the warranty service to cover the same checks as an RWC and, indeed, they do not.

In summary, making a connection between warranties, warranty services and the RWC would be extremely harmful. The RWC framework protects vehicle owners and other road users from unsafe vehicles, as is the purpose of the framework. Servicing of vehicles is strongly desirable, but this alone is insufficient.

### **Growing complexities**

Emerging technologies such as advanced driver assistance systems (ADAS) including automatic pedestrian, artificial intelligence and vehicle-to-vehicle, and vehicle-to-infrastructure communications is becoming more and more common on modern vehicles.

These safety systems require rigorous testing to ensure they are kept calibrated according to manufacturer specifications and for correct operation. With the rapid development and deployment of vehicles with autonomous capability of SAE level 3 and higher, the need for annual safety inspections will become even more critical in the future.

The proposed regulations are forward looking and the need for the RWC framework to be ready for emerging vehicle technologies over the next ten years is paramount.

### **RWC contribution to road safety knowledge**

The recent introduction of eCertificates provides VicRoads, licensed vehicle testers and VIV inspectors additional safety benefits and helps promote better compliance of safe vehicles on Victoria's public roads. The shift towards eCertificates also allows for better data analysis to help identify trends relating to vehicle safety.

### **Roadworthy exemption**

VACC believes there should be a single exemption from the current roadworthy certificate requirement.

New car (franchise) dealers acquire new stock in different circumstances. When it is acquired, it is transferred into the dealer's name. At times, the new stock may be used for on road or showroom demonstration purposes. More often than not, it is acquired as a result of the franchisor applying

downward pressure to meet unrealistic franchisor mandated sales targets. These cars will sit in a holding facility, often for weeks on end and never move. They are sold as a used car with less than 50 kms on the odometer. As there is a change of ownership, a RWC is required for this dealer owned stock to transfer the registration from a dealer to a consumer. VACC proposes that such vehicles, provided they have 50 kms or less on their odometer, should not require a RWC as these vehicles are effectively new.<sup>13</sup>

## Conclusion

The options contained within the RIS such as limiting RWC based on age and distance travelled are completely at odds with the objects of the Road Safety Act and Regulations. The Road Safety Act and Regulations aim to improve road safety and to ensure motor vehicles are appropriately registered, having regard as to whether they meet standards for registration, ensuring motor vehicles are safe for use on highways, used in a safe way, and minimise the wear and damage caused by vehicles to roads and road infrastructure.

VACC strongly challenge any suggestions as outlined in the RIS to move away from the baseline position as they do not improve vehicle safety. The Department should be considering strengthening the current scheme by making it mandatory that all vehicles must undergo a safety check every five years from the previous inspection to ensure the vehicle is still safe for road use. This was raised in 2013 as part of the red tape reduction review conducted by the then red tape commissioner John Lloyd. In this submission, VACC strongly rejects any change to Victoria's roadworthiness system as the then proposed options would have resulted in Victoria having less roadworthiness requirements than QLD, NSW and most countries such as Europe, USA, Canada, Japan, and New Zealand<sup>14</sup>.

VACC argues Victoria has the best roadworthiness framework in Australia. Industry is constantly evolving towards stricter inspection processes in a collaborative effort between VicRoads and VACC's LVT committee.

## 5.2. eCertificates

Expanding provisions in relation to the use of authorised vehicle inspectors, inspection and approved forms including new definitions/provisions to allow for the future use of e-Certificates including: eAFSAC; gas compliance certificate; eVASS; eDNCC; eVIV; eVIC; and eRWC; Pages 117-118

Options analysis of problems with regards to paper-based certificates. Pages 136-140  
Requirement for either paper-based or electronic certificates to be supplied to the Secretary. Page 188

*Options outlined in the RIS:*

*Option 1 - Require either paper-based or electronic certificates to be supplied to the Secretary with a phased transition to electronic by 1 July 2022.*

*Option 2 - (proposed) Require only electronic certificates to be supplied to the Secretary (to be phased in by 1 July 2022) and only allow paper-based certificates to be supplied to the Secretary as a back-up.*

VACC supports the proposed option that will require only electronic certificates to be supplied to the Secretary from 1 July 2022, and to allow paper-based certificates be supplied to the Secretary as back-up. VACC has long advocated for reform towards digital platforms and has worked closely with VicRoads on this initiative. The move towards making electronic certificates mandatory from 1 January 2022 was also endorsed by members of the VACC LVT executive committee.

<sup>13</sup> VACC, The case for exemption from roadworthy for new cars with less than 50 km on the odometer (2018), retrieved from [https://vacc.com.au/Portals/0/Low%20KM%20Demo%20and%20Cyber%20car%20report%20\\_1.pdf](https://vacc.com.au/Portals/0/Low%20KM%20Demo%20and%20Cyber%20car%20report%20_1.pdf)

<sup>14</sup> <https://vacc.com.au/Portals/0/Submissions/streamlining-vics-roadworthy-system.pdf>

Further, member feedback suggests a need for better integration between all VicRoads platforms. For example, a problem has been identified with AFSACS and RWC, whereby a vehicle requiring its gas tank to be tested at 10 years based on AS/NZ1425, is then carried out by a non-authorized person and fails to provide a legitimate certificate to prove the inspection was carried out by a licensed individual. Currently, there is no provision within the eRoadworthy system that provides evidence such as an eCertificate to the LVT that the vehicle has undergone testing from an approved AFSCA provider. Integration of these systems would ensure better vehicle compliance with regard to safety. VACC notes that VicRoads has flagged this as a future enhancement.

## 6. Other matters

### 6.1. Approach to fees

Summary of fees and projected annual government revenue pg. 47

Service delivery costs including direct and indirect costs and projected costs pg 49

Summary of Services Group (business unit) activities and costs. Pages 164 – 176

Question 20 - Page 176

*Proposal for fees under services Groups and projected cost recovery. Should an alternative approach to fees be considered with regards to services provided under the Services Groups business units and if so, why?*

It is VACC's view that LMCTs have been used as revenue collectors for VicRoads and State Revenue Office without compensation or productivity gains for a long period.

LMCTs collect both data and revenue on behalf of the regulator. The cost of these collections is significant and is unrelated to the commercial relationship between them and their customer.

- While data elements such as name and address can be collected once and used for both purposes, many elements of the data set required by the regulator are not required for commercial purposes. In addition, the data gathered by the regulator must be submitted in particular electronic forms and via specific platforms, meaning this work is funded by the LMCT purely to comply with the regulatory requirement.
- Fees are required to be collected by the LMCT on the government's behalf, rather than paid directly by the vehicle acquirer. This means the LMCT becomes a collection agent for the regulator. No compensation is paid by the regulator for costs incurred by the LMCT.
- LMCTs who make payments electronically rather than via a personal visit to a Customer Service Centre (which would create a cost burden for government) are charged a merchant fee. This is unrelated to the commercial benefit to the business, is otherwise unavoidable, and is not reimbursed.

VACC's position is that an agency agreement should be entered into (similar to the agency agreement between VicRoads and Australia Post), whereby LMCT costs and merchant fees are reimbursed.

VACC notes that the RIS seeks to minimise costs to government and consumers. No mention is made of reducing costs to industry. The effect of moving fee collection to industry is simply to transfer costs. VACC also notes that, if these fees may be passed on indirectly to customers, such a transfer creates a hidden regulatory impact on customers. The regulatory impact of moving government costs to the industry is significant and is concealed in the logic of the RIS.

## 7. General observations on the RIS

### 7.1. The case for government intervention (page 101)

The RIS justifies government intervention as required to avoid 'market failure'. It describes this as being the failure to allocate resources to 'their best uses' without defining what a 'best use' might be.

VACC does not believe there is widespread market failure. However, we believe that recent government regulation has failed to deliver a well-regulated market in all respects and that reform is appropriate and timely.

Government must always ensure the orderly roll out of efficient regulatory policy that will deliver safe and acceptable community outcomes.

The creation of a framework within which industry can deliver community outcomes efficiently is therefore a vital part of government's role. The necessary framework must be fair to all parties not only government, insurers and consumers, but also to industry. Without workable and reasonable regulation of industry, market distortions and ultimately market failure will occur.

**It is of concern to VACC that the RIS is predicated on the view of 'market failure' as the primary driver.**

### 7.2. Options analysis methodology and approach (page 125)

The automotive industry is both the provider of services for customers and the interface of government in delivering many, if not most, aspects of vehicle safety. The 'cost to government' and the 'cost to community' are identified as valid selection criteria, but there is no reference to optimising for industry delivery or even cost to industry.

The options analysis relies entirely on a multi criteria analysis approach to simplify the complexity of separately assessing potentially interacting changes and to avoid any effort to evaluate the many potential impacts. It is VACC's view the criteria, as listed on pages 125 and 126 are worthy but incomplete.

Assuming the recommendations arising from the RIS are based on these criteria, as they purport to be, the design of regulations to facilitate delivery through industry is therefore entirely overlooked.

This calls into question the entire assessment of the options and, therefore, the proposals.

**VACC believes the entire review should be restated with two additional criteria:**

- **Efficiency – The degree to which the regulations can be delivered efficiently by the automotive industry**
- **Cost to industry – The cost of a proposal to industry in terms of administration, including direct and indirect costs including staff time**

The options assessment criteria listed are worthy but incomplete, in the view of VACC.

As a consequence, some regulatory changes will have undesirable outcomes. In other cases, the changes could transfer costs from government to industry.

## 8. Conclusions

It is the firm view of VACC that our members are critical partners with government and the community. We have a mutual interest in a physically safe road environment and a responsible, economically efficient and socially fair marketplace.

The role of all stakeholders, including the regulator, goes far beyond the last-gasp prevention of market failure as described in the RIS. Regulation should be designed for the best outcome, not as a final defence against market breakdown. It remains VACC's considered view that no retail industry market failure exists.

Our members acknowledge VACC being consulted for this review and the effort invested by government in preparing this RIS. However, VACC maintains its concern with the focus of the RIS, which largely relates to government outcomes, rather than any serious consideration of consumer and industry betterment.

VACC members have, for many years, accepted evolving regulation introduced for the benefit of the public and government. Industry have adapted their processes, incurred costs and accepted the direction of government. VACC believe it is important that government listens to the views of over 5,000 businesses who are actually delivering the outcomes that these regulations seek to influence.

VACC acknowledges that the Department has a skills gap regarding vehicle standards and vehicle policy expertise. VACC has a breadth of expertise, is well resourced and is the best equipped organisation in the state to provide authoritative advice on state and federal automotive industry issues. We do not consider it unreasonable to be the leading, if not the sole, advisor on issues relating to vehicle registration, fitness and safety of the industry in Victoria and on a national platform.

### **Our previous experience**

Despite past consultation, VACC notes a number of issues where the regulator has been slow to react and where outcomes has therefore not been rolled out in an efficient manner. Some of these include:

- A twelve-year process in implementing e-Certificates, for which VACC has been advocating since 2009 and which do not require leading edge technology.
- An over thirty-year delay for flexible registration, and still only partial flexibility in something that should allow infinite choice without cost or inconvenience to government.
- Restricted access to the dealer certification scheme for used car dealers.
- Inconsistent and at times unworkable VASS business rules, particularly in rural Victoria.
- A failure to progress access to stolen number plate data for industry when that would demonstrably deliver community benefit and support law enforcement.
- Closure of VicRoads Customer Service Centres (CSC's) in clear disregard for community and industry requirements.
- Vehicle inspections at CSC's not being adequately resourced to meet demand, with LMCTs at times being directed to testing stations over 100km away, with consequential direct and time costs that cannot be recovered from government or customers.
- Poorly executed communication to CSC's with the roll out of the eCertificate resulting in customer confusion and unnecessary burdens on industry.
- Two-year dialogue to have a simple a sensible change to VSI8 for centre hub locators

These are no more than examples.

VACC has called for a root and branch modernisation of the Act and its Regulations but this has been resisted.

There are many opportunities for sensible, safety-oriented changes. Examples of these include the use of magenta lights on accident tow trucks and Road Rule 79A being extended to accident tow truck operators. All of these would be easy to introduce and would make a material difference yet are prevented by archaic regulation.

## Summary of our response

In summary, VACC recommends the following:

1. Reform the regulations concerning written-off vehicles and, in particular:
  - b. The need for objective and adequately qualified assessments to determine a vehicles potential written-off status.
  - c. Remove the unfettered discretion insurer's have in determining written-off vehicles.
  - d. The sale of written-off vehicles at salvage auctions must comply with the Environmental Protection Regulations 2017 (Vic).
  - e. Restrict the sale of repairable write-offs to LMCTs and second-hand dealers.
2. Maintain the current roadworthy framework and do not succumb to the fallacy that warranty and servicing in any way replace the need for a roadworthy.
3. Licensing of VIVs and use only registered businesses to undertake repairs for RWOs.
4. Change key elements of the Club Permit Scheme regarding replica and individually constructed vehicles
5. Treat motor trikes in the regulations in broadly the same way as motorcycles.
6. The government to adopt a cost recovery program for LMCTs in the collection and remittance of government fees.

## 9. Appendix A – examples of mis-classifications on WOVV

The vehicles shown below are examples of vehicles which self-evidently do not satisfy the criteria for the repairable write-off category.

### 9.1. Vehicles classified as repairable but should not have been written-off

The vehicle in the photo was recorded incorrectly on the WOVV in Victoria as a RWO whereby it should never have been recorded on the WOVV at all. The insurer approved repairs originally and the repairs were completed by the repairer and the invoice was then submitted. After the repairs were completed, the insurer claimed the vehicle was a repairable write-off and was trying to seek a salvage on the vehicle that had already been repaired and where the owner had moved to another state. The damage presented to the vehicle was isolated to the rear door only and not other panel was affected.

The insurer wrote on the WOVV the vehicle had heavy damage (irrespective that the vehicle was repaired already, and they knew that it was repaired when the WOVV was lodged with the Department).

The vehicle has since been successfully re-registered and passed the VIV inspection.

More information can be provided if required.



## 9.2 Vehicles classified as RWO but should be classified as SWO

In the pages that follow we show examples of vehicles that have been offered for sale, shown as RWOs which are clearly well beyond a state in which they can be repaired. The incentive for this is that the RWO status increases the value of the vehicle for the insurer.

*The vehicles on this page and the pages following were offered for sale as repairable write-offs*

**Vehicle Details - Stock No.**
**Lot No.**

**Circa 02, Holden Special Vehicles, Clubsport, VX II R8, Sedan**



<b>Description</b>	Circa 02, Holden Special Vehicles,
<b>Build Date</b>	(
<b>Odometer</b>	Odometer Not Visible
<b>Colour</b>	Black
<b>Transmission</b>	4 Spd Automatic
<b>Engine</b>	5.7 Multi-Point Injection Petrol - Unleaded ULP
<b>Registration</b>	No Registration
<b>No. of Seats</b>	5
<b>No. of Doors</b>	4
<b>GST Status</b>	GST Included in Sale Price
<b>Damage Details</b>	Front - Heavy Panel, Heavy Structural, Interior - Airbags Deployed, Nearside Front - Heavy Panel, Heavy Structural, Offside Front - Light Panel, Light Structural
<b>Location</b>	VIC
<b>Applicable Fees</b>	Please check Terms and Conditions for relevant fees.

R.W.O.

Close X

---



Vehicle Details - Stock No.

Lot No.

Toyota, Yaris,

Hatchback



Description	04/ Toyota, Yaris,
Build Date	No
Log Books	No
Colour	Black
Transmission	4 Spd Automatic
Engine	1.3 Multi-Point Injection Petrol - Unleaded ULP
Registration	No Registration
No. of Seats	5
No. of Doors	3
GST Status	GST Included in Sale Price
Damage Details	Front - Heavy Panel, Heavy Structural, Interior - Airbags Deployed, Nearside Front - Heavy Panel, Heavy Structural, Offside Rear - Heavy Panel, Light Structural
Location	/IC
Applicable Fees	Please check Terms and Conditions for relevant fees.

R.W.O

Close X



**Vehicle Details - Stock No.**

06/04, Ford, Falcon, I



<b>Description</b>	06/04, Ford, Falcon,	Super Cab,
<b>Build Date</b>	Circa 2004	
<b>Log Books</b>	No	
<b>Colour</b>	Green	R.W.O.
<b>Transmission</b>	4 Spd Sports Automatic	
<b>Engine</b>	4.0 Multi-Point Injection Petrol - Unleaded ULP	
<b>Registration</b>	No Registration	
<b>No. of Seats</b>	2	
<b>No. of Doors</b>	2	
<b>GST Status</b>	GST Included in Sale Price	
<b>Damage Details</b>	Front - Heavy Panel, Heavy Structural, Nearside Front - Heavy Panel, Heavy Structural, Nearside Mid - Minor Dents and Scratches to Vehicle Panels, Offside Rear - Light Panel, Light Structural, Rear - Light Panel, Light Structural	
<b>Location</b>	....., VIC	
<b>Applicable Fees</b>	Please check Terms and Conditions for relevant fees.	



**Vehicle Details - Stock No.**

**Lot No.**

Ford, Territory, :



<b>Description</b>	, Ford, Territory,
<b>Build Date</b>	Circa 2007
<b>Odometer</b>	is. showing on Odometer
<b>Log Books</b>	No
<b>Colour</b>	Black
<b>Transmission</b>	4 Spd Sports Automatic
<b>Engine</b>	4.0 Multi-Point Injection Petrol - Unleaded ULP
<b>Registration</b>	No Registration
<b>No. of Seats</b>	5
<b>No. of Doors</b>	4
<b>GST Status</b>	GST Included in Sale Price
<b>Damage Details</b>	Dam Offside Rear Suspension - Light Structural, Interior - Airbags Deployed, Nearside Rear - Heavy Panel, Offside Front - Heavy Panel, Heavy Structural, Offside Front Suspension - Light Structural, Offside Mid - Heavy Panel, Heavy Structural, Offside Rear - Heavy Panel, Heavy Structural, Rear - Heavy Panel
<b>Location</b>	
<b>Applicable Fees</b>	Please check Terms and Conditions for relevant fees.

R.W.O



Vehicle Details



Main Photo



Main Photo

VEHICLE INFO	AUCTION INFO		
	2004 Mazda 3 i		
Location	Victoria		
Compliance	Aug 2004		
Body	Hatch		
Engine	1.8L Ei Petrol	Transmission	5spd Manual
Colour	Orange		
Stock number			
Registration	VIC		
WOVR status	Repairable Write-off		
Features	** VEHICLE LOCATED		VIC **

## 10. Appendix B – Department of Transport legal response regarding WoVR

See Section 2.2.2



Department of Transport

GPO Box 2392  
Melbourne, VIC 3001 Australia  
Telephone: +61 3 9651 9999  
www.transport.vic.gov.au  
DX 210292

  

Your ref: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: [REDACTED]  
By email only: [REDACTED]

Dear Practitioners

**[REDACTED]-V- SECRETARY TO THE DEPARTMENT OF TRANSPORT  
MAGISTRATES' COURT REF [REDACTED]**

We refer to the above matter and to the appeal that is listed for hearing at [REDACTED] on [REDACTED]. We also refer to your supporting affidavit dated [REDACTED] on which your client relies.

The Secretary to the Department of Transport (which is now the correct Respondent) considers your client's appeal is without basis; in those circumstances, the Respondent invites your client to withdraw it, noting that the Respondent would provide its consent without seeking costs.

**The appeal has no prospects of success**

Your client has appealed against a determination of the Secretary to refuse to remove from the written-off vehicle register (the register), your client's vehicle. Pursuant to s 16E(2A)(c) of the *Road Safety Act 1986* (Vic) (the Act), the only ground on which an appeal may be made in those circumstances is that "the vehicle was not a written-off vehicle when it was entered on the register".

Having regard to the definition of "written off vehicle" at s 16C of the Act, it is beyond doubt that it was such a written off vehicle at the relevant date; ie, your affidavit deposes as follows:

- the vehicle was involved in a collision (at para [6]);
- the vehicle was insured by an insurer [REDACTED] (at para [4]),
- the insurer made a determination for the purposes of s 16C of the Act ([REDACTED]) and [REDACTED]; and
- the vehicle was entered on the register on [REDACTED] ([REDACTED]).

You will also note that s 16D(2A) of the Act provides that the Respondent (and so the Court, on appeal) is entitled to rely on the insurer's determination that the vehicle is a written off vehicle without making further enquiries.







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