

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 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.

The purpose of this document 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 when 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.

Background

For some time, Victorian LMCTs have sporadically used the right to enforce the cooling-off provisions as announced in the Act.

Many LMCTs have also returned deposits paid by purchasers who have either lawfully or unlawfully terminated a contract of sale with an LMCT to acquire a new or used motor vehicle. LMCTs who have refunded deposits 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.

In similar circumstances, many LMCTs 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. Those LMCTs reason that the time they have invested in negotiating and preparing a vehicle for sale makes a deposit non-refundable. Whilst in essence this reason applied by LMCTs may be correct, there are several key processes that LMCTs should put in place before applying such a practice.

Over the post COVID pandemic period, many dealerships have seen contracts for the purchase of a new or used vehicle be cancelled, or unlawfully terminated, by the consumer under some of the following reasons:

- Supply and delivery of the car taking too long
- Source of another vehicle from another dealership
- Failure of mechanical test
- Price increase from manufacturer
- Change of mind as to car of choice
- Change of life circumstances
- Buyer's remorse
- Other additional condition.

Whilst some of the cancellations or unlawful terminations VACC is involved with are for straightforward issues such as a delivery date on the contract not being met, many other reasons could simply be attributable to buyer's remorse or consumer opportunism. There is no law in

¹ Section 43 Motor Car Traders Act 1986 (Vic).

Australia that deals with buyers' remorse,² and certainly no obligation on a Victorian LMCT to not extoll the full compensatory measures available in law to seek redress of the resources spent by the LMCT in the process of delivering that vehicle.³ Those resources may include the cost of floorplan finance and holding the inventory, cost of advertising the vehicle on an on-line classifieds platform, the labor component of dealing with the consumer, preparing contracts and finance, preparing the vehicle for sale including registration, and fitment of accessories and aftermarket parts as requested in the contract by the consumer. Another element is the loss of sale opportunities on that vehicle in the time that the vehicle to be supplied was 'off the market'.

This paper looks to remind members on their legislative rights and protections LMCTs can rely upon to assist in offsetting the costs incurred as a result of a cancellation or unlawful termination of a contract.

Important to note Australian Consumer Law treatment of refunds

It is vital that when reading this paper that dealers do not confuse the principles and laws applied when dealing with cooling-off, non-refundable deposits and illegal termination of contract with a consumer's basic rights under the Australian Consumer Law (ACL). Consumers are entitled to a repair, replacement or refund if a product or service they buy does not meet one of the consumer guarantees.

Dealers must never display a 'no refunds' sign (or otherwise) stating that refunds are not available, or not available after a certain number of days. To do so is a breach of the ACL. Those consumer rights cannot be taken away by anything the dealer or manufacturer says or does.⁴



Cooling-Off and the dealer

Cooling-off provisions apply to the sale of new or used vehicle sales (including motorbikes) bought by a consumer from a LMCT.

LMCTs should be aware that a consumer has three 'clear' days to cool-off (or change their mind) about the sale of a new or used vehicle they have entered into a contract of sale for.

² Consumer Affairs Victoria, Refunds for change of mind, (2022), < <https://www.consumer.vic.gov.au/products-and-services/business-practices/store-policies/change-of-mind> >.

³ Kylie Matthews, Choice Magazine, Just two in five Australians have asked for a repair, refund or replacement Change of mind refunds aren't guaranteed,(2021) <https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/articles/australians-should-exercise-their-consumer-rights>.

⁴ ACCC Consumer Rights (2022), < <https://www.accc.gov.au/business/selling-products-and-services/consumer-rights-and-guarantees>>.

The three-day cooling-off period starts from the next business day after the vehicle is purchased and does not include weekends or public holidays. As an example, if a consumer signs a contract for a new car with a total purchase price of \$35,000 on a Friday morning, the next 'clear' day is defined as Monday. Three business days will be Monday, Tuesday and Wednesday 11.59pm.

If the consumer decides on Wednesday afternoon that they wish to invoke their right to 'cool-off' then they have met the criteria and can activate their right to cool-off. Under S 43 of the Act, a prescribed penalty of \$400 or two per cent of the purchase price (whichever is the greater) is to be borne by the consumer. This monetary amount is not a figure that the dealer has just dropped into a contract of sale. It is prescribed penalty within the Act that has its authority enshrined under Victorian legislation and is fully enforceable. So, in this case the dealer could retain \$700 as a result of the consumers decision to cool-off. Of course, the dollar value the consumer will pay will change with a different total purchase price. To cool-off within the legislated timeframe, the consumer must give the motor car trader (or the motor car trader's agent) written notice that they are terminating the contract.

In the same example, if the consumer decides on Thursday morning that they wish to 'cool-off' then they have not met the criteria and subsequently lose their right to cool off. A failure by the consumer to take delivery of the motor vehicle will amount to a breach of contract and the dealer can seek a damages claim using provisions contained within the contract of sale.

Importantly, if a consumer chooses to accept delivery of a vehicle within the cooling-off period, they will automatically lose the right to cool-off.

Below is a sample letter devised by the Consumer Action Law Center (CALC) that VACC recommends you provide to your customer if they are uncertain of how to advise you in writing of their intention to cool-off.⁵

CALC SAMPLE LETTER

[Date]

Dear Sir/Madam

Notice of cancellation

By giving you this letter, I cancel the contract dated *[insert date of the contract]* to purchase *[insert details of the vehicle in the contract, such as the make and registration]* pursuant to Section 43 of the Motor Car Traders Act 1986 (Vic).

[If applicable, set-out any other grounds that you rely on to cancel the contract - get advice if you are unsure]

I require you to immediately pay me all money that I am entitled to and return any trade-in vehicle.

Yours faithfully

[Your name]

CC: Consumer Affairs Victoria

[Insert name of finance company if applicable]

5. Consumer Action Law Center (2013), <https://consumeraction.org.au/can-i-get-out-of-a-contract-to-buy-a-car-from-a-motor-car-trader-cooling-off-rights/#_ednref1>.

Exceptions to cooling-off provisions

The three-day cooling-off period does not apply if:

- **the vehicle being sold is a commercial vehicle.**

In this instance dealers must know whether a vehicle is categorised as a commercial vehicle under the Act. Some dual cab utilities, SUVs or vans with a gross vehicle mass of under 4,500kg may not be categorised as a commercial vehicle. The best way for LMCTs to verify whether a vehicle is subject to cooling-off provisions is to check the category codes on the vehicle's compliance plate. Under the Act, a commercial vehicle means a vehicle that has a vehicle category code of MD, ME, NA, NB, or NC (or any other code specified by the regulations for the purposes of this definition) stamped on its compliance plate.

- **you are selling a vehicle to a motor car trader.**

There is no cooling-off between LMCT to LMCT or special trader, including cars bought at auction

- **the purchaser is a body corporate.**

A body corporate is taken to mean a legal entity, other than a body politic or a natural person. It includes a statutory corporation, a company, and an incorporated association.⁶ A body corporate registration is defined under the *Corporations Act 2001* (Cth).⁷

- **if the purchaser accepts delivery of the vehicle within the cooling-off period.**

If a purchaser chooses to accept delivery of the vehicle within the cooling-off period, they will automatically lose their right to cool-off.

How the dealer advises the consumer of their cooling-off rights

LMCTs are required to include a prescribed information box in the contract of sale for each vehicle they sell, that sets out information about the cooling-off process. The prescribed terms for used cars can be found in schedule 2 of the regulations. The prescribed words for new cars can be found in schedule 3 of the regulations.



⁶ Department of Finance, Body Corporate, (2022) <Body Corporate | Department of Finance>.

⁷ Section 601BA (1)-(2) of the Corporations Act 2001 (Cth).

What is an LMCT entitled to do under the Act when a consumer elects to cool-off?

LMCTs can keep some of the deposit that a consumer has paid for a used vehicle (\$100 or one per cent of the purchase amount for a used car, whichever is greater). A demonstrator vehicle is a used vehicle.

LMCTs can keep some of the deposit paid by a consumer for a new vehicle (\$400 or two per cent of the total purchase price, whichever is the greater)

VACC Advice

1. Always be informed if your vehicle of sale is a commercial vehicle or motor car as defined by the category codes contained within the Act. Ensure the customer knows whether the vehicle, and subsequently the contract, has cooling-off rights attached to it.
2. Consider informing a consumer that if they take delivery of the vehicle within the three-day cooling-off period that they will lose their right to cool off entirely.
3. Always go through the terms and conditions of an agreement for the sale for a new or used motor vehicle with each vehicle purchaser.
4. Make the consumer aware of the cooling off provisions as stated on the agreement for sale of a new or used vehicle. Those provisions cannot be traded away or modified under law.
5. Never commence fitment of accessories or aftermarket parts before the cooling-off period has elapsed.
6. Never register a new car until the cooling-off period has elapsed.
7. Whilst not legislated to do so, consider advising the consumer of the financial penalty applied under section 43 of the Act if they elect to cool-off.
8. A consumer can only cool-off by advising the LMCT in writing. This can be (for e.g.) via letter, email, fax or SMS.
9. Have a cooling-off business policy in place as to whether your dealership will enforce its legal right to keep the one per cent or \$100 for a used car (whichever is the greater), or two per cent or \$400 for a new car (whichever is the greater). Remember, you have invested time and resources into making a vehicle sale and you are only enforcing your rights under the Act.
10. New car dealers should provide a purchaser of a new vehicle with a copy of the ACCC publication *'Just bought a new car?'* (Please see attached Appendix 1).
11. The VACC generated New and Used Motor Vehicle Agreements of Sale adhere to the prescribed terms as set out in the *Motor Car Traders Act 1986 (Vic)* and will suffice as far as the cooling-off provisions are concerned.

Deposits

Many dealers take a deposit on a new or used vehicle that, in the eyes of a LMCT, 'commits' a consumer to completing the transaction and 'holds' that vehicle for the consumer to purchase. Dealers may also ask a consumer for a deposit if that person is taking a vehicle for a test drive or taking the vehicle off premises for an independent mechanical inspection. The amount of the deposit should generally ensure it is proportionate to any potential loss you could suffer if the deal does not eventuate.

It is important to correct the misnomer that all deposits are nonrefundable. In certain circumstances dealers must return 100 per cent of a deposit to the purchaser, even in circumstances where a contract of sale has occurred. The actual amount a dealer is allowed to keep depends on the circumstances. It should not be so high as to constitute a penalty.⁸

⁸ Fair Trading NSW 'Deposits' (2022) <<https://www.fairtrading.nsw.gov.au/buying-products-and-services/buying-products/consumer-rights-myths-and-facts>>



So as to not cause any uncertainty, the maxim for Victorian LMCTs should be that **'Non-refundable deposits are allowed when a buyer is aware of the fee prior to signing the contract.'** The fee should also not be an 'unfair' contract term.⁹

How dealers can protect themselves before something goes wrong.

Meeting the Non-Refundable Criteria

In essence, most non-refundable deposits are intended to protect a dealership in circumstances of sudden cancellation and to compensate the business for the time, effort and money expended up to that point of the transaction.

The non-refundable deposit that dealerships charge in these circumstances must be reasonable and proportionate with reference to protecting their legitimate business interests and is not excessive or used as a 'penalty' against a customer or client.¹⁰

In summary you can keep a deposit as long as it is properly disclosed to a purchaser (i.e., is the consumer aware of the non-refundable status of the deposit) before entering into the transaction and that it is a legitimate business interest.

Documenting the deposit correctly

Dealerships must ensure they disclose all relevant information regarding the non-refundable deposit to their customers or clients.

This can be incorporated into the Terms and Conditions of a receipt being used by the business or on the special/additional conditions of a contract.

Deposits on test drives and conditional agreements

Under Regulation 22 (1) of the *Motor Car Traders Regulations 2018 (Vic)* (the Regulations) a LMCT will be in breach of the Regulations if they do not return a deposit to a consumer who pays a deposit

⁹ Lawpath, 'Are non-refundable deposits legal?' (2019) <<https://lawpath.com.au/blog/are-non-refundable-deposits-legal>>

¹⁰ Enterprise Legal 'When is a deposit truly non-refundable?' (2020) <<https://enterpriselegal.com.au/knowledge-centre-articles/when-is-a-deposit-truly-non-refundable>>.

prior to a test drive of the motor vehicle and subsequently returns the motor car and does not enter into an agreement to purchase it. Failure by the LMCT to comply can result in a fine of up to 10 penalty units.¹¹

Similarly, under Regulation 22 (2), it is VACC's interpretation that an LMCT will be in breach of the Regulations if they do not return a deposit to a consumer who has a conditional agreement for the purchase of a vehicle attached to a contract and that condition is not met by the LMCT (e.g., LMCT to meet stipulated delivery date, motor vehicle to pass mechanical test). In this instance, where there is no breach by the consumer, the motor car trader must refund or return the deposit in full to the purchaser immediately upon demand by that purchaser. Failure to comply by the LMCT can result in a fine of up to 10 penalty units.¹²

Possible consumer actions for non-refund or return of deposit

Under Section 76 (1)(g) of the Act, your dealership could be subjected to a claim upon the Motor Car Traders Guarantee Fund that may result in your dealership losing its licence to trade.

Part of Section 76 deals with the instance where a consumer who claims a loss has been incurred from a failure of a motor car trader to comply with an agreement to refund the whole, or part of a deposit, or any other amount following termination of a contract for sale of a motor car.

Other actions for consumers to pursue include making an application to the Victorian Civil and Administrative Tribunal (VCAT) or other courts and tribunal to have the deposit returned in full.

VACC advice on deposits

1. Always issue a receipt when taking a deposit that clearly shows what payment method was used and what amount was paid.
2. Always refund deposits if a test drive does not result in a sale. A credit for 'next time' will not suffice.
3. Always refund deposits if your dealership has not met a condition of sale that is stipulated in the contract.
4. Ensure the deposit amount is proportionate to any potential incurable loss.
5. Ensure that any amount or percentage to be retained by the LMCT is set out clearly for the consumer to be alert to and is acknowledged by a signature from the consumer.
6. Ideally you should refund the consumer in the same way the deposit was paid.
7. Transparency is key,¹³ you must set out the termination charge clearly and legibly.¹⁴

Special or Additional Conditions on your Agreement of Sale

Many new and used vehicle deals are subject to special conditions. Those special conditions may typically include:

Specified delivery date

Dealers should be aware that a specified delivery date should be carefully considered before committing to a firm, documented delivery date.

If the time for delivery of a new car is an essential term of the agreement of sale (i.e., a condition of the contract rather than a contractual warranty),¹⁵ and the dealer does not deliver as specified in the agreement, then the consumer has the option to rescind the contract.

¹¹ From 1.7.22 to 30.6.23 a penalty unit in Victoria is \$184.92.

¹² Ibid.

¹³ Enterprise Legal 'When is a deposit truly non-refundable' (2020) < <https://enterpriselegal.com.au/knowledge-centre-articles/when-is-a-deposit-truly-non-refundable>>.

¹⁴ Queensland Office of Fair-Trading v Bruce Kalf trading as North Queensland Horse Float Sales [2013].

¹⁵ The definition of 'essential term' is considered in Associated Newspapers Ltd v Banks [1951] HCA 24.



The purchaser's right to rescind the contract is easier to assert if the contract states that delivery date is paramount,¹⁶ or that states that the contract is terminated if the dealer does not meet the delivery or additional conditions as stipulated on the contract.¹⁷ It is important for dealers to understand that it is not mandatory that a delivery date is to be inserted in the contract, but dealers ought to be aware that if one is, then a right of termination without monetary compensation to the dealer may arise if the date is not met.

Subject to purchaser obtaining finance approval and other finance criteria

Dealers should be aware that the VACC terms and conditions for the sale of a new or used vehicle contains a specified term (Term 12 (1)-(3)) that allows for consumers to terminate, in writing, an agreement without penalty if they have taken all reasonable steps to but are unable to obtain finance.

It is important to note that under Section 41 of the Act, and Regulation 23 (schedule 2), the consumer is required to have at least applied for, and been refused, finance.

It is important to note that stating that a contract is 'subject to finance' does not mean that the deal is subject to finance on the terms, and at the interest rate, the purchaser chooses. The LMCT may arrange finance at a high/higher interest rate.¹⁸ However, this does not provide licence for LMCTs to obtain finance for a consumer that is clearly not in the consumer's best interests. Dealers should always ensure that a consumer is offered an interest rate by the lender that is based on the consumer's financial position and credit score, rather than on the consumer's ability to negotiate. To do so any other way may be considered unconscionable. LMCTs should refer to the *National Consumer Credit Protection Act 2009 (Cth)* to better understand your obligations in consumer finance.

¹⁶ Fitzroy Legal Service 'How to get out of a car deal'(2021) < <https://fls.org.au/law-handbook/houses-communities-and-the-road/buying-a-car/how-to-get-out-of-a-car-deal/>>.

¹⁷ 15 & 16 Goods Act 1958 (Vic).

¹⁸ Ibid 13.

Various accessories or aftermarket fittings

Where various accessories (for e.g., tow bar or sunroof) are to be installed at the purchaser's request and have been included in the contract of sale and set out specifically on the special or additional conditions set out in the contract of sale will be considered a contract precedent.

The consumer could terminate the agreement under this criterion without penalty as a contract precedent and will preclude the contract from coming into existence until that condition is fulfilled.

Subject to mechanical test

A special term that would allow for consumers to have a potential purchase terminated if the vehicle is not classed as mechanically or structurally sound by a mechanical professional of the purchaser's choice.

The purchaser could terminate the agreement under this criterion without penalty as it is considered a contract precedent and will preclude the contract from coming into existence until that condition is fulfilled

What is the process for a dealer addressing an unlawful termination of a contract for a new or used vehicle?

If a purchaser is considered to have unlawfully terminated the contract, then the dealer should consider commencing an action for damages.

Those members who use the VACC Agreement for Sale of New Vehicle and Agreement for the sale of a Used Car can find the term 14(1)(a) that provides a percentage term (five per cent of the total price) to be provided by the purchaser if the contract is unlawfully terminated by them. Whilst this term is not prescribed under the *Motor Car Traders Regulations 2018 (Vic)* for the sale of a new vehicle dealers should take solace in the fact that VACC has had the term legally tested for fairness under the Unfair Contract Term criterion under the ACL.

For the sale of a used vehicle, the five per cent forfeiture by a purchaser for an unlawful termination is covered by a prescribed term under Section 5(1) of the *Motor Car Traders Regulations 2018 (Vic)*.



What action can a dealer take if the consumer refuses to take delivery of the new or used vehicle ?

After all reasonable endeavors have taken place, and all actions taken by the dealer to mitigate any losses, the legal position for dealers could be to seek damages for losses incurred against the consumer. The purchaser may be liable to compensate the dealer.¹⁹ It is recommended that LMCTs keep a written evidence portfolio of those endeavours.

The dealer must be able to prove a non-recoverable loss of profit that eventuated by the purchaser wrongfully terminating the contract .²⁰ The case law precedent for working out a methodology for assessing damages is found in *W&J Investments Ltd v Bunting*.²¹

Summary

It is the view of the VACC LMCT Divisions that all members should:

For cooling-off

1. Enforce the legislated cooling-off provisions for new and used vehicles in all circumstances deemed fair and that do not cause an unfair hardship on the consumer.
2. Ensure that all dealership sales and administrative staff are aware of the LMCT legal right under s 43 of the Act to retain a percentage (or value) from the vehicles total purchase price when a consumer elects to cool-off.
3. Ensure that the decision by the consumer to cool-off is delivered to the dealer in writing.
4. Be wary of consumers contract shopping or citing issues to terminate deals that are buyers' remorse.
5. Never register new cars, fit accessories or fit aftermarket parts until the cooling-off period has elapsed.
6. Provide the consumer with a version of the CALC letter advising the LMCT of their intention to cool-off.

For deposits

1. Ensure that a receipt is issued that clearly shows the amount, date, method of payment and signature of the purchaser.
2. A receipt for anything over \$75 must be issued.²²
3. Non-refundable deposits must be reasonable and proportionate with reference to protecting dealers' legitimate business interests and costs.
4. State terms for non-refundable deposit.

For unlawful contract terminations by a consumer

1. If you are not using the VACC supplied Agreement of Sale for New or Used Vehicles, ensure that your termination clause includes a section that provides your dealership with protections should an unlawful termination by a consumer ensue.
2. Always enforce your rights and seek redress when faced with an unlawful termination of contract if it does not cause an obvious hardship on the consumer.
3. Ensure your purchaser is aware of the termination clause within the contract.
4. Take the approach that transparency is key to a successful outcome.

¹⁹ 56(2) Goods Act 1958 (Vic).

²⁰ Ibid 13.

²¹ [1984] NSWLR 331.

²² ACCC, Receipts, bills, proof of purchase,(2022) < Receipts, bills, proof of purchase | ACCC>.

5. Remember, in any transaction, the LMCT will generally be considered to be the predominant and informed party who has the most bargaining power within a contract. A court or tribunal will almost always err to this premise. Be sure you have a fair and legal process documented for cooling-off, treatment of deposits and contract terminations by the consumer.

How can VACC help ?

Members who are unsure of their obligations to a consumer under the *Motor Car Traders Act 1986 (Vic)*, *Motor Car Traders Regulations 2018 (Vic)*, *Australian Consumer Law 2011 (Cth)* or *Goods Act 1958 (Vic)* are encouraged to use their VACC membership to its full capacity.

I am available to conduct dealership briefings on-site for all of your sales and administrative team at no cost to your business.

Feel free to call my office 9829 1280 or email me, Michael McKenna, via mmckenna@vacc.com.au for any assistance that is required.

Appendix 1



Just bought a new car?

Know your consumer rights

Congratulations on your new car! For any consumer, this is a major—and exciting—purchase. Take a moment to read this information so you understand what your rights are in case you have a problem later.

Under Australian law, when you buy products and services they come with automatic guarantees that they will work and do what you asked for, under what is referred to as Australia's consumer guarantee rights. If something goes wrong with your new car, you may be entitled to a remedy under the consumer guarantees as well as the manufacturer's warranty or any extended warranty you might have.

- **Consumer guarantees:** Your automatic rights under the Australian Consumer Law that cannot be restricted or excluded.
- **Manufacturer and extended warranties:** Voluntary promises offered by the manufacturer, dealer or a third party that apply for a specified time and may add to your automatic rights under the Australian Consumer Law.

Manufacturers and dealers must honour your consumer guarantee rights regardless of any commercial warranties they give to you or sell you. For example, your consumer guarantee rights may protect you if your car experiences a major failure after a warranty has expired.



Consumer guarantees

- Your statutory rights that cannot be replaced, limited or removed by any agreement, contract or warranty, or made subject to non-disclosure conditions.
- They apply to new cars for an unspecified but reasonable time, and are subject to certain exceptions (e.g. if the reason for the damage is abnormal consumer use).
- These rights include that your new car must:
 - be of acceptable quality (including that it is safe, durable and free from defects)
 - be fit for any purpose disclosed before the sale
 - match the description provided or demo model
 - have spare parts and repair facilities available.
- These rights apply regardless of whether or not an independent operator services or repairs your car.



Manufacturer's warranty

- This is a car manufacturer's promise about your new car and what they will do if something goes wrong.
- It applies for a specified time from when you buy a new car.
- It comes with conditions that limit the coverage and what you can claim for.
- It typically allows you to choose your preferred repairer for service and repair, as long as the manufacturer's maintenance and servicing standards are met.
- However some manufacturer warranties may require you to return to their dealer network for repairs claimed under warranties.



Extended warranty

- You may be able to purchase an optional add-on extended warranty that is usually sold separately to the car.
- It applies for a specified time once the manufacturer's warranty expires.
- You may be able to purchase a manufacturer's extended warranty, which usually replicates and extends your existing warranty, or you may be able to purchase a dealer or third-party extended warranty.
- You should make sure that the extended warranty provides value for money and benefits greater than what you automatically receive under the consumer guarantees. For example, some extended warranties contain restrictive terms and conditions, such as excluding certain parts, setting caps on claims or requiring you to use a nominated repairer.

www.accc.gov.au

If your new car fails to meet the consumer guarantees

If your car fails to meet a consumer guarantee, you have rights against whoever supplied you the car (e.g. the car dealer), and in some cases against the manufacturer. In particular, you are entitled to a repair, replacement or refund if your new car fails to meet the consumer guarantees. The remedy you're entitled to, and who chooses the remedy, will depend on whether the failure is **major** or **minor**.



Major failures

This type of failure happens when:

- your car cannot be fixed or it is too difficult to fix your car within a reasonable time (e.g. your car develops excessive jerking due to a manufacturing defect that cannot be repaired, or is too difficult to repair within a reasonable time)
- if, as a reasonable consumer who was fully aware of the nature and extent of the failure, you would not have bought the car (e.g. your car suddenly and unexpectedly loses power due to a manufacturing defect)
- the failure prevents you from using your car and it cannot be fixed in a reasonable time (e.g. your car is not drivable due to a manufacturing defect and is incapable of being repaired in a reasonable time)
- the failure creates an unsafe situation (e.g. your car has a fault that affects your ability to brake or steer the car easily).

Type of remedy

You can 'reject the car' (which typically requires you to return it) and choose between a repair, replacement or refund. You should clearly advise the supplier that sold you the car (e.g. the car dealer) if you intend to reject it, and explain why – e.g. the car is not drivable, or the car was not repaired within a reasonable time, etc.

You may also be able to recover 'reasonably foreseeable' damages for any loss or damage you suffered from the supplier that sold you the car (e.g. the car dealer), or in some cases from the manufacturer.



Minor failures

This type of failure happens when:

- your new car can be fixed, or the problem can be resolved, within a reasonable time (e.g. your car's engine develops a slight rattling noise that doesn't interfere with its ordinary operation, and can be successfully repaired within a reasonable time).

Type of remedy

The supplier that sold you the car (e.g. the car dealer) can choose to repair or replace your new car, or to offer you a refund.

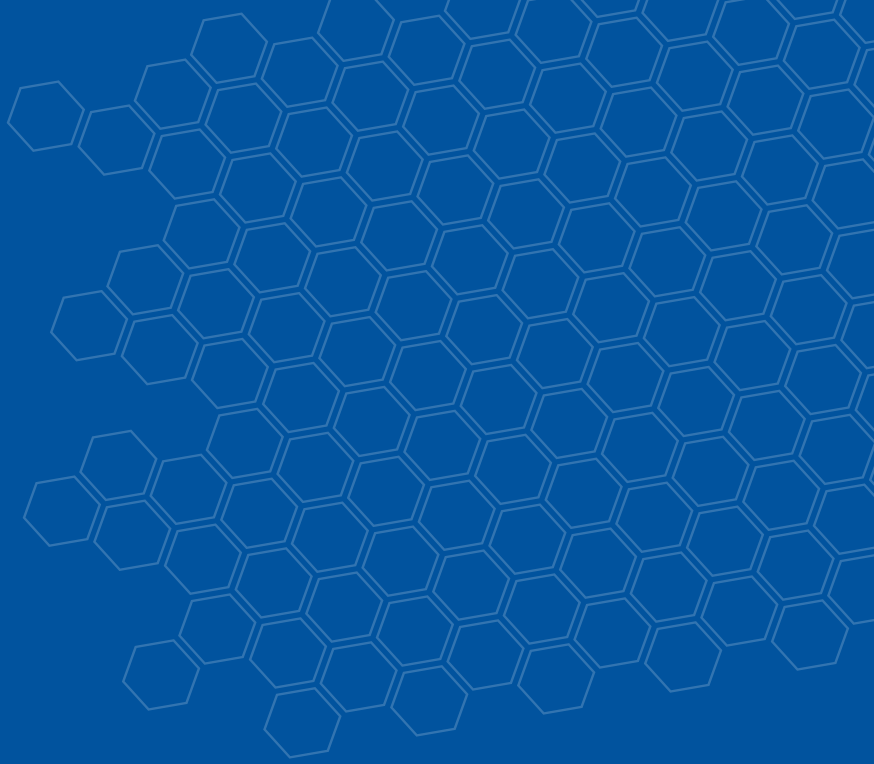
Any repairs must be done within a reasonable time and without charge.

However, you may choose the remedy if the repair is not done in a reasonable time.

In this case, you may request a free replacement or a refund. You may also seek a repair elsewhere and be able to recover the costs, as well as any 'reasonably foreseeable' loss or damage you suffered as a result of the failure, from the supplier that sold you the car (e.g. the car dealer), or in some cases from the manufacturer.

More information

For more information on your consumer rights visit: www.accc.gov.au/consumerguarantees



VACC
You're in good hands

VACC House • 650 Victoria Street, North Melbourne VIC 3051