

VACC Submission

VACC Reply to the National Working Group survey relating to second hand vehicle sales



The Victorian Automotive Chamber of Commerce (VACC) thanks the Victorian Department of Government Services and Consumer Affairs Victoria (CAV) for the invitation to provide industry insights and commentary on consumer issues relating to the sale of second-hand vehicles in Victoria.

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*For matters regarding
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About VACC

VACC is Victoria's peak automotive industry association, representing the interests of more than 5,000 members in over twenty retail automotive sectors that employ over 50,000 Victorians. In 2024 VACC celebrated 106 years of service to the Victorian automotive retail industry and community.

VACC members range from 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 aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), tyre dealers and automotive dismantlers and recyclers.

VACC is the only industry association in Victoria to represent Licensed Motor Car Traders (LMCT), incorporating new and used vehicles sales. This includes car, motorcycle, truck, farm machinery, automotive dismantlers and fleet lease companies. VACC's LMCT membership includes 1,600 (approx.) of Victoria's 2,198 LMCTs (or 72 per cent of LMCTs).¹

VACC is also an active member of the Motor Trades Association of Australia, the Australian Chamber of Commerce and Industry and contributes significantly to the national policy debate through those peak national automotive associations. VACC also collaborates heavily with the Australian Automotive Dealer Association (AADA).

¹ Consumer Affairs Victoria (CAV) 2022-23 Annual report, Registers administered by CAV (2023),18.

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Terms used in this response

In this response, the term second-hand vehicles has largely been substituted by the term used vehicle. Many vehicles are second, third or fourth hand.

The complexity of motor vehicles and the future of trading in used vehicles

It is important that VACC defines to the National Working Group (NWG) exactly what a used or second-hand motor vehicle is, why a used vehicle must always be treated separately to a new motor vehicle and other products purchased by consumers, and the complexities of a used vehicle with many worn or aging parts

In its 2017 reply to the ACCC's New Car Retailing Industry market study draft reply, the Federal Chamber of Automotive Industries (FCAI) advised the Federal Government of how complex motor vehicles and how motor vehicles should be viewed in isolation compared to other consumer products. The FCAI advised that motor vehicles are so ubiquitous and have been with us for such a long period of time that the level of engineering sophistication is often overlooked. To be able to get into a car, push the button and be transported in safety and comfort through often harsh conditions, is an amazing engineering feat, which should not be taken for granted. Motor vehicles contain more than 60,000 parts and more lines of computer code than a commercial jet aircraft. To have a regulatory regime that treats motor vehicles in the same way as a toaster is problematic.

The Australian Consumer Law (ACL) guarantee that applies to acceptable quality (section 54) provisions notes that second-hand goods sold in trade or commerce are covered by the guarantee of acceptable quality, but age, price and condition of these products must be a considering factor in any decision with regard to a claim under this guarantee.² This is an aspect of used car retailing that consumers and consumer groups do not always understand. The conjecture surrounding exactly how a used motor vehicle should be assessed under a quality perspective, and the ability for consumers and traders alike to know exactly how that product's quality and performance is guaranteed is a challenging and often cost prohibitive exercise. For example, a complete forensic analysis on a used motor based on time constraints, complexity and cost, is not feasible. The arguments advocating for LMCTs to conduct comprehensive (forensic) mechanical inspections or overhauls before selling vehicles to consumers would add thousands of dollars to each vehicle, which is neither reasonable nor practical. Another claim widely misunderstood by consumers and consumer lobby groups is that if a vehicle has undergone a roadworthy check using the mandatory criteria of Vehicle Standard Information (VSI) 26,³ or VSI 4 for motorcycles, it does not guarantee the vehicle's mechanical performance. This inspection is often mistakenly assumed to be equivalent to a pre-purchase inspection. It is important to stipulate that a roadworthy inspection and attainment of a roadworthy certificate is not an inspection of mechanical quality, reliability or cosmetic aspects of the vehicle. A certificate of roadworthiness issued by a licensed vehicle tester is a certification that at the time of inspection, a vehicle meets the requirements of VSI 26 and is safe for use on public roads.⁴

VACC cannot overstate the importance of recognising and acknowledging a used vehicle is not a new vehicle. A dealer demonstrator vehicle is not considered a new vehicle. Used vehicles vary significantly in condition and performance based on many factors, including the age of the vehicle and kilometres travelled, as well as how it has previously been driven, maintained, repaired or stored. In many cases, a used car may have had more than two owners. Its use has not necessarily been for highway driving and has been driven with many different driving techniques through varying weather events. Applying ACL provisions to used vehicles of varying

² ACCC, Consumer guarantees: A guide for consumers, (2021), < <https://www.accc.gov.au/system/files/Consumer%20guarantees%20-%20a%20guide%20for%20consumers%20-%20July%202021.pdf> >,3[4].

³ VSI 26 and VSI 4 constitute written directions provided to Victorian Licensed Vehicle Testers by DTP under Regulation 220 of the Road Safety (Vehicles) Regulations 2009. LVTS must ensure a vehicle meets the standards of VSI 26 or VSI 4 before a certificate of roadworthiness is issued.

⁴ VSI 26 Roadworthy requirements, (2023),1,[8].

conditions in the pursuit of remedies that require new-like repairs places a burden on the industry and creates expectations for consumers that are unlikely to be met.

A used vehicle has often had multiple owners and is not a passive product; it endures various stresses and strains throughout its use. Importantly most used vehicles sold by a LMCT have a published owner's manual provided by the manufacturer (or access to one on-line) that offer detailed guidance on maintenance practices and intervals that must be met.

It is important for the NWG to understand there is a significant difference between new and used motor vehicles. The expectation of consumers purchasing used vehicles, particularly regarding performance comparable to new vehicles or remedies under ACL provisions, should be publicly addressed as being unreasonable. Indeed, this is the predicament that VACC and its LMCT members face when dealing with a consumer, who may have an unrealistic expectation about how their recently purchased used vehicle should perform. The reality is that when faced with what may be considered an issue, consumers are often provided with information from advisors of varying capability and knowledge. At times that information is neither reasonable, accurate nor practical. This can lead to expectations being formed by the consumer that cannot be met. The unintended consequence being the cause of distress and harm to those most vulnerable in our communities, when represented by said advisors.

As a consequence of this ill advice provided to consumers, and associated sully of an industry, organisations such as VACC, may be forced to recommend to its LMCT members to no longer continue to retail vehicles that are over 10 years old, over 160,000 kms or priced between \$1 to \$14,999. LMCTs can no longer sustain the unrealistic demands that require absorption of the costs of new-like remedies insisted upon by consumers and other advisors. An outcome of such a misapplied law is that the most vulnerable consumers in our community may have no other option but to trade in the private market, leaving them without any form of consumer protection when purchasing a used vehicle. Surely this was never meant to be the intention of the ACL. Further, LMCTs will be forced to choose between the provision of community-based sponsorship, donations and free work provided to consumers over issues relating to confounding ACL claims. A VACC research project completed by Deloitte Motor Industry Services in 2021 estimated that \$14.73 million in donations and \$52.473 million in free work is completed by LMCTs each year. When a vehicle is driven to destruction by a consumer, resulting in a melted engine or buckled components, that is not a liability for the LMCT or warranty provider.⁵ But this is the type of claim that LMCTs face.

About the VACC response

The VACC response to the survey questions and following preamble is directly related to correspondence forwarded to VACC Chief Executive Officer Mr Geoff Gwilym dated 1 October 2024.

The following points underscore VACC's understanding of the invitation and forms the basis of the VACC response:

1. For VACC to share its knowledge and experience about consumer issues relating to used vehicle sales in Victoria.
2. For CAV to formally advise stakeholder organisations of the formation of a National Working Group (NWG).
3. For VACC to advise stakeholders that the NWG seeks to better understand the issues impacting consumers buying used vehicles in each state and territory via a 20-question survey.
4. The consultation does not include issue pertaining to the purchase of new motor vehicles.

⁵ Actual ACL claim received by VACC member LMCT in 2023.

The research methodology for VACC's response to the survey

In compiling its response, VACC has sourced information and evidence from the following:

1. Interviews were conducted across VACC's membership. This included franchise used car dealers and independent used car traders divisions.
2. Interviews with three volume providers of Extended Warranties.
3. Interviewed on-line classified providers.
4. Analysed 30 weeks of VCAT data from 2023 and 2024 (17 weeks in 2023, 13 weeks in 2024).
5. Interviewed and sourced data from Victoria Police.
6. Interviewed and sourced data from the Department of Transport and Planning (DTP).
7. Requested data from CAV (with no data provided by CAV).
8. Interviewed six consumers who have purchased vehicles from dealerships in the past 3 months.
9. Relied on previous VACC submissions including:
 - i. [VACC Guidance for Licensed Motor Car Traders: How to deal with cooling-off procedures, deposits, and unlawful contract termination by consumers \(2023\)](#).
 - ii. [VACC Licensed Motor Car Traders: Guidance on recording odometer readings and dealing with odometer fraud \(2023\)](#).
 - iii. [The rise of the vehicle on-seller: A guideline to the risks for franchise dealers and the consumer \(2023\)](#).
 - iv. [A VACC Report into LMCTs as the respondent in VCAT \(2023\)](#).

VACC concerns regarding the survey and the work of the NWG

As a general comment, VACC and the broader new and used motor vehicle industry are disappointed in the approach taken by the NWG in preparation of this survey. VACC has varied concerns that that the survey questions are not balanced, they do not portray fairly, or accurately, the many millions of dollars and hours LMCTs provide, at no charge, to solving or remedying issues that they may feel were created through a vehicle's abnormal use or general wear and tear.

VACC has for some time heard informally that the Australian Government was to complete a review into the sale of used cars in Australia. When the informal statements were made, VACC recommended that industry bodies, such as VACC, should be to be consulted on the terms of reference process that would ultimately provide best outcomes for consumer and industry. This unfortunately did not transpire.

Further, the NWG approach does not align with the Australian Competition and Consumer Commission (ACCC) 2024-25 Compliance and Enforcement Priorities, where motor vehicles are not listed as a priority for the period.⁶ In review of the Consumer Ministers Network (CMN) Communiques, there is no specific mention of motor vehicles as a priority.⁷ The latest CMN Communiques (November 2023) does refer to protecting consumers and small business from unfair trading practices. However, VACC is curious as to why the NWG would work outside the terms of reference and priority areas as dictated by the CMN.

⁶ ACCC, 2024-25 ACCC Compliance and Enforcement Priorities (2024), < https://www.accc.gov.au/system/files/compliance-enforcement-2024-factsheet_0.pdf>.

⁷ The Treasury, Consumer Ministers Network (CMN) Meeting No. 3, 24 November 2023, (2023), <<https://consumer.gov.au/consumer-affairs-forum/communiques>>

What the ACCC survey tell us about motor vehicles

VACC refers to data findings published in the ACCC Consumer Survey. The ACCC Survey Question 32 asked survey respondents the following:

Q 32. Thinking again about the past two years, have you experienced any problems when purchasing any of the following product or service categories?

The survey respondents ranked how problematic it was when purchasing a motor vehicle product. The survey respondents responses placed motor vehicle sectors (fuel, repair, service, sale, detailing, rental etc) as the 14th ranked sector in the survey response to this question.⁸ This substantially contradicts many of the ambitious claims made by Victorian consumer advisors with regard to problems with motor vehicles. Much of the negative data in the ACCC consumer survey that related to motor vehicles is related to poor customer service. VACC has not been able to establish a direct link between poor customer service and the quality of used cars on the market and would argue that the consumer experience from a customer service perspective when dealing with a LMCT or franchise dealer easily outperforms many other retail and government enterprises. The 2023 Consumer Survey conducted by the ACCC indicates the level of awareness and knowledge by consumers of consumer rights and the key considerations in the purchase of a new or used vehicle.

In light of the ACCC survey response data, it could be argued that another inquiry into motor vehicle trading is considered unnecessary and suggests the industry is being unfairly targeted.

A representation of LMCTs as the respondent in VCAT

The misnomer of used motor vehicles being a highly ranked source of unresolved consumer complaints is further highlighted by VACC research conducted in 2023 and 2024 that shows that LMCTs comprise less than one percent of all Victorian Civil and Administrative Tribunal (VCAT) hearings as a respondent. Further, LMCTs are not in the top 5 ranked industry sector category as a respondent under the Goods and Services category.⁹

Those who claim there is a lack of opportunity for the consumer to have their say in VCAT are making an argument about an issue that simply does not exist. The evidence compiled by VACC in 2023 and 2024 shows an insignificant rate (0.4 per cent) of LMCTs being listed as the respondent (see orange highlighted percentage in the Table 1 below).¹⁰

In VCAT hearings over a 13-week period in 2024 the VACC research revealed the following:

Table 1. Summary of LMCT representations in VCAT

LMCT as respondent in VCAT under Goods and Services Category 2024						
Total VCAT Hearings of all categories	Total LMCT Hearings	Total OEM* only Hearings	Total Goods and Service Category Hearings	Total LMCT Goods and Services Hearings	Total LMCT of ALL Hearings	Total LMCT of ALL Goods and Services
15,789	65	36	1073	65	0.4 %	6.05 %

* OEM = Original Equipment Manufacturer

Important points for consideration when analysing this data are that:

- The data clearly shows that LMCTs are respondents in only 0.4 per cent of VCAT hearings.
- VACC makes an assumption on the hearings listed that the LMCT cases are responding to consumer allegations involving vehicle with fault/performance issues.

⁸ The Treasury, Australian Consumer Law Survey, Incidence of problems by category,(2023), <https://consumer.gov.au/sites/consumer/files/inline-files/acl-aust-consumer-survey-2023.pdf> , 47.

⁹ VACC research conducted for 17-week period in 2023 and 13 week period in 2024.

¹⁰ Ibid.

- c. A reasonable proportion of the hearings listed could be disputes about contract termination, cooling off or other elements that go towards the basis of a contract that leads to a dispute in many fields of commerce.
- d. Luxury brands (OEMs) are overrepresented at VCAT compared to used vehicle traders or volume new car dealers. It would not be incorrect to assume purchasers of luxury vehicles may be better informed purchasers.
- e. Hearings that cite the vehicle manufacturer as the respondent are not included in the analysis of LMCT cases. A manufacturer is not a LMCT.
- f. The VCAT data clearly show that there is no market failure and that the Act and the ACL are doing as intended.
- g. The proportion of cases relating to Goods and Services (6.05 per cent) is not significant especially when comparing to other industry sectors (see below).¹¹

Comparing LMCTs to other industry sectors in VCAT

In the same 13-week period the following sectors were subject to VCAT hearings, as the respondent, listed under the Goods and Services category.

Table 2 LMCT comparison to other sectors as respondent in VCAT under Goods and Services

LMCT % comparison to other sectors as respondent in VCAT under Goods and Services		
Sector	Total number of measured cases	Percentage of Goods and Services Hearings
Construction & Property Maintenance	229	21.3
Information Technology	73	6.80
LMCT	65	6.05
Real Estate Agents	63	5.87
Retail Combined	81	7.54

Points to consider in this analysis include the fact that:

- a. The construction, maintenance and housing related trades are listed in over 21.3 per cent of VCAT hearings as respondents.
- b. Information Technology (IT) providers have increased from an average of 6.49 per cent in 2023 to 6.80 per cent in 2024.
- c. The presence of Real Estate Agents in the Goods and Services category is troubling as they already occupy high levels of activity in VCAT hearings under the Residential Tenancies and Building and Environment categories.
- d. LMCTs rank fifth in 2024 and fourth in 2023 in the list of the aggregated total per sector as a respondent in VCAT.¹²
- e. The VCAT data clearly show there is no market failure and that the Act and the ACL are doing as intended.

Most of those sectors would not have the same transactional footprint as LMCTs. In VACC's view, these sectors are overrepresented as respondents in VCAT and should have the attention of consumer groups and regulators. Any focus from government or consumer groups on LMCTs on this basis is unwarranted.

¹¹ VCAT data provided by VCAT Strategic Communications and VCAT Hearing list at www.VCAT.vic.gov.au.

¹² Ibid.

What type of LMCT hearings are being managed in VCAT?

In the same 13-week period the breakup of type hearings that LMCTs are involved in at VCAT are:

Table 3 LMCT as respondent in VCAT hearings (type)

LMCT as respondent in VCAT hearings (type)	
Type of Hearing	Percentage of LMCT Cases
Directions Hearings	26.15 %
Compulsory Conference	27.6 %
Fast Track Mediation	0%
Hearing	46. %
Review Hearing	1%

It is important to note the following:

- A Directions Hearing and/or Compulsory Conference are not final hearings.¹³ Under this premise, a case can be resolved at, or before, a Directions Hearing or Compulsory Conference.
- Using the VCAT data, it is highlighted that 53.75 per cent of LMCT hearings are listed as Directions Hearings or Compulsory Conferences over the 13-week sample period.
- 46 per cent of LMCT cases progressed to a Civil Claims Hearing or other Hearing.
- This could indicate that the LMCT hearings are actually 46 per cent fewer than nominated as a Directions Hearing is a possible precursor to a full-blown Hearing.
- Fast Track Mediations are underutilised. This may be as a result of the mandated \$10,000 limit or that consumers are asking for far more in their VCAT claim than they would necessarily be entitled to, if successful.
- The VCAT data clearly show that there is no market failure and that the Act and the ACL are doing as intended

It is VACC's view that the willingness of either party (usually the respondent) to 'give something' to resolve a case, is prevalent before a VCAT hearing takes place.

The figures above clearly show that the system is working for the consumer. If there is any issue at all, it is that consumers are not responding positively or being made aware of the right to a Fast Track Mediation. There is no evidence to show that applicants are choosing to not proceed with a hearing because it is 'too hard.'

Addressing Recalcitrant LMCTs: A Targeted Approach

Over the past 18 months, the entire Victorian LMCT cohort has been targeted by different consumer groups who are using the aggregated complaint data generated by a select group of LMCTs (believed to be a few as 6 LMCTs) to call for all manner of government, industry and taxpayer funded interventions.¹⁴

VACC calls on the Victorian Government to ensure VACC is included as a key stakeholder and partner in any current or future Government or taxpayer funded project, research project or campaign that refers to sale of a new or used motor vehicle in Victoria. VACC has much to offer in this regard. It is not an exaggeration to say that the very great majority of Victorian LMCTs are after best possible outcomes for the consumer and industry in the retail sale of a vehicle in Victoria. It makes much sense to include VACC.

¹³ VCAT Directions Hearings (2023) < <https://www.vcat.vic.gov.au/the-vcat-process/types-of-hearings/directions-hearings>>.

¹⁴ CAV has provided VACC with a list of six LMCTs who are the source of multiple consumer complaints.

VACC has always maintained, and is on the record, as stating that any LMCT in Victoria engaged in a pattern of systemic, ongoing, and unconscionable breaches of the Australian Consumer Law, the Motor Car Traders Act 1986 (Vic) (the Act), or any other relevant legislation must be held accountable and face the full extent of the law.

Put simply, power for remedial action to be taken against recalcitrant LMCTs lies with CAV. VACC fully supports any such actions taken and would stand alongside any federal or state Minister who calls out suspicious behaviour by a LMCT, which could include unconscionable breaches of the Australian Consumer Law, the Act, or any other relevant legislation. Better consumer outcomes and an industry that is treated fairly and can compete in a market free from recalcitrant LMCTs has always been the goal of all LMCTs.

Recommendation 1

CAV must 'name and shame' recalcitrant LMCTs and issue public warnings about their behaviour.

Recommendation 2

VACC calls on the Victorian Government to ensure VACC is included as a key stakeholder and partner in any current or future Government or taxpayer funded project, research or campaign that refers to sale of a new or used motor vehicle in Victoria.

The Australian Used Car Market

The AADA Automotive Insight Report (AIR) reveals that nationally, used car sales for the month of August 2024 returned a total of 209,102 vehicles.¹⁵

Data provided in the AIR supplied by AutoGrab (a prominent automotive retail intelligence platform that provides real-time vehicle data) advises that used car listings continued to increase in August 2024 by 5.2% to 314,672.¹⁶ The advice from AADA to VACC is that used cars are taking longer to sell amid an oversupply to the market.

How consumers purchase their cars in 2024

Consumers invariably source and purchase a vehicle in the following ways:

- a. Privately, after sourcing the vehicle from an on-line classified provider (e.g., carsales.com.au, Facebook Marketplace, Gumtree).
- b. From a 'roadside' seller.
- c. From an auction house under fall of hammer conditions.
- d. From a new vehicle franchise dealer or independent used vehicle trader i.e., a LMCT.

Table 4. Advantages and Disadvantages of various method of purchase of used vehicles.¹⁷

Method of Purchase	Consumer Protections	Advantages	Disadvantages
Private Purchase	No cooling-off period - No statutory warranty - Responsibility to verify vehicle status (stolen, money owed, written-off, roadworthy)	N/A	- High risk of issues - No recourse under ACL for faults

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¹⁵ AADA September Automotive Insight Report, (2024), < <https://www.aada.asn.au/air-used-cars-taking-longer-to-sell-amid-oversupply/>>.

¹⁶ Ibid,2.

¹⁷ See <https://www.consumer.vic.gov.au/cars/buying-a-used-car/ways-to-buy-a-used-car/licensed-motor-car-trader>.

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Method of Purchase	Consumer Protections	Advantages	Disadvantages
Roadside Seller	- Same as private purchase	N/A	- High risk of issues (similar to private purchase)
Auction House (Fall of Hammer)	- Guarantee of clear title	N/A	- No cooling-off period - No statutory warranty - Limited recourse under ACL (only for title)
LMCT (Franchise Dealer/ Independent Trader)	- Three-day cooling-off period - Three-month/5,000 km statutory warranty (for vehicles <10 years, <160,000 km) - Guarantee of clear title - ACL protections for faults - Right to claim from Motor Car Traders Guarantee Fund - Guaranteed drive-away price - Vehicle registration can be included - Certificate of roadworthiness for registered vehicles	- Strong consumer protections - Clear recourse options	N/A

Buying a car privately or under auction conditions does not offer the following consumer benefits:

- a. There is no cooling-off period.
- b. The vehicle is not covered by a statutory warranty.
- c. When purchasing privately it is the purchaser's responsibility to check that the car:
 - iv. is not stolen.
 - v. has no money owing on it.
 - vi. Does or does not appear on the written-off vehicles register.
 - vii. Is roadworthy before applying for registration.
- d. The private purchase of a motor vehicle does not provide for the opportunity for the purchaser to take further action against the seller of the vehicle under the ACL if that vehicle does not meet one or more of the ACL Consumer Guarantees.
- e. Buying a car at auction (fall of hammer) does not provide protections for purchasers under the Act or ACL. The only exception for cars purchased at fall of hammer is the guarantee to clear title. It is also a misnomer that buying a vehicle from auction is cheaper than buying from a LMCT. It may be the case from time-to-time but is not a rule of thumb. The statement to such should be removed from the CAV webpage.¹⁸

VACC considers it perverse that the LMCT sector is placed under such scrutiny, yet governments and consumer groups ignore the consumer detriment generated within the higher transacting private-to-private market.

What the Department of Transport and Planning (DTP) vehicle transfer data reveals with regards to retail channels of motor vehicles.

A review of all channels of Victorian vehicle transfer data provided by the DTP, formerly VicRoads, is tabled below.¹⁹ It presents an aggregated and segmented data set of motor vehicles transferred in Victoria for the period March 2024 – August 2024.

¹⁸ Consumer Affairs Victoria, Buying a Used Car at Auction (2023), < <https://www.consumer.vic.gov.au/cars/buying-a-used-car/ways-to-buy-a-used-car/auction>>.

¹⁹ Department of Transport and Planning vehicle transfer data received 4.10.24.

Table 4 DTP transfer statistics per channel

DTP transfer statistics per channel									
Channel	March 2024	April 2024	May 2024	June 2024	July 2024	August 2024	Total 2023	Total 2024	
Dealer to dealer	8,519	8,025	9,470	8,085	9,645	9,457	46,583	53,201	Wholesale trades between LMCTs
Dealer to Private	18,894	19,173	21,087	18,784	22,018	19,609	109,723	119,565	Vehicles sold to consumers from LMCTs
Private to dealer	15,623	15,603	17,690	16,218	18,155	16,399	87,424	99,688	Vehicles sold by member of the public to LMCT
Private to private	35,885	33,823	37,610	31,487	34,576	34,413	206,515	207,794	Vehicles sold between private persons
Total							450,245	480,248	

The DTP transfer data includes all vehicles that require a transfer to take effect as per Road Safety (Vehicles) Regulations 2021 (Vic).²⁰

- a. 63 per cent of vehicle transfers were conducted by the private-to-private market.
- b. The private-to-private market shows a 0.7 per cent growth in 2023 versus 2024.

A Snapshot Analysis of Sellers and Listings on Australia’s Leading Online Motor Vehicle Classifieds Platform

It is well established that carsales.com.au is Australia’s most sophisticated, visited and effective new and used motor vehicle sales on-line classified provider.

A VACC review of the carsales.com.au portal conducted on 18 October 2024 reveals that used car inventory listed for sale (with a price range of min \$3,000 > \$150,000) in Victoria announces that:

- a. There were 36,438 used cars for sale by private advertisers.²¹
- b. There were 27,742 used cars available for sale by LMCTs.²²

This shows that the private-to-private market advertisements is 24 per cent higher on on-line classifieds via carsales.com.au.

A VACC review of the carsales.com.au portal conducted on 18 October 2024 reveals that used car inventory listed for sale (with a price range of min \$3,000 > \$150,000) nationally announces that:

- a. There were 115,422 used cars for sale by private advertisers.²³
- b. There were 95,922 used cars available for sale by LMCTs.²⁴

A total of 17 per cent greater on-line classified advertisement in favour of the private-to-private market was reported for this portal nationally.

²⁰ Division 8, Sections 86-99.

²¹ See <https://www.carsales.com.au/cars/used/victoria-state/>.

²² Ibid,

²³ Ibid.

²⁴ Ibid.

How on-line classifieds portals have become integral in the consumer buying journey.

The emergence of various on-line classifieds providers has meant that the once traditional localised markets have expanded beyond the reach of a few suburbs, and now provides a national marketplace. The on-line classifieds system has dramatically changed how LMCTs and consumers acquire and dispose of vehicles. For LMCTs, it has been an innovation that has helped propel their businesses, particularly those who work in niche markets such as luxury vehicle, trucks and 4WDs. For the vast majority of consumers, the on-line classified experience has offered a greater range of vehicles and created a truly competitive and measurable marketplace.

The downside to the emergence of on-line classifieds providers has seen an access to market for opportunistic private sellers of used motor vehicles. Unfortunately, this system has also been infiltrated by unlicensed operators, organised crime gangs and others whose intention is to scam unsuspecting and vulnerable consumers who are in the market for 'a bargain'. It is also a haven for private sellers to sell vehicles with hidden major mechanical faults, suspect odometer readings, financial encumbrances and vehicles of unknown provenance. VACC acknowledges that the on-line classifieds platforms of renown (e.g. carales.com.au) work tirelessly and dedicate massive resources to identifying and attempting to block these sellers. We have seen many good innovations from the good on-line classified platforms over the years in an attempt to keep the risk to a minimum, but it is impossible to eradicate all offenders.

Consumers must be protected when purchasing used motor vehicles from private sellers. Many vehicles sold privately have known defects that the seller has not declared or have had odometer meters tampered with to help attract a higher price. This was particularly evident post COVID. This is analogous to what happens at dealerships where consumers knowingly trade in vehicles that have major faults that are difficult to identify without having a vehicle forensically assessed on a hoist and other procedures.

On-line classifieds providers have another opportunity to reduce the instances of consumers purchasing poor quality used vehicles from private sellers. It is widely accepted that consumers who purchase vehicles from a private seller, or under auction conditions, have little, if any, protection under the ACL. It is a general position that most consumer guarantees only apply if goods or services are supplied in "trade or commerce".²⁵ Transactions between a private seller and buyer are not ordinarily considered to be transactions made in "trade or commerce" because the transaction is not a business or professional activity.²⁶ Under this pretext, private sellers of motor vehicles are under no obligation to make any statement with regards to a vehicle's condition. VACC interacts with many Victorian consumers who have suffered at the hands of private sellers.

VACC is particularly concerned about the presence of private sellers on Facebook Marketplace and seeks CAV and ACCC intervention in the prevention of scam advertising and the selling of poor-quality motor vehicles on this platform.

Case study

*"We purchased the vehicle below for \$17k with 82,138 km's from Marketplace and upon bringing the vehicle into stock, realised that we had previously wholesaled the same vehicle the month prior through a major motor vehicle auction house with 243,877 km's for \$9,977. This has been reported to Police and the person has been banned from purchasing vehicles from that auction house. The vehicle's odometer has been whizzed and we are substantially out of pocket. The vehicle is still in our stock."*²⁷

25 Teresa Torcasio, HWL Ebsworth All consumer guarantees apply only if the supply of goods or services are in trade or commerce apart from those consumer guarantees in sections 51-53. Competition and Consumer Act 2010 (Cth) Sch 2 ('Australian Consumer Law') or ("ACL"), definition of "trade or commerce", section 2 (2023).

26 Tersea Torcasio, HWL Ebsworth Competition and Consumer Act 2010 (Cth) Sch 2 ('Australian Consumer Law') or ("ACL"), definition of "trade or commerce", s 2. (2023).

27 Dealer email to VACC August 2024.

Recommendation 3

VACC recommends that the text below be a mandatory requirement on any vehicle advertised on an on-line classified portal or auction house on-line catalogue for the sale of a used motor vehicle. The statement must be in red type, placed prominently on each individual on-line classified portal advertisement and have a tick box that will require the consumer to acknowledge that they have been informed of the very real risks of purchasing privately.



Buying from this private seller compromises any of your rights under the Australian Consumer Law

The sale of this vehicle is by a private seller. This means that the vehicle offered for sale does not come with guarantees that can be relied upon under the Australian Consumer Law.

You will not be entitled to a replacement or refund for any failure and compensation for any other reasonably foreseeable loss or damage. You will not be entitled to have the goods repaired or replaced if the motor vehicle fails to be of acceptable quality. You will have no protections should the odometer reading be found to be incorrect.

You will also have limited protections if there is a financial encumbrance (or other) meaning clear title to this motor vehicle cannot be guaranteed.

Recommendation 4

That CAV convene a working group including VACC, AADA, DTP, on-line classified motor vehicle sales providers and motor vehicle auction houses to:

Review data gathered by those entities that will identify and lead to the prosecution of unlicensed persons who participate in the trading of motor cars or holds out in any way as carrying on the business of trading in motor cars. This should be a retrospective analysis that will allow CAV to verify whether previous persons who have been convicted for such transgressions are still active.

Introduce a mandatory code of conduct that will see auction houses and on-line classifieds providers be liable under law for knowingly supplying a vehicle that are not of an acceptable quality or aiding and abetting the trading of stock that is being retained/ acquired or disposed by a person without a licence.

VACC response



Regulatory framework

1. Are consumers and dealers of second-hand motor vehicles aware of their rights and obligations under the ACL as well as jurisdiction-specific legislation? Please provide examples of the most prominent knowledge gaps.

In Victoria, consumers are made aware of their rights under the ACL when purchasing from a LMCT in the following ways:

- a. The VACC agreement of sale for a Used Motor Vehicle (see Appendix 1) has the following ACL statement prominently located, in 12-point font size immediately before the consumer signs the agreement:

RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

- b. This is in addition to the inclusion on the agreement of sale of an announcement regarding Section 54 of the Motor Car Traders Act 1986 (Vic) (the Act) that addresses a consumer's statutory warranty rights for vehicles that are under 10 years old and have an odometer reading of less than 160,000 kms.
- c. The introduction of the Unfair Contract Terms legislation in November 2023 provided VACC with an opportunity to create and include a voluntary disclosure document to be an addendum to the VACC generated Used Vehicle Agreement of Sale (see Appendix 2). In the non-disclosure document LMCTs provide a written statement that brings to the consumer's attention the substance and effect of the agreement of sale for their purchase of a used motor vehicle from the LMCT.

The disclosure form provided by VACC is similar to that required by New South Wales (NSW) suppliers under section 47A and 47B of the Fair-Trading Act 1987 No 68 (NSW).

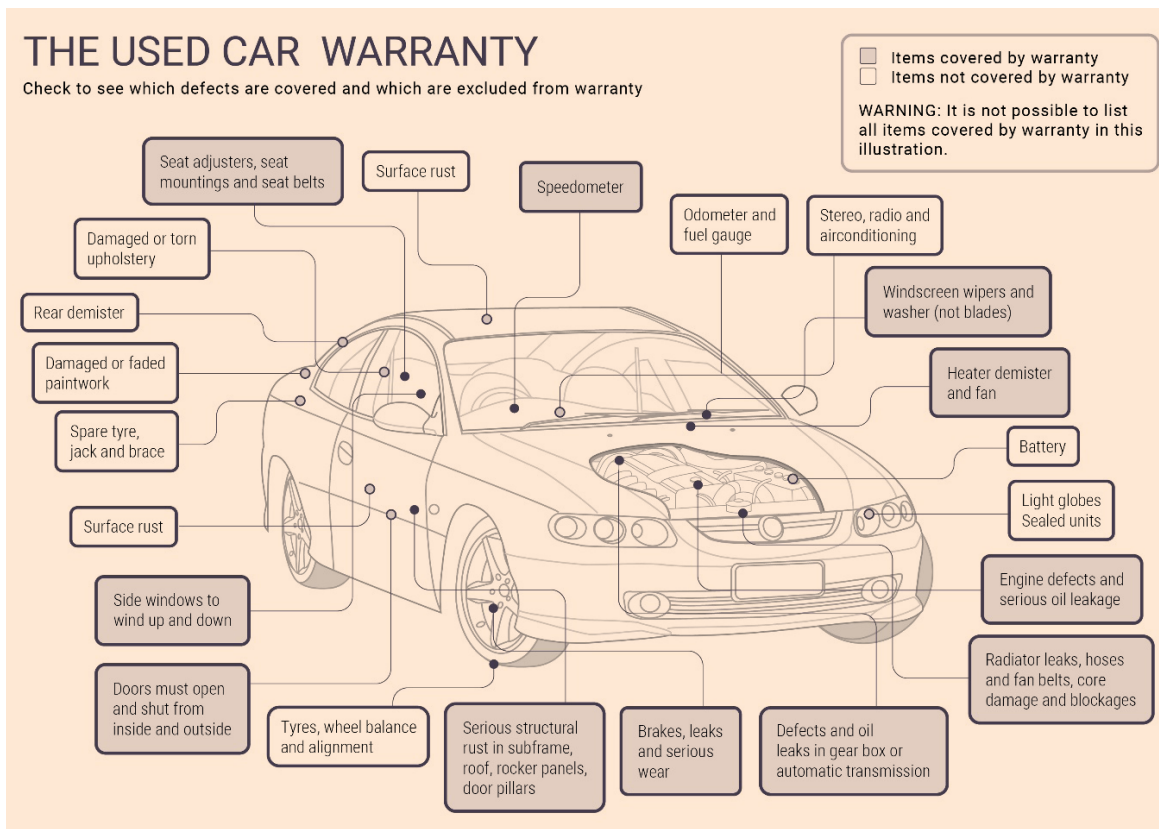
In the VACC disclosure notice, VACC has called out terms of the agreements of sale that historically cause unnecessary consumer complaints and confusion, including a statement that consumers have additional rights under the ACL. The inclusion of the disclosure notices in the LMCT deal pack is not a legal obligation in Victoria but a best practice and voluntary action by LMCTs designed to inform the consumer in a very obvious and simple way of how the contract of sale is structured and help limit the type of consumer breaches and complaints LMCTs will likely receive.

- d. An analysis undertaken by VACC reveals an uptake by LMCTs to supply this voluntary disclosure notice reveals that approximately 37 per cent of LMCTs are using this document.
- e. VACC has also developed, and circulated widely to industry, a form referred to in the industry as the VACC Motor Car Traders Act Statutory Warranty Form (see Appendix 3). This form also allows for LMCTs to advise consumers of the process for consumers to follow if they wish to enact their rights under the ACL or the Act. VACC has provided this form at no charge to members for the past 16 years.
- f. Franchise new car dealers who also trade in used motor vehicles also provide consumers with a copy of the ACCC's 'Just Bought new car? Know your consumer rights' document (see Appendix 4). This is particularly important service from franchise dealers who retail many used motor vehicles that have a very large portion of the manufacturer's warranty included. A large number of these vehicles may have an odometer reading of less than 20 kilometres.²⁸

²⁸ As a result of cancelled sale, RDA car and other factors where dealers are forced or induced to participate in a system to pre-registering new cars that they acquire under their LMCT name, thus making them a used car.

- g. VACC advises that the Western Australian Motor Vehicle Dealer Act 1973 (WA) should be replicated to advise consumers of their rights and items that are covered in a used vehicle. The image below displays a more contemporary and uncluttered statement of what consumers could reasonably expect to be or not be included as a potential issue to claim upon.

Figure 1. The used car warranty



*Image sourced from <https://www.commerce.wa.gov.au/consumer-protection/car-warranties>

Recommendation 3

VACC recommends that CAV and VACC collaborate to modernise the Motor Car Traders Act 1986 (Vic) Section 54 to mimic the image and list of items that are listed for inclusion and exclusion as mandated by the Motor Vehicle Dealer Act 1973 (WA).

- h. Where the vehicle is equipped by a manufacturer's handbook and/or service schedule the ACL is prominent. Similarly, those who purchase an extended warranty from an outside warranty provider are also informed of their rights under the ACL and the Act.

VACC believes that the knowledge gap regarding each party's rights and obligations in the sale is often obscured at the point of sale for reasons outside of the LMCT's control. It is a very subject for almost all consumers. Many consumers, caught up in the excitement and anticipation of purchasing a new or used vehicle, do not care to have the conversation with the LMCT staff and subsequently do not make themselves fully aware of their rights under the ACL or other relevant regulations.

If consumers do not properly inform themselves prior to signing, having been provided extensive information prior to the purchase, at what stage should the LMCT forcibly ask the consumer to be alerted further as to the rights and responsibilities related to the purchase?

For many sales staff the process involved in retailing a vehicle is complex, with many other legislative obligations needing to be met (in addition to the ACL). To this end, VACC provide LMCTs with roadshow events that address the role of the dealer in the ACL process. These

events are held at dealerships, on-line or at major community focal points in many regions. These events include references to the do's and don'ts and what consumers rights may be. The knowledge gaps are being addressed by LMCTs. It would not be unreasonable to expect that consumer groups funded by the Victorian taxpayer are mandated to participate in a similar type of professional development. VACC offers to roll out seminars to those groups at no cost.

Recommendation 4

VACC recommends that consumer groups be mandated to undertake industry specific training in how the ACL is to be actioned by both the consumer and the LMCT.

2. What (if any) are the current regulatory barriers to consumers obtaining a remedy for purchasing a poor-quality second-hand vehicle?

The current regulatory barriers to consumers obtaining a remedy for purchasing a poor-quality used vehicle include the following:

- a. Purchasing a vehicle from motor vehicle auction houses under fall of hammer criteria means that the consumer will not have the same statutory warranty, cooling-off period or Certificate of Roadworthiness you would receive when buying from a LMCT.
- b. Most of the Australian Consumer Law consumer guarantees do not apply to cars sold at an auction.
- c. That the ACL states that the consumer has caused or contributed to the problem or action or inaction (abnormal use). There must be a definition of 'abnormal use' included within the ACL.²⁹
- d. Not having a clearly stated term for 'the rejection period' or stated position on distance travelled and consideration of unfettered usage by the consumer in the ACL.
- e. Consumers being encouraged to bypass the Statutory Warranty provisions of the Act in favour of a more ambitious damages claim lodged in VCAT or another tribunal.
- f. Remediating an issue for a vehicle purchased privately is next to impossible. With 63 per cent of vehicles sold in Victoria being sold privately this is a major problem for consumers and takes Section 51,52,53,54,55 of the ACL out of play.
- g. Consumers citing Section 54 of the ACL, but the LMCT cannot replicate the issue or fault.
- h. Section 54 of the ACL not being specific to provide the LMCT with the opportunity to remedy the issue. Quite often LMCTs are presented with a claim or invoice for rectification work or other work done to a vehicle they have sold but had never been provided with an opportunity to remedy.
- i. More often than not an affected person will make a claim against a supplier even if the failure to comply with a consumer guarantee was caused by the manufacturer. Practically this makes sense because usually the affected person may not know the identity of the manufacturer or have the relationship, however the LMCT is left in a precarious position.

In the instance where the LMCT is not connected by virtue of a franchise agreement (or other) with a manufacturer, and the process for dialogue regarding ACL indemnification or recovery of expenses absorbed, as a result of completing work with regards to a manufacturing defect can be difficult for the LMCT.

As the law stands now, the LMCT, as the supplier, has the obligation to remedy and to deal specifically with the consumer if the consumer chooses this route. However, the manufacturers subsequent attention and willingness to assist to the non-aligned LMCT and their consumer is quite often dismissed. It would make great sense for the ACL provision to

²⁹ ACCC, Motor vehicle sales and repair, An industry guide to the Australian Consumer Law, (2018), 15 [1]-[8].

be amended so consumers purchasing a used motor vehicle, who are citing section 54 of the ACL, revert directly to the manufacturer for remedy with the supplier (the LMCT) co-joined in any potential action. This will provide comfort to consumers knowing that the entity who was responsible for the fault is considering the remedy.

Recommendation 5

Include ACL consumer guarantees to any product purchased at fall of hammer under auction house conditions. The responsibility for obligations to the consumer rights under the ACL should be shared by the auction house and the vendor.

Recommendation 6

Amend the ACL Manufacturer Indemnity provisions for motor vehicle transactions to have the manufacturer as the first respondent and the supplier (the dealer) being co-joined at any action where necessary.

Recommendation 7

The ACL to clearly define what the rejection period is with regards to a used motor vehicle purchase and abnormal use of a motor vehicle.

3. Are any regulatory schemes exacerbating the issues experienced by consumers of second-hand vehicles?

In Victoria the Motor Car Traders Act 1986 (Vic) and Crimes Act 1958 (Vic) should be amended to:

- a. Review how the private-to-private market transact, as it applies to advertising and clear title and private sellers seeking to gain a financial gain by deception.
- b. Review how auction houses transact to ensure how vehicles are sold, be it fall of hammer or fixed price selling.
- c. Review how odometer tampering is dealt with in the private-to-private and LMCT sector.

4. How effective are the conciliation processes in your jurisdiction? Please provide examples of where these processes have led to positive or negative outcomes for consumers.

VCAT

VCAT as a conciliation process for LMCTs and their consumers is laboursome, complex, lengthy and expensive. The wait period for an end-to-end Goods and Services Hearing to be completed is presently at 52 weeks.³⁰ This is a burden for the LMCT and consumer on many fronts. LMCTs are forced to yield to the consumer complain under this basis and pay or settle on an amount when they may ordinarily have defended such a claim if the period was not so long or the VCAT process was more certain. VCAT Fast Track Mediations have not worked, with not one undertaken for LMCTs in the 2024 VACC research period. VACC suggests it may be time for VCAT to elevate the threshold for Fast Track Mediation from \$10,000 to a threshold amount of \$20,000.

Recommendation 8

Increase the fast-track mediation threshold in VCAT to \$20,000

³⁰ VCAT, Estimated time to get a hearing, Goods and Services, (2024), <https://www.vcat.vic.gov.au/the-vcat-process/when-vcat-starts-a-case/how-long-vcat-case-takes#:~:text=it%20takes%20about%207%20business.possible%20within%203%2D4%20weeks.>

CAV

VACC applauds the recent introduction of an internal resource at CAV to deal specifically with issues relating to LMCTs and their consumers as they apply to motor vehicles. VACC is on the record as being very satisfied with the willingness, accessibility and pragmatism of the current CAV Executive Director of Regulation Policy & Dispute Services and the Director of Regulatory Services.

VACC has sought data from CAV for many years with regards to what a consumer complaint actually is and how they are reported.

For the purposes of this submission, we can only rely on data from 2020–21.³¹ In that period CAV had received 3,045 calls³² with consumer queries about issues identified by CAV as minor or major defects to motor vehicles.³³ This is a subjective figure as:

- a. There is no data to show through what channel the consumer purchased the vehicle.
- b. The resolution and repetitive quantity of those 3,045 calls are not known.
- c. There is no way to ascertain how CAV arrived at a technical or expert mechanical diagnosis as to whether an issue was minor or major.
- d. There is a lack of objectivity in the data where the CAV opinion on whether a consumer suffered from buyers' remorse or using a reasonable criterion to determine that there was no issue.
- e. There is no data to say what the defect actually was or how it was caused.
- f. 3,045 complaints out of a total of 5,157,172 registered vehicles in Victoria.³⁴

Recommendation 9

CAV and the Department of Government Services provide month by month data to VACC with regards to consumer issues in the sale of motor vehicles by LMCTs, as well as a monthly overview of the work and outcomes of the Motor Car Traders Claims Committee (MCTCC)

How CAV has historically explained to VACC its processes for identifying consumer inquiries, disputes, proactive compliance, and enforcement investigations:

Advice from CAV to VACC:

- a. General enquiries where CAV was contacted regarding questions or requests for advice or information. In response to enquiries, consumers may receive advice on resolving problems with traders or they may be invited to make a complaint if they have already made a reasonable attempt to resolve the dispute.
- b. CAV defines a dispute as an expression of discontent or fault-finding regarding a trader where the complainant is seeking a resolution or is asking CAV to take action. This includes complaints handled via CAV's specialist dispute resolution service, and also Front-Line Resolution (FLR) matters where front-line staff in CAV's Information and Dispute Services Centre undertook dispute resolution activities to fast-track the resolution of disputes.
- c. Pro-active compliance cases involved compliance activities that were performed pro-actively rather than investigations and compliance actions undertaken in response to

³¹ VACC has made several requests to CAV from 19.8.24 for data with no outcome.

³² No CAV data is available, figure taken from CALC 2023 Pre Budget-Submission.

³³ VACC is unsure as to who in CAV is qualified to assess whether a vehicle fault to be minor or major.

³⁴ ABS Motor Vehicle Census Data 2022 <https://www.abs.gov.au/statistics/industry/tourism-and-transport/motor-vehicle-census-australia/latest-release#states-and-territories>.

complaints from the public. This included instances where CAV's regional inspectors attended motor vehicle dealerships to monitor compliance with administered legislation.

- d. Complaints involving alleged or potential breaches of the law that were assigned to compliance and enforcement staff for investigation, and cases involving activities undertaken by CAV's Enforcement and Legal Services Branch (such as court actions, including criminal prosecutions and civil proceedings).

The Motor Car Traders Guarantee Fund:

It is VACC's view there is a vacuum of knowledge being displayed by those who advise consumers regarding how and when a claim can be made upon the Motor Car Trader Guarantee Fund (the Fund). This is evident on the number of claims that are rejected. It would also not be unreasonable to advise that LMCTs treat a claim on the Fund as very serious and will usually settle a matter before the need to have the Fund sit in judgment. In many cases the LMCT will do this, not as an admission of fault or wrongdoing, but rather to save them from the arduous process in responding to such a claim. The terms of reference under Section 76 of the Act are very powerful and, if used correctly, of great benefit to consumers who may have an issue with the purchase of a vehicle from a LMCT.

VACC places great importance on the working of the Fund, after all it is comprised entirely of LMCT money. It is important that those who advise consumers of courses of action have the knowledge of how and when to make a claim when faced with a dispute, using the very powerful and defined terms of reference contained within Section 76 of the Act. Criticism of the outcomes of claims presented for consideration to the MCTCC are unreasonable. The Fund is working exactly as it was designed to do. Claims can only be admitted under the already vast and appropriate terms of reference under Section 76. VACC supports the retention of those current elements and sees no case for expansion of inclusions to those terms.

There are many consumer claims that should never be considered to be heard by MCTCC. For the purpose of ensuring fairness and equity to all stakeholders, any claim that is not within the legislated scope of section 76 should be rejected without inconvenience to the LMCT or raising the expectation of a consumer who has been poorly informed about making such a claim. Access to justice is a two-way street, and specific legislative requirements must be followed.

There is also a cohort of LMCTs that use the Fund as a resource to run their consumer complaints division. They use it as a tool of final resort. This must stop and those LMCTs must be held accountable for their actions and any inconvenience caused to the consumer and the state. VACC would support the Secretary to the MCTCC in any action to issue show cause notices to LMCTs who are deliberately exploiting the Fund.

The Business Licensing Authority (BLA):

VACC supports a robust, nimble, and transparent motor vehicle retailing licensing regime. VACC appreciates our constructive dialogue with the BLA and consider the authority to be a model example of industry/government relationship and collaboration. The BLA has resolved numerous consumer and licensing issues by interpreting the intent of the Act and regulations as they were legislated.

VACC has extensive knowledge of individual LMCT histories and behaviours. VACC is concerned about certain licensing conditions applied to newly licensed or current LMCTs and considers some to be high risk. While VACC understands how and why these conditions were established, it must be frustrating for the BLA and other LMCTs to encounter or learn they exist.

To this end, VACC supports greater autonomy and investment in resources for the BLA when they are considering an application to grant, suspend, modify, or cancel a license.

It is VACC’s view that the BLA is the gatekeeper to setting the standard for the type of individual who will participate in the automotive retail sales sector and how consumers will ultimately be serviced. If the BLA identifies an issue with a license, they should be able to respond without fearing that the appeals process, or the judicial system’s lack of resolution will undermine their actions. The BLA must be well-resourced and supported by government to provide best outcomes for industry and consumer.

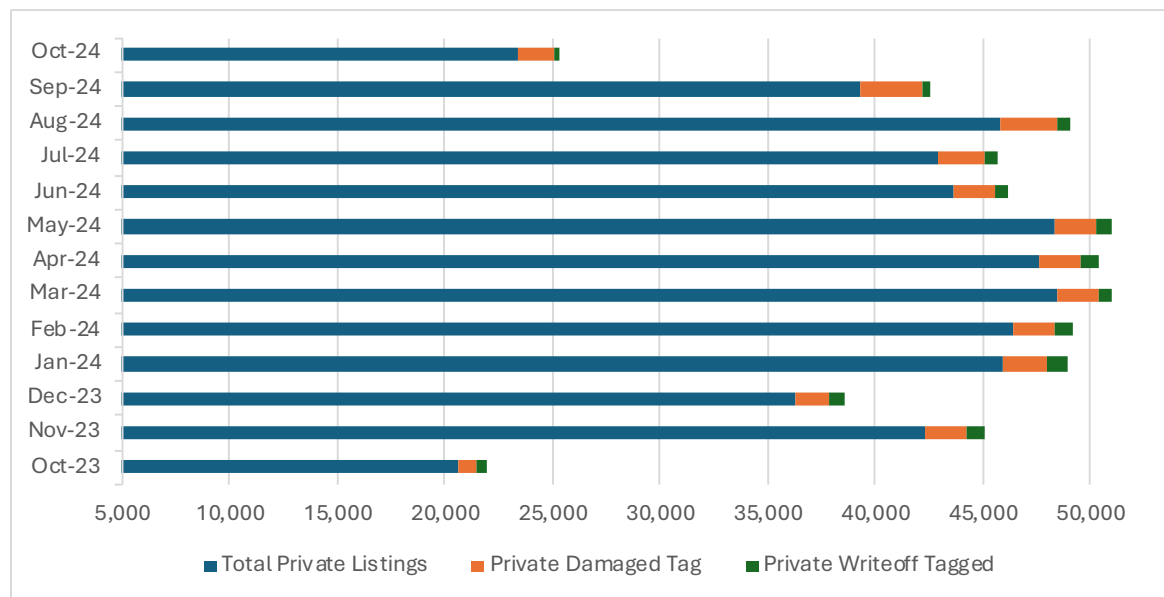
Recommendation 10

VACC recommends that a review of Division 2 of the Act be undertaken with the purpose of providing greater discretionary powers to the BLA when determining who is granted or retains a license to trade in motor vehicles.

5. Does the supply of poor-quality second-hand motor vehicles appear to be conducted predominantly by dealers or private sellers?

The number of new listings identified by AutoGrab as damaged or written-off during a calendar month in Victoria is analysed using a machine learning algorithm that scans listing descriptions for relevant keywords. The data is categorised into Dealer and Private listings, showing the percentage flagged as previously written-off or damaged. As shown in Figure 2 and Figure 3, during the 12-month period from October 2023 to October 2024, only 1 per cent of dealer listings were tagged as damaged, while 5 per cent of private listings were flagged as damaged. Similarly, during the same period, only 1 per cent of dealer listings were tagged as write-offs, compared to 2 per cent of private listings.³⁵

Figure 2. Proportions of Damages and Write off Tags: Private Breakdown

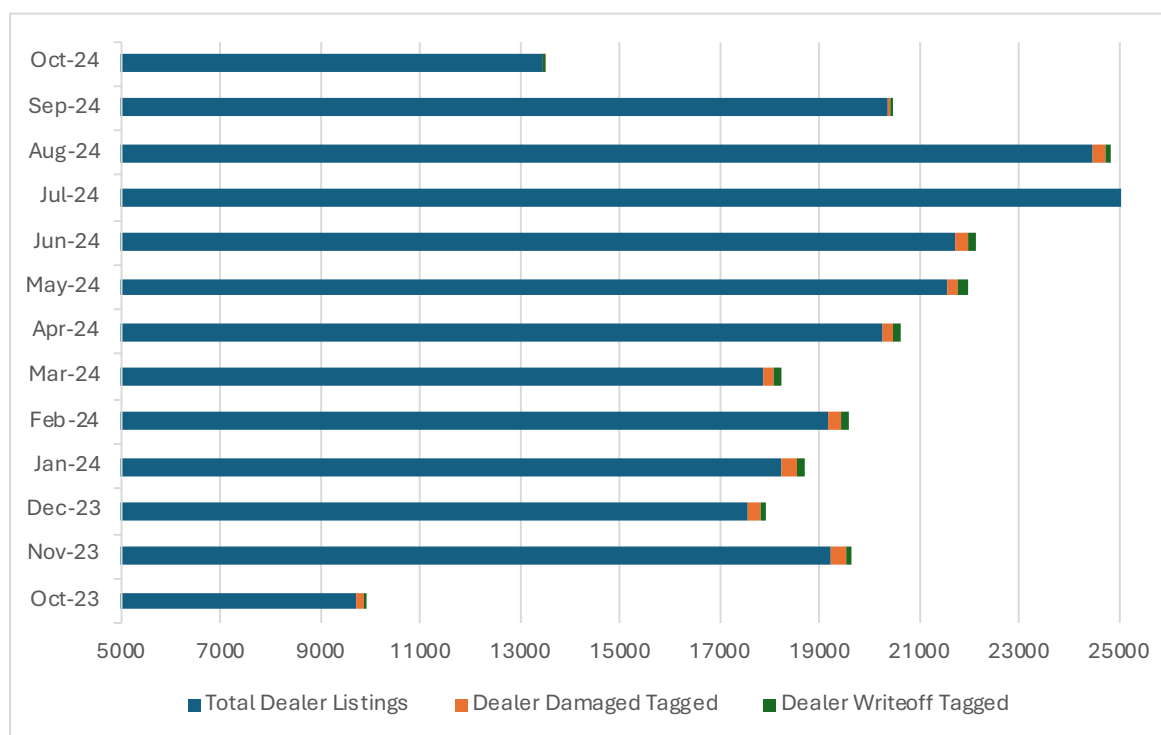


Source: AutoGrab³⁶

³⁵ Data provided exclusive to VACC by AutoGrab, October 2024.

³⁶ Ibid.

Figure 3: Proportions of Damaged and Write off Tags: Dealer Breakdown



Source: AutoGrab³⁷

6. What are the key market factors leading to the sale of poor-quality second-hand motor vehicles by traders?

This question should be rephrased to say:

What, if any, are the key market factors in the alleged sale of poor-quality used motor vehicle by traders?

It is not playing semantics to ask what the expectations of a person are when purchasing a used vehicle of a certain age and kilometres. What deems a vehicle to be of poor quality?

- According to a Consumer Policy Research Centre (CPRC) report, 54 per cent of respondents who had experienced a problem with a vehicle revealed that the age of those cars those vehicles were between 7–20 years old.³⁸ Cars in that age group are not new, are prone to showing signs of wear and tear, and have experienced many different owners, drivers and driving conditions. A reasonable person would not expect problem free or new like motoring.

In the data from the CPRC report 28 per cent of the problems experienced included:

- 33 per cent of respondents either having a small problem (e.g. flat battery, flat tyre) or multiple minor failures.
- 15 percent had been subjected to vehicle recalls (noting that this is 4-year retrospective surveying, with the Takata Airbag recall included)
- 28 per cent experiencing a minor fault.³⁹

A dealer should not be held responsible for a consumer experiencing a flat tyre or a dead battery. If a recall takes affect that is outside of the control of a LMCT.

³⁷ Ibid.

³⁸ CPRC Detours and Roadblocks, Age of Used Car at the time of purchase (2023) Graph 2, 16.

³⁹ CPRC Detours and Roadblocks, Age of Used Car at the time of purchase (2023) Graph 3,19.

If such instances are considered indicative of poor-quality vehicles, particularly those vehicles aged between the 7 and 20 years bracket, then the research methodology and the questions posed by the National Working Group in the survey should be open to scrutiny.

- b. Many times, when these vehicles are traded, either privately or to a LMCT, the service history is not available. Latent defects are often masked by consumers who trade in vehicles when they are aware of the cost to rectify such issues.

Case study

A Melbourne metropolitan used car dealer engaged in a trade in of vehicle to facilitate the sale of another used vehicle. After preparing the vehicle for sale part, the procedure of the LMCT was to have his mechanics run the car 'hot'. It was diagnosed that a piston in the vehicle would need to be replaced. The LMCT contacted the consumer who traded the vehicle with a request to re-negotiate the trade in value paid as the vehicle would require massive repair. The consumer denied any knowledge of the fault. The LMCT then source the most recent service history of the vehicle in the service books and contacted the most recent workshop to service the vehicle two weeks prior to the sale. The independent service operator advised the LMCT that they had informed the consumer of this problem and that it was just matter of days before the engine would fail catastrophically.

The biggest contributor to a consumer who purchases a vehicle that is considered to be poor quality is an over expectation of how a used motor vehicle will perform and a promotion of unrealistic consumer rights when dealing with consumer law. Although the ACL does not allow for buyer's remorse or change of mind refund as a pathway to a remedy, many consumers look to small defects in aged vehicles as a way to exit a vehicle and seek a windfall gain. This has been exacerbated during the cost-of-living crisis.

Some LMCTs were forced to acquire stock that they ordinarily not trade in during the post COVID-19 boom.

There are examples of consumers using the interaction between a vehicle Bluetooth connectivity to their mobile phone as an opportunity to blame poor vehicle performance. The issue is usually the mobile phone, not the vehicle.

7. What are the most prevalent issues raised in relation to the supply of poor-quality second-hand vehicles? This could include but is not limited to:

- ▶ **The sale of unroadworthy or written-off vehicles**

Regulation 104 (1) of the *Road Safety (Vehicles) Regulations 2021* (Vic) states that:

'A person who sells a written-off vehicle must inform the purchaser in writing whether the motor vehicle is entered on the register of written-off vehicles or on an interstate written-off vehicles register.'

It is important to note that this Regulation applies to any person selling a written-off vehicle. This is particularly relevant in the private-to-private market, where notices are often not clearly visible. This lack of transparency is a concern for consumers who choose to transact on less legitimate on-line classified platforms.

This statement is further announced as a requirement under the *Motor Car Traders Regulations 2018* (Vic) (the Regulations). A version of the form as set out in the Regulations in Schedule 1 and known as a Form 4 (see Appendix 5). Any used vehicle sold by a LMCT must have Form 4 attached to it. It is legislated that the consumer must receive a copy of the Form 4 when purchasing a used motor vehicle from a LMCT.

The VACC Used vehicle Agreement of Sale has a statement to this effect prominently displayed for the consumer to view.

Many LMCTs choose not to retail or trade in written-off vehicles. This may stem from a preconceived notion that a Repairable Write-off (RWO) is unsafe or that the vehicle's value is significantly diminished as a result of being declared a RWO. Additionally, many warranty providers will not offer extended warranties on such vehicles, and finance companies typically do not provide floorplan financing for them.

► **Vehicles experiencing major faults soon after purchase**

Issues raised by consumers can vary. It is not uncommon for buyers to experience problems with Bluetooth connectivity, particularly when trying to pair their mobile phones with a used car. Additionally, some consumers encounter issues with specific types of transmissions early in ownership, which may be mistakenly perceived as major faults. The diverse types of transmissions do not always align with certain driving styles during the initial ownership period.

We have observed cases where consumers who purchase high-powered vehicles experience engine failures for various reasons, often related to abnormal use or driving techniques. When engine failures occur, they are typically seen in older utility vehicles. Investigations usually reveal that proper service regimens have not been followed, or previous history of damage not being declared or the timely replacement of timing chains and maintaining adequate oil levels as per the manufacturer's guidelines.

► **Misrepresentations about a vehicle's history including odometer readings**

In 2023, VACC surveyed its LMCT divisions to determine the extent of the issue concerning individuals or corporations trading vehicles with tampered or suspect odometers to LMCTs.⁴⁰

The survey results revealed that 44.44 percent of LMCTs have fallen victim to a consumer or corporation trading a vehicle with a wound-back odometer between 2019 and 2023.⁴¹ This equates to 967 Victorian LMCTs being affected by this fraudulent behaviour. On average, the LMCTs that responded to the survey reported acquiring two vehicles per dealership with tampered or suspect odometers each year from consumers or other channels.

The prevalence of private-to-private sales and dealer participation in suspect odometer readings is listed below, based on data specifically provided by AutoGrab

In October 2024, VACC commissioned AutoGrab to provide a comparative analysis on the incidence of odometer anomalies when using the two variables of dealer and private seller in the on-line classified market.

According to AutoGrab, 68 per cent of on-line classified listings are private, indicating that consumers tend to purchase used vehicles from private sellers rather than dealers.⁴² This shift undermines consumer protection guarantees, potentially leading to reduced oversight and quality assurance, leaving consumers vulnerable to inferior vehicle quality.

This data supplied to VACC shows records where AutoGrab has detected odometer anomalies by comparing the latest listings marketplaces to previous records of the same Vehicle Identity Number (VIN) that were in Victoria. VACC is happy to provide this complete data set to CAV or VicPol on request.

Of the 798 on-line classified advertisements that the odometer anomalies were detected in the period 12/5/2021 to the 11/8/2024 it was revealed that:

⁴⁰ [VACC Licensed Motor Car Traders: Guidance on recording odometer readings and dealing with odometer fraud \(2023\)](#).

⁴¹ *Ibid*,4 [4].

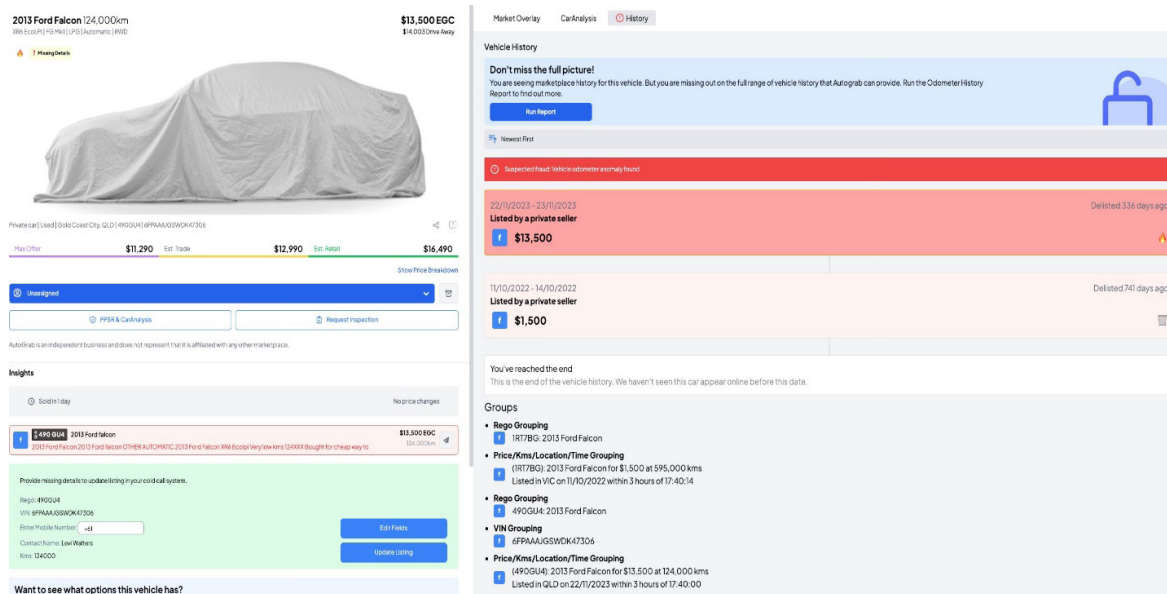
⁴² AutoGrab to VACC October 2024.

- 104 on-line advertisements for used cars online with suspect odometers were advertised by Dealers.
- 694 on-line advertisements for used cars online with suspect odometers were advertised by Private sellers.⁴³

The odometers were wound back in ranges from 10,000 km to 471,000 kms.⁴⁴

AutoGrab has reviewed these records, and they have been flagged in the Car History Analysis, advising buyers to investigate potential odometer discrepancies. AutoGrab has provided VACC with an example of a vehicle sold privately in Victoria, taken to the Gold Coast and relisted a year later at a higher price.⁴⁵

Figure 4 AutoGrab Car Analysis Report

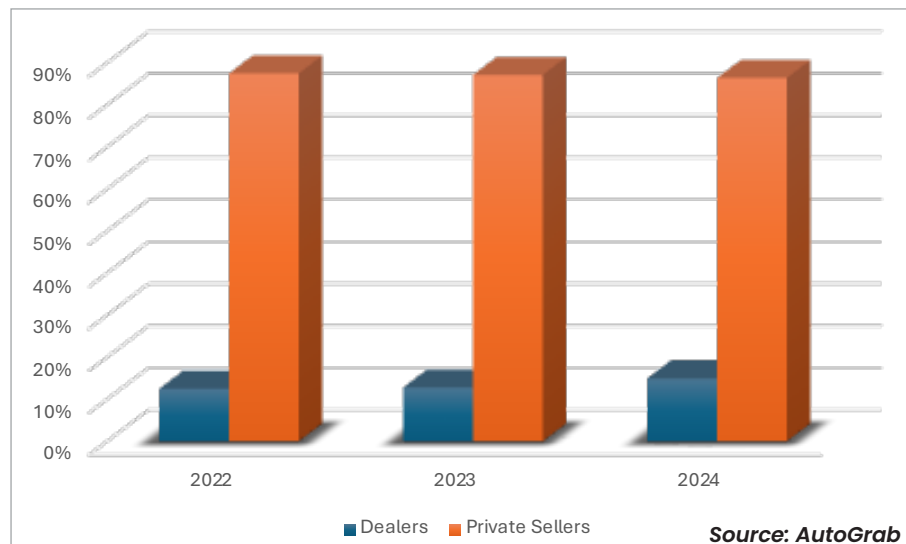


Source: AutoGrab

The percentage of private-to-LMCT sales shows a massive discrepancy in the overall amount of odometer anomaly

Research commissioned by VACC has resulted in AutoGrab providing a report that has revealed odometer anomalies by comparing the latest listings marketplaces to previous records of the same VIN that were in Victoria.

Figure 5 Odometer Anomaly Detection: Private Sellers vs. Dealers



43 Ibid.

44 Ibid.

45 Ibid.

The percentage of odometer anomalies detected in private listings remains alarmingly high, starting at 88 per cent in 2022 and slightly decreasing to 86 per cent in 2024.⁴⁶

This consistently high figure indicates a persistent risk for consumers purchasing from private sellers, suggesting that these listings are far more likely to have inaccurate odometer readings.

In stark contrast, dealer listings show a much lower and stable rate of anomalies, remaining at 13 per cent from 2022 to 2023, and increasing slightly to 15 per cent in 2024.

This stability indicates that LMCTs are likely better equipped to maintain accurate mileage records, providing a more reliable purchasing option for consumers. The data indicates a need for increased consumer education regarding the risks associated with purchasing from private sellers. Awareness campaigns could help buyers understand how to detect potential odometer fraud and encourage them to consider dealer options for greater security.

VACC research conducted in 2023 revealed that 44 per cent of LMCTs in Victoria have fallen victim to a consumer trading in a vehicle to their business with a suspect odometer reading.⁴⁷

What the VACC survey highlighted about suspect odometer reading

The VACC survey also revealed at what point a wound back odometer is identified. Disturbingly, 75 per cent of identification of wind backs are discovered after a LMCT has paid for the vehicle and sold the vehicle to a consumer. LMCTs are forced to buy back this vehicle from the consumer at the price the consumer originally paid. This vehicle may or may not be sold to a consumer with a notice that the odometer reading is not correct. If an accurate odometer reading prior to alleged tampering can be ascertained, the LMCT may be able to restore the odometer to its original setting. This is a practice that almost all LMCTs choose not participate in. Section 38(3) of the Act states: *“It is a defence to a prosecution under subsection (1) for the person charged to prove that the tampering or substitution was not done with intent to deceive by or on behalf of the person charged.”* Based on this, legal advice received by VACC indicates that repairing an odometer to reflect a true and accurate reading is not considered an offense.

The impact of odometer fraud on the consumer and LMCT

It is essential to consider the significant community impacts that arise when a consumer fraudulently sells a vehicle with a wound-back or suspect odometer to an LMCT. When an odometer is tampered with, there is a heightened likelihood that mechanical repairs will be needed sooner than expected, particularly for critical components such as suspension, brakes, emissions systems, computer updates, and other specific maintenance requirements. The purchaser may be unaware that essential scheduled maintenance is due at that time, as the false odometer reading does not align with the actual condition of the vehicle. Compounding the issue, many vehicles with wound-back odometers are often sold with forged service records.

As vehicles age and odometer readings increase, service and repair costs also rise. For example, if a vehicle is misrepresented as having travelled less than 100,000 kilometres, the purchaser may assume that significant service and repair costs will be deferred and potentially covered by the manufacturer's warranty. In reality, a vehicle with a wound-back odometer will likely incur major mechanical repair costs sooner rather than later.

If these repairs are not addressed according to the true odometer schedule, future purchasers can be left facing expensive mechanical issues. In such cases, LMCTs may find themselves vulnerable to various warranty claims and Australian Consumer Law issues.

⁴⁶ Ibid.

⁴⁷ VACC (n 41).

Recommendation 11

VACC and CAV formally agree on what solution a LMCT can apply to a vehicle that has a discrepancy in the odometer.

VicRoads Vehicle Reports

VACC has worked with VicRoads in the development and rollout of the VicRoads Vehicle Report (VVR).⁴⁸ The VVR provides a potential purchaser of a vehicle with an entire history of the motor vehicle – if it has been registered and transferred in Victoria. That history includes:

- Odometer discrepancy check
- Written-off and stolen history.
- Outstanding finance checks
- Valuation and safety insights
- Victorian registration and transfer history
- Victorian roadworthy history



VACC LMCTs are strong supporters of the VVR and believe it has been instrumental in helping identify vehicles with odometer discrepancies or those that have been written-off at the point of trade-in. The VVR remains the only source of actual vehicle data, derived entirely from motor vehicle transfer information provided by vehicle owners.

⁴⁸ VicRoads, VicRoads Vehicle Report, (2024), <https://www.vicroads.vic.gov.au/registration/buy-sell-or-transfer-a-vehicle/buy-a-vehicle-report/vehicle-search?gad_source=1&gclid=EA1aIQobChMI9P2xreKqiQMV_tE8AhIUPRGOEAAAYASAAEgKF>.

► **Misrepresentations about the suitability of vehicles for a consumer's needs.**

VACC has not encountered consumer issues related to a vehicle's suitability for their needs or civil actions citing Section 55 of the ACL, which states that goods must be fit for the purpose disclosed by the purchaser prior to the vehicle's purchase. However, VACC observes that Section 55 of the ACL is often misapplied by many consumer advisors. These advisors frequently attempt to bolster claims made under Section 54 (regarding acceptable quality) by incorrectly citing Section 55 as a guarantee issue for their claims.

8. Is there an issue of intrastate or interstate movement of poor-quality second-hand vehicles for resale in other markets?

VACC believes that the differing laws between NSW and Victoria regarding the sale of WOV results in many vehicles from NSW that have been or will be written-off, being shipped to Victoria where they can be rebuilt and sold to consumers.

NSW enacted specific legislation in 2010 that prohibits WOVs from returning to the road, meaning they can only be used for scrap.⁴⁹ This regulation was introduced with a focus on road safety, aiming to reduce car theft and re-birthing, as well as to protect consumers and support small businesses in the repair industry. In contrast, Victoria has no such law; however, the prohibition of RWOs is a firm policy position of VACC's LMCT divisions.

Additionally, Victorian traders advise of occasional influxes of vehicles from other states that have been damaged by flood or hail events.

9. Are any issues relevant to second hand motor vehicles concentrated in particular locations, demographics, or dealers/sellers?

Evidence supports the notion that issues related to the sale and repair of used motor vehicles varies by particular location, demographic, dealer, auction house and private seller.

VACC worked closely with the Victorian Law Reform Commission (VLRC) in its 2015 review into the 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries'.⁵⁰ The VLRC report addressed issues related to restricting entry into certain occupations and industries, while also recommending a strong emphasis on ensuring compliance with regulatory obligations and the pre- and post-entry behaviour of participants in licensed industries. VACC observes that many aspects, both within and outside the licensing parameters of LMCTs and second-hand dealer legislative and regulatory requirements, are being disregarded by regulators and law enforcement agencies. Whether this is due to resource constraints or a lack of support from the judicial system is unknown.

For the purposes of personal safety and risk of retribution, VACC would request that our views on this question are best answered in camera.

Recommendation 12

VACC recommends that CAV, ACCC and the NWG convene an in-camera opportunity for all respondents to report verbally on issues relevant to that are particular to location, demographic, dealer, auction house and private seller.

49 NSW Government, Owing or buying a written off vehicle in NSW, (2010), <<https://www.nsw.gov.au/driving-boating-and-transport/vehicle-registration/written-off-vehicles/owning-or-buying-a-written-off-light-vehicle>>.

50 VLRC, Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries', (2016), <https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRC_Regulatory_Regimes_Report_for_web.pdf>.

10. Do you have any potential ideas or suggested reforms to help address these issues (such as from a regulatory, consumer or industry perspective)?

VACC notes that there are punitive measures available to CAV and other regulators and law enforcement with regards to unlicensed vehicle trading, odometer tampering and fraudulent representation of vehicles to LMCTs. Those actions have both civil and criminal remedies. From time to time, we see those powers activated and we are always the first entity to provide the public recognition of such an outcome. But we do not see this type of activity often enough. VACC understands resource constraints for regulator and law enforcement agencies may be at the core of why there is inactivity. What occurs when regulators take no action is an increase in consumer detriment. Even more concerning is the unilateral shift in focus toward LMCTs by the Regulators, as they are seen as easier targets. The time has come to tackle this issue.

For the purposes of personal safety and risk of retribution, VACC would request that our views on this question are best answered in camera.

Recommendation 13

VACC recommends that CAV, ACCC and the NWG convene an in-camera opportunity for all respondents to report verbally on potential reform measures from a regulatory, consumer and industry perspective.

11. Please outline whether you consider any of the following an issue and explain the prevalence of each situation:

► *Licensed dealers selling vehicles in a private capacity (or otherwise giving the impression that they are a private seller)*

VACC does not consider this to be a problem that impacts consumers or a problem that is endemic in Victoria, nor do we have evidence to prove or disprove the statement.

Private sellers giving the impression that they are licensed dealers.

VACC does not view this as an endemic problem in Victoria; however, it has the potential to undermine the entire balance of LMCT license fees that contribute to the Motor Car Traders Guarantee Fund (the Fund).

The issue of a private person passing themselves off by direct statement, or other, is of concern to VACC. The VACC is concerned by the fact that Section 74(3)(a) of the Act does allow for a claim on the Fund to be made by a person who at the relevant time, was (or who the claimant reasonably believed was) a licensed motor car trader.

The sale of a motor vehicle by a non LMCT body corporate has significant issue for VACC and consumer. However, the burden may be slightly lessened by the fact that any vehicle sold by a person in trade or commerce would be subject to the ACL provisions.

This issue of private persons passing off their credentials was particularly concerning during the immediate post COVID period when motor vehicle stock was scarce. The emergence of vehicle on-sellers was obvious, with many consumers and LMCTs suffering from interactions (see appendix 6)

► *Private sellers selling vehicles in circumstances where they should be licensed.*

VACC believes this issue to be of the utmost concern and danger to consumers and LMCT. It is an issue and concern that is difficult to address, but could be with greater compliance and enforcement activity and collaboration with the current LMCT cohort.

VACC has, for some time, requested that CAV and law enforcement agencies review how vehicles are sold and acquired on marketplace, on-line classifieds suppliers, mainstream auctions and other methods. The issue is particularly out of hand in regional Victoria.

Consumer, taxpayer, community protection and the LMCT receiving a fair go in this scenario are paramount.

12. Do you have any potential ideas or suggested reforms to help address these issues (such as from a regulatory, consumer or industry perspective)?

Recommendation 14

VACC recommends that VACC, AADA, CAV, ACCC, Victoria Police, the Australian Federal Police, Victorian State Revenue Office, the Australian Taxation Office, Centrelink and the Department of Home Affairs participate in a series of round tables in the view of creating a specialised Taskforce to address the scourge of unlicensed selling of motor vehicles.

13. Please outline whether you consider any of the following an issue and explain the prevalence and consumer harm of each situation:

- ▶ **Dealers ignoring requests for remedies which the consumer should be entitled to under legislation or warranty.**

The VACC believes this question to be poorly worded. It is difficult to determine what constitutes a dealer ignoring a consumer.

A dealer is permitted to inspect an alleged vehicle fault, is able to ask questions, seek advice and quite often is forced to contract out to an expert that investigation. This does not make the case for a dealer ignoring a request. If a dealer does not automatically acquiesce to a consumer demand for a refund or remedy it is usually because the dealer is investigating how the issue arose or taking their own professional advice. As long as that dealer reply is completed in a reasonable period of time, then VACC fails to see where the issue lies.

If the investigation does result in the dealer being obliged to remedy the situation and the dealer fails to address this in a reasonable period of time, then VACC suggests CAV and the courts should intervene.

The data from a legislative perspective under the Act does equate to this being an issue from an LMCT perspective. A summary that claims received by the Motor Car Traders Claim Committee (MCTCC) reveal that, on average, for the past five years, LMCTs are following their legislative obligations under the Act.

Table 5: LMCT claims received by MCTCC from 2018 to 2023

Data received from the MCTCC				
Financial Year	MCTCC Claims received	Claims refused	Claims withdrawn	Claims admitted
2018-19	61	19	31	7
2019-20	74	31	13	6
2020-21	64	39	18	4
2021-22	61	32	10	4
2022-23	71	69	15	1

Source: MCTCC

There has been a total of two claims appealed at VCAT since 2020. The grounds on which the claims were admitted before their appeal were odometer tampering by trader – 76(1)(a) and failure to cancel security interest – 76(1)(b) of the Act.

The data from an ACL perspective as stated earlier in this reply with regards to LMCT presence in VCAT as a respondent, shows that LMCTs are either fixing problems before the consumer launches some type of litigation or that the customer is satisfied with the LMCT remedy.⁵¹ Keep in mind that in Victoria approximately 865,000 vehicles are transferred each year and over five million vehicles are registered on the road. The percentage of those causing an issue is minuscule.

**► Delays in dealers providing remedies. See above.
Dealers providing inadequate remedies such as discounted buybacks, faults not fixed during repairs, not accepting full cost of repairs etc.**

As stated above, dealers are entitled to review a consumer claim on an alleged fault or claim and to complete an analysis on how and why that fault may have developed.

VACC can provide much evidence to show that dealers in most instances buy vehicles back for the same value as to what the consumer paid after the consumer has had extensive use.

Where there is evidence of driver contribution to a problem, dealers will often negotiate an amount with the consumer under a co-contributory basis.

Quite often faults develop outside the rejection period or are experienced at some stage after the consumer has enjoyed an exceptionally extended period of unfettered motoring. That benefit of unfettered motoring in effect becomes a windfall gain for the consumer and a significant cost to the dealer, if the customer is refunded an entire purchase price of a vehicle. It is VACC's view that where the consumer is entitled to a refund, that an appropriate percentage or factor to account for the vehicle's depreciation should ensue.

VACC does not believe that any reasonable consumer would expect to be entitled to a windfall benefit under this circumstance.

Suffice to say VACC assists LMCTs who are subject to claims that at times are reasonable and fair at best, fraudulent at worst.

14. Do you have any potential ideas or suggested reforms to help address these issues (such as from a regulatory, consumer or industry perspective)?

Recommendation 15

The ACL should be amended to allow for LMCTs to be able to recover their costs more easily from manufacturers where it is established that the product was supplied to market in a non-acceptable form. The ACL should be amended to list any manufacturer under this basis as the first respondent in any action.

Recommendation 16

In the event of an ACL full refund, a depreciation method should be introduced to negate an unfair burden in the LMCT and prevent or encourage consumer windfall gain opportunities.

Recommendation 17

In the event of an ACL full refund, a damage assessment method should be introduced to negate an unfair burden in the LMCT and prevent windfall gain opportunities

⁵¹ VACC,(n 9).

Recommendation 18

Any on road costs associated with a refund are for the consumer to pursue through the various state and federal based revenue collection agencies. This is money that was never the dealers and has been remitted to the respective agency within a legislated time frame.

15. Are you aware of concerning issues regarding extended warranties, including sales tactics, and misrepresentation of cost, coverage or terms and conditions?

VACC has interviewed three of the top used car extended warranty providers to inform the two survey questions on extended warranty.

From our in-field research for this submission, it was advised that not all franchise dealers used car department's retail external extended warranties, as many come with a large balance of factory warranty which is transferred to a new owner.

Warranty providers advised VACC that warranties sold to consumers may be limited to listed components and in some cases have low claim limits. Some extended warranties may also have exclusions which can limit or not include cover even if the listed covered component fails.

It is important the NWG know of how extended warranty providers work with dealerships and consumers who have purchased their product at the point of sale.

The following addresses the end-to-end process of the dealer management of sales of extended warranty, the training of dealer staff in selling the warranty, how customers can make a claim on the extended warranty, how the customer is informed of their right and how a consumer can exit an agreement.

Lower-value products

All products with a claim's limit under \$2,000 can only be given away free of charge to customers (i.e. customers cannot be charged for lower-value products).

Product Design

Products do not have variable claim's limits within the plan the customer has selected. For example, if the claim's limit for engine components is \$3,000, all other covered components also have a claim's limit of \$3,000. This is aimed at eliminating confusion on claim's limits.

All products cover wear and tear of covered components to provide certainty in coverage. The success rate of claims submitted is 78 per cent.⁵²

Of the claims declined, 82 per cent were declined due to non-covered items. This is similar across the industry with claims declined hovering around the 15 per cent.⁵³ This is usually because customers will typically submit a claim for anything that needs to be repaired on their vehicle.

The maximum margin a dealer can earn is 50 per cent of the retail price of the product.

All service-intervals across most products are as per manufacturer guidelines. Additionally, some warranty providers will only decline a claim due to lack of servicing if the failure being claimed is attributable to a lack of servicing.

⁵² From Warranty provider #1.

⁵³ From Warranty provider # 2.

Selling the car with an extended warranty attached to it

Customers receive a pro-rata refund (minus claims paid) if they sell their vehicle to a dealership, or if their vehicle is stolen, repossessed, or written off.

Customers who sell their vehicle privately can transfer the warranty to the new owner.

Sales

Dealers are required to complete a product training questionnaire before they can access products to sell to consumers. As part of the sales process, dealers can print and/or email policy documents to customers once the sale is processed.

Most providers digitally issue welcome communications to customers two days after the sale of a warranty is processed. This ensures that customers receive a separate communication outside of the sales environment on the day of the purchase, where they can read their warranty information in their own time.

The welcome communication may detail the following:

- Key features of the warranty and claims limits.
- Attaches a policy schedule which clearly shows the cost of the warranty.
- Attaches the full terms and conditions of the warranty.
- Highlights that they have a 30-day cooling off period to cancel the product with no questions asked.

For customers who have a multi-year policy, it is common that an annual reminder is forwarded customers by the extended warranty company on the anniversary of their warranty to remind customers of their warranty coverage.

Case study

From one of the most experienced extended warranty sales dealership staff members in Australia

'In my experience as an agent to set up the entire operational system for extended warranty offerings, it is obvious and consistent that dealers have to understand and have a policy and standard to the delivery of extended warranty to a consumer.

I've been stating for years, and working alongside ADS, Presidian, Integrity and others that we need to implement a training program that has salespeople accredited to speak/present warranty. Too many consumers don't really listen, and many sales staff are not lawyers. Its not fair on both parties. Maybe we need to have a VACC orange tick for used cars and a training program, that I would be more than happy to facilitate. No sure how it would be funded though.'

Cooling-Off Period

Most extended warranty companies encourage consumers to contact them directly to receive a full refund if cancelling within a cooling-off period (i.e. they do not need to go back to the dealership). The warranty company may also claw back any margin the dealer has earned from any cancellations within the cooling-off period, so there is no benefit in mis-selling a warranty.

The cooling off period is typically 14 days with some providers offering 30 days cooling off periods. One warranty provider advised that 1.6 per cent of purchasers have exercised their right to cancel within cooling off in 2024. All have been fully refunded.

Reporting on cooling-off period cancellations is provided to most warranty provider sales teams so that if there are dealers frequently appearing on the report, additional training is conducted to ensure products are being explained properly to customers.

Other Product Features

Any warranty that commences within three months of the delivery date of the vehicle receives a free three-month warranty extension to mitigate any statutory warranty overlap. Customers also receive three months of roadside assistance included from most warranty providers.

Qualifying Questions

Qualifying questions for consumers were introduced with the Design and Distribution Obligations (DDO) that required all product issuers to have Target Market Determinations (TMD). These questions are required to be answered at the beginning of the sales process and system restraints mean that if they are not all answered in the affirmative (meaning the customer falls outside the target market), the warranty is unable to be created.

Welcome Pack

All new warranty holders receive an email with a welcome pack within 3 days of purchase. This includes their terms and conditions, answers to the qualifying questions, as well as a summary of important processes and contact information. It also has a QR code and link for our customer app.

16. Do you have any potential ideas or suggested reforms to help address these issues (such as from a regulatory, consumer or industry perspective)?

Recommendation 19

Introduction of a standardised “Star Rating” or similar which would improve transparency for consumers.⁵⁴

This will assist in improving the design of the warranty products sold to consumers. Regulating minimum claim limits to (for e.g. \$3,000–\$5,000) per claim, identifying and regulating unfair exclusions which may affect the consumers ability to remedy a failed component and greater transparency of covered components and exclusions.⁵⁵

Recommendation 20

The formation of a government-led working group, including CAV, VACC, AADA, ASIC, AFSA, CHOICE, and key extended warranty providers (such as ADS Warranties, Integrity Warranty, and Presidian Group), to meet every six months to discuss issues and standards related to motor vehicle extended warranties.

17. What types of finance are most commonly used to purchase second hand vehicles – e.g. point of sale finance facilitated by the dealer, finance through a broker etc?

VACC conducted interviews with Finance and Insurance (F&I) dealerships and independent used car traders who advised that the most commonly used finance products by consumers are personal loans, top up on home loans, secured car loans.

Many dealers engage in credit activities relying on the Point of Sale (POS) exemption rather than as credit licensees or as credit representatives. This does not make the dealer an agent of the lender. This allows for dealers to act as introducers for consumers to finance companies.

⁵⁴ Warranty provider No.3 with support of provider #2.

⁵⁵ Warranty provider #3.

Loans approved under point of sale are approved in line with the respective financier's capacity calculations and strict lending policies, which are highly regulated and the reliance on consumers to provide honest data in credit assessment is vital. Many dealers may use a finance company that has a 'Capacity Calculator' that is used to initially assess whether a consumer can make repayments without creating a burden on the consumer or a risk for the finance company. The capacity is based on an income versus expenses methodology.

Some dealership groups have their own brokerage company that can facilitate personal loans and secured car loans. A national credit survey conducted by VACC 2017 advised that approximately 1 in 9 dealers have their own Australian Credit Licence or are appointed as credit representatives for their finance providers.⁵⁶

18. Please outline the most prevalent and harmful types of inappropriate provision of motor vehicle finance, potentially including:

► **where the loan amount appears to exceed the reasonable value of the vehicle**

Dealers do not provide loans on this basis.

► **where the loan amount appears to exceed what the borrower can reasonably pay**

Dealers operating under the Point of Sale (POS) exemption system, as introduced, and credit providers with an Australian Credit Licence cannot provide finance for such loans. It is important to note that some consumers do not provide accurate information when applying for finance under the income versus expenses test, which is beyond the dealer's control.

A quick analysis from a Melbourne-based dealer advises the following number of rejections for used car loan applications:

- July-Aug-September 2024 their first-tier financiers rejected 21 loan applications.
- July-Aug-September 2024 their brokerage company rejected 39 loan applications.

This random request show that dealers, and finance, are rejecting many finance applications despite the severe pressure the sector is under to move vehicles.

► **where misrepresentations/omissions appear to have been made about terms and conditions of the loan.**

While VACC makes no claims that irresponsible lending or introductory practices involving dealers have been completely eradicated, we have observed significant improvements in both rapidity and volume, as well as adherence to the lending practices mandated under the National Consumer Credit Protection Act 2009 (Cth) (NCCP). The key concept of this Act is that credit licensees must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer.

Dealers who hold a Point of Sale (POS) or Australian Credit Licence can be addressed by the Australian Securities and Investments Commission (ASIC) for misrepresentations and issues of misconduct under the NCCP. Consumers can bring such claims to the Australian Financial Complaints Authority (AFCA). There are significant punitive measures and lasting brand damage that can result from these actions.

VACC applauds the work done by consumer lobby group CHOICE with regards to calling out loan providers who fail to accurately assess whether their customers can actually pay off their loan and charging exorbitant fees as well. What VACC would like to see is the very few

⁵⁶ Richard Dudley, MTAA, ABC New , Retailers surprised to be caught in Hayne Royal Commission (2017), <<https://www.abc.net.au/news/2019-02-15/retailers-surprised-to-be-caught-in-hayne-recommendations/10804128>>.

independent dealers who introduce consumers to finance companies that are constantly in breach of their NCCP obligations be identified and those LMCTs be encouraged to shift finance to recommended providers.

Misrepresentation about terms and conditions of any loan are not tolerated or common in either the introducing dealership or the respective financier. The vast majority of LMCTs have very strong compliance disciplines in place in all dealerships, they are constantly audited by an appointed full time Compliance Officer who also conducts regular compliance training with all finance and insurance consultants.

19. Are you aware if consumers purchasing poor quality second motor vehicles using finance, and have been left paying off loans for unusable vehicles?

VACC has heard of this issue with car buyers, which is largely attributed to private sales or sales by non-LMCT entities.

Among the issues we have identified under this context, most arise when dealing with recidivist LMCTs. It is almost always the same LMCTs in the same location and among the same cohort. In all cases, if the issue with an LMCT is deemed by VACC to be unfair or unconscionable, VACC will assist the consumer, regardless of whether they are dealing with a member of VACC or not.

20. Do you have any potential ideas or suggested reforms to help address these issues (such as from a regulatory, consumer or industry perspective)?

Recommendation 21

VACC, AADA, CAV, ASIC, AFCA and CHOICE collaborate on a campaign to identify where LMCTs are using credit providers who practice irresponsible lending practices and work with the LMCT to move providers.

Recommendation 22

That CAV and ACCC maintain a publicly accessible register of private sellers, LMCT and auction houses who retail vehicles that are of poor quality that have resulted in adverse outcomes for consumers.

Appendix 1.

PART A – AGREEMENT FOR SALE OF USED MOTOR CAR

Date Issued:

TRADER'S DETAILS

Name, address and LMCT Number of Motor Car Trader, hereinafter called "the Trader"

Australian Business Number (ABN)

Salesperson's Name (Please Print)

PURCHASER'S DETAILS

Surname or Name of Incorporated Body

First Name Second Name Date of Birth

Australian Business Number (ABN) (If purchased by company)

Driver Licence Number

Residential Address

Postal Address – if different from residential

Tel. Private Tel. Business Mobile

Email

Nominated Registered Owner – if different from Purchaser

Residential Address

DESCRIPTION OF MOTOR VEHICLE

Make and Model

Body Type

Build Date (if app.)

Stock No.

Colour

State of Reg.

Registration Number

Reg. Expiry Date

VIN/Chassis/Frame Number

Does the vehicle appear on a written off vehicle register?

YES

NO

Distance recorded on the odometer at the time of signing the Agreement*.

*Refer to clause 5 of Terms & Conditions

Purchase Vehicle Price (including GST):

\$

TOTAL PRICE OF MOTOR VEHICLE AND OTHER SUPPLIES

Other charges as specified or shown on invoice

Item	Price	GST
Purchase Vehicle Price	\$ <input type="text"/>	\$ <input type="text"/>
Stamp Duty	\$ <input type="text"/>	\$ <input type="text"/>
Transfer Fee	\$ <input type="text"/>	\$ <input type="text"/>
Registration Fee	\$ <input type="text"/>	\$ <input type="text"/>
VicRoads Fees	\$ <input type="text"/>	\$ <input type="text"/>
Total Price of Motor Vehicle	\$ <input type="text"/>	\$ <input type="text"/>

TOTAL PRICE OF MOTOR VEHICLE (including GST)

\$

Delivery Date

This motor vehicle is sold: (-)

With a current Roadworthiness Certificate

With the Registration cancelled

Purchaser's Signature:

IMPORTANT INFORMATION – YOUR RIGHT TO COOL OFF

Motor Car Traders Act 1986 – Section 43

Under Section 43 of the Motor Car Traders Act 1986, if none of the exceptions listed below applies to you, you may end this Agreement within 3 clear business days of the day that you sign the Agreement. To end the Agreement within this time, you must give the motor car trader or the motor car trader's agent **written** notice that you are terminating the Agreement.

If you end the Agreement in this way, you are entitled to a refund of all the money you paid EXCEPT \$100 or 1 per cent of the purchase price (whichever is greater).

EXCEPTIONS – the 3-day cooling-off period does not apply if—

- the vehicle being sold is a commercial vehicle; or
- you are a motor car trader; or
- you are a body corporate; or
- you accept delivery of the vehicle within the cooling-off period.

IF YOU CHOOSE TO ACCEPT DELIVERY OF THIS VEHICLE WITHIN THE COOLING-OFF PERIOD, YOU WILL AUTOMATICALLY LOSE YOUR RIGHT TO COOL-OFF

PART B – AGREEMENT FOR SALE OF USED MOTOR CAR

TRADE-IN MOTOR VEHICLE PARTICULARS *Refer to clause 11*

Make and Model	Body Type	Build Date (if app.)
Veh. 1		
Veh. 2 (if appl.)		
State of Reg.	Registration Number	Reg. Expiry Date
Veh. 1		
Veh. 2 (if appl.)		
VIN/Chassis Number		
Veh. 1		
Veh. 2 (if appl.)		
Distance recorded on odometer at the time of signing the agreement		
Veh. 1	(inc. GST) \$	Allowance for trade-in
Veh. 2 (if appl.)	(inc. GST) \$	
Owner of motor vehicle(s) being Traded		
Veh. 1		
Veh. 2 (if appl.)		
Does the Trade-in vehicle appear on a written off register?		
Veh. 1 registration number	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Veh. 2 (if appl.) registration number	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Signature of Person authorised to trade-in motor vehicle		Date of Trade-in
Veh. 1		
Veh. 2 (if appl.)		

ALLOWANCE MADE FOR TRADE-IN MOTOR VEHICLE

Allowance for Trade-in	\$
Other Goods	\$
Less — Pay out to	
	\$
	\$
PPSR Search Fee	\$
Net Trade-in Allowance	\$

Where a motor car, or motor cars, are accepted as part payment of the price or other charges and where the amount allowed on the Trade-in Vehicle(s) has been reduced by an amount to be paid by the trader to discharge the interest of any other person in the vehicle(s) the number of days after the delivery of the Trade-in Vehicle(s) to the trader within which the trader will pay this amount to the person not more than _____ days.

TERMS OF SETTLEMENT *Subject to clause 3, 6 and 7*

Total Purchase Price of the Motor Vehicle	\$
Less — Deposit	
Deposit Receipt No.	\$
Less — Net Trade-in Allowance	\$
Price Payable	\$
(in cash, bank cheque or cleared Funds on delivery of motor vehicle)	
Receipt No.	
If trade-in not to be part of terms of settlement refund transaction No. (eg. cheque/efit/other transaction no.)	

FORFEITABLE AMOUNT

Forfeitable Amount:	\$
(must be no more than 5% of the Purchase Vehicle Price)	

COMPLETE THIS SECTION IF THIS AGREEMENT IS SUBJECT TO PURCHASER OBTAINING FINANCE APPROVAL

Amount of Finance	\$
On or Before (Approval Date)	
From	(or similar type of credit provider)
By way of:	Lease <input type="checkbox"/> Hire Purchase <input type="checkbox"/> Other <input type="checkbox"/>

ADDITIONAL CONDITIONS

Purchaser's Signature	
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Note: The parties to this agreement may include other conditions if those conditions do not reduce the rights given to either party by or under the Motor Car Traders Act 1986.

STATUTORY WARRANTY UNDER SECTION 54 OF THE MOTOR CAR TRADERS ACT 1986

Motor cars not more than 10 years old and that have been driven less than 160,000 kms are automatically covered by a statutory warranty under section 54 of the Motor Car Traders Act 1986

Is this motor car automatically covered by a statutory warranty under section 54 of the Motor Car Traders Act 1986? Yes No

If the motor car is covered by the statutory warranty:

The Trader warrants that if a defect appears in the Purchase Vehicle before the end of the warranty period, the Trader will, at their own expense—
 (a) arrange for the Purchase Vehicle to be taken to a place where it can be repaired or made good; and
 (b) repair or make good, or cause to be repaired or made good by another motor car trader or by a qualified repairer, the defect, so as to place the car in a reasonable condition having regard to its age.

The warranty period is whichever of the following periods is shorter—

- (a) the period from when the Purchase Vehicle is delivered to the Purchaser until it has been driven for a further 5,000 kilometres; or
- (b) the period of 3 months from the day after the Purchase Vehicle is delivered to the person buying it.

The benefits to the Purchaser given by this statutory warranty are in addition to other rights and remedies of the consumer under the ACL.

If the motor car is not automatically covered by the statutory warranty

The Trader does not have any obligation under the Motor Car Traders Act 1986 (Vic) to repair or make good any defects after delivery. However, the trader may have other obligations under other legislation including the ACL.

RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

The Purchaser acknowledges that the Purchaser has read and understood the Commercial Terms in both Part A and Part B and the Terms and Conditions in Part C and agrees to be bound by this Agreement.

THIS IS A LEGALLY BINDING AGREEMENT

Signature of Purchaser	
Signature of Person authorised by LMCT	
Dated the	day of 20

PART C – TERMS AND CONDITIONS FOR SALE OF USED MOTOR CAR

1. Definitions

Unless the context otherwise requires:

ACL means the Australian Consumer Law as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Agreement means the agreement between the Trader and Purchaser consisting of these Terms and Conditions and the Commercial Terms.

Approval Date means the date referred to as such in the Commercial Terms.

Commercial Terms means the terms of sale set out in Parts A and B of this document.

Consequential Loss means any indirect or consequential loss including any loss of profit, loss of revenue, loss of production, loss or denial or opportunity, loss of or damage to goodwill, loss of reputation, loss of use, loss of interest, loss of anticipated savings or any similar kind of loss but excludes any liability that the Trader may incur from third parties due to a breach of clause 6 by the Purchaser.

Consumer Guarantees means any right or statutory guarantee under Division 1 of Part 3-2 of the ACL.

Defective Vehicle means a Purchase Vehicle which is defective in quality or workmanship or which does not otherwise conform with this Agreement.

Delivery Notice means the notice provided to the Purchaser that the Purchase Vehicle is ready to be collected as set out in clause 7.2.

Delivery Period means the 7-day period referred to in clause 7.2 .

Force Majeure Event means any act outside the reasonable control of a party including an act of God, act of terrorism, war, revolution, pandemic, epidemic, government order or restriction, strike or industrial dispute, any unlawful act against public order or authority or any event whether the same or different to the events listed above.

Forfeitable Amount means the amount referred to as such in the Commercial Terms and as set out in clause 17.4(a).

Loss means any losses, liabilities, damages, costs, charges or expenses, fines and penalties.

Net Trade-in Allowance means the amount as set out in the Commercial Terms and as referred to in clause 11.1.

Nominated Registered Owner means the nominated registered owner (if any) named in the Commercial Terms.

Non-Excludable Rights has the meaning given in clause 12.1.

PPSA means the *Personal Properties Security Act 2009* (Cth).

Purchase Vehicle Price means the amount as set out in the Commercial Terms being the price of the Purchase Vehicle without any additional charges and/or government levies.

Price Payable means the amount as set out in the Commercial Terms being the Total Price of the Motor Vehicle minus any Net Trade-in Allowance and minus any deposit already paid by the Purchaser.

Purchaser means the purchaser named in the Commercial Terms.

Purchase Vehicle means the motor vehicle (and any associated accessories, components or parts) listed in the Commercial Terms.

Terms and Conditions means these terms and conditions of sale as set out in Part C of this Agreement.

Total Price of the Motor Vehicle means the amount as set out in the Commercial Terms being the Purchase Vehicle Price and including all additional charges and/or government levies.

Trader means the trader named in the Commercial Terms.

Trade-in Vehicle means the motor vehicle (if any) listed in the Commercial Terms.

2. Interpretation

In these terms and conditions, unless a contrary intention is expressed:

- 2.1 headings and italicised, highlighted or bold type do not affect the interpretation of these terms and conditions;
- 2.2 the singular includes the plural and the plural includes the singular;
- 2.3 a reference to any legislation includes all delegated legislation made under it such as regulations, and includes all amendments, consolidations, replacements or re-enactments of any of them from time to time;

2.4 the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in these terms and conditions do not limit what else is included and must be construed as if they are followed by the words 'without limitation'; and

2.5 a reference to '\$', 'A\$', 'AUD' or 'dollars' is a reference to the lawful currency of the Commonwealth of Australia.

3. Purchase of motor vehicle

The Purchaser agrees to buy, and the Trader agrees to sell, the Purchase Vehicle for the Price Payable on the terms and conditions of this Agreement.

4. Nominated Registered Owner

Where in this Agreement a Nominated Registered Owner is designated as such the Purchaser hereby authorises and directs the Trader to do all things reasonably necessary to effect registration of the Purchase Vehicle in the name of the Nominated Registered Owner in lieu of the Purchaser.

5. Payment

5.1 The Purchaser must pay the Price Payable for the Purchase Vehicle on or before the delivery of the Purchase Vehicle under clause 7.

5.2 If the Purchaser does not pay the Price Payable on or before the end of the Delivery Period (as required under clause 7) or by such other time agreed between the parties in writing, the Trader may terminate this Agreement by notice in writing to the Purchaser, except where the Trader was responsible for the Purchaser failing to pay in that time.

5.3 For the avoidance of doubt, the parties acknowledge that this Agreement is intended to be a tax invoice for the purposes of the GST legislation and the Trader is not required to issue a separate tax invoice document to the Purchaser in respect of any supplies made under this Agreement.

6. Use of Purchase Vehicle

6.1 The Trader sells the Purchase Vehicle to the Purchaser on the condition that the Purchaser acquires the Purchase Vehicle for personal use and not for the purposes of export or resale for a commercial or profit-making purpose.

6.2 The Purchaser acknowledges, warrants and agrees that:

- (a) it will not sell or dispose of the Purchase Vehicle for a commercial or profit-making purpose (which, for the avoidance of doubt, does not include any genuine personal sale or disposals made in good faith for a non-commercial purpose); and
- (b) any breach of the requirement in clause 6.2(a) by the Purchaser may trigger a breach by the Trader of its obligations under its agreement with the supplier of the Purchase Vehicle which may result in severe financial consequences for the Trader.

6.3 The Purchaser must indemnify the Trader from and against any Loss the Trader suffers from or in connection with the event listed in clause 6.2(b) (except to the extent such Loss is caused by the Trader).

6.4 The indemnity in clause 6.3 is a continuing obligation separate and independent from any other obligation and survives the expiry or termination of this Agreement.

7. Delays in delivery

7.1 The Trader must make every reasonable effort to make the Purchase Vehicle available for delivery on or before the delivery date stated in this Agreement. Where delivery is delayed by more than 14 days, the Purchaser may terminate this Agreement by notifying the Trader in writing, unless the delay is caused by the Purchaser.

7.2 The Trader will notify the Purchaser when the Purchase Vehicle is available for collection by the Purchaser (**Delivery Notice**). The Purchaser must take delivery of the Purchase Vehicle within 7 days of receiving the Delivery Notice (**Delivery Period**). If the Purchaser fails to take delivery before the end of the Delivery Period, the Trader may terminate this Agreement by notice in writing.

7.3 The Purchaser is to take delivery by collecting the Purchase Vehicle from the Trader.

7.4 The parties may agree in writing to a longer Delivery Period rather than 7 days as set out in clause 7.2

PART C – TERMS AND CONDITIONS FOR SALE OF USED MOTOR CAR

- 8. Risk**
The Purchaser shall accept delivery of the Purchase Vehicle at the address of the Trader as set out in the Commercial Terms, and all risk in the Purchase Vehicle shall pass to the Purchaser on delivery.
- 9. Odometer Reading**
The Trader being unable to satisfy itself absolutely as to the accuracy of the odometer reading as being the distance travelled by the Purchase Vehicle, cannot and therefore does not, believe the odometer reading accurately records such distance.
- 10. Retention of Title and PPSA**
- 10.1 It is expressly agreed between the Purchaser and the Trader that title to the Purchase Vehicle in no circumstances passes to the Purchaser until the Trader has received full and cleared payment for the Purchase Vehicle as provided in this Agreement.
- 10.2 Until the Trader receives full payment in cleared funds, the Purchaser holds the Purchase Vehicle as fiduciary bailee and agent for the Trader.
- 10.3 If the Purchaser sells the Purchase Vehicle before the Trader receives full payment in cleared funds the Purchaser must hold the proceeds of any sale of the Purchase Vehicle on trust for the Trader in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligations as trustee.
- 10.4 Until the Trader receives full payment in cleared funds, if the Purchaser defaults on any of its payment obligations under this Agreement, the Trader is entitled to take immediate possession of the Purchase Vehicle, and the Purchaser hereby authorises the Trader to enter into any premises owned or controlled by the Purchaser for the purpose of repossessing the Purchase Vehicle.
- 10.5 Notwithstanding anything to the contrary contained in this Agreement, the PPSA applies to this Agreement.
- 10.6 For the purposes of the PPSA:
- (a) terms used in clause 10 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) this Agreement is a security agreement and the Trader has a Purchase Money Security Interest in the Purchase Vehicle and in the proceeds of its sale;
 - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
 - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the Purchase Vehicle which is able to be registered by the Trader on the Personal Property Securities Register.
- 10.7 The security interest arising under this clause 10 attaches to the Purchase Vehicle when the Purchase Vehicle is collected from the Trader's premises.
- 10.8 Where permitted by the PPSA:
- (a) the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA; and
 - (b) the Trader and Purchaser agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA and nothing in these sections will apply to this Agreement.
- 10.9 To the extent permitted by the PPSA, the Purchaser agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on the Trader will apply only to the extent that they are mandatory or the Trader agrees to their application in writing; and
 - (b) where the Trader has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 10.10 The Purchaser must immediately upon the Trader's reasonable request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Trader to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Trader may at any time require.
- 10.11 The Trader may allocate amounts received from the Purchaser in any manner the Trader determines, including in any manner required to preserve any Purchase Money Security Interest it has in the Purchase Vehicle.
- 11. Trade in Conditions**
- 11.1 Where the purchase involves a Trade-in Vehicle then the amount allowed for the trade-in (**Net Trade-in Allowance**) must be deducted from the Total Price of the Motor Vehicle. The Net Trade-in Allowance will be the amount allowed on the Trade-in Vehicle less any amount to be paid by the Trader to discharge the interest of any other person in the Trade-in Vehicle.
- 11.2 The Trade-in Vehicle must be delivered to the Trader no later than the date of delivery of the Purchase Vehicle. If the Trade-in Vehicle is delivered after this date or is not in substantially the same condition as at the date of this Agreement then the Net Trade-in Allowance may be adjusted by an amount equal to the change in the fair market value of the Trade-in Vehicle between the date of this Agreement and the date of delivery to the Trader.
- 11.3 The Purchaser's interest in the Trade-in Vehicle shall pass to the Trader:
- (a) when the Purchaser accepts delivery of the Purchase Vehicle; or
 - (b) when the Purchaser has delivered the Trade-in Vehicle to the Trader and the Trader has paid the Net Trade-in Allowance to the Purchaser or acknowledged in writing that this amount has been credited towards the Price Payable.
- whichever occurs first.
- 11.4 The Trader must not, without the prior written consent of the Purchaser, sell or agree to sell the Trade-in Vehicle before delivery of the Purchase Vehicle to the Purchaser.
- 11.5 For the avoidance of doubt, if the Trader validly terminates the Agreement under clauses 7.2 or 5.2, the Trader is entitled to dispose of the Trade-in Vehicle as set out in clause 17.4(c).
- 11.6 Where the Net Trade-in Allowance has been reduced by an amount to be paid by the Trader to discharge the interest of any other person in the Purchase Vehicle, the Trader will pay this amount to the other person within 28 days of delivery of the Trade-in Vehicle to the Trader.
- 12. Limitation of Liability**
- 12.1 Nothing in this Agreement is intended to have the effect of excluding any Consumer Guarantees or any other applicable law that cannot be excluded, restricted or modified by agreement of the parties (**Non-Excludable Rights**).
- 12.2 Subject to any Non-Excludable Rights, and to the maximum extent permitted by law:
- (a) any term, condition, warranty, representation, guarantee or undertaking that may otherwise be implied into this Agreement by legislation, common law, equity, trade, custom or usage is excluded;
 - (b) each party excludes its liability to the other party for any Consequential Loss however arising (including under any indemnity);
 - (c) the liability of the Trader in respect of any Defective Vehicle, breach of or failure to comply with any Non-Excludable Rights (which cannot be excluded but can be limited) or for any other Loss however arising is limited to:
 - (i) the replacement of the Purchase Vehicle or the supply of equivalent goods;
 - (ii) the repair of the Purchase Vehicle;
 - (iii) the payment of the cost of replacing the Purchase Vehicle or acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Purchase Vehicle repaired.

PART C – TERMS AND CONDITIONS FOR SALE OF USED MOTOR CAR

- 12.3 Except in relation to any Non-Excludable Rights, the Purchaser acknowledges that:
- it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Trader in relation to the Purchase Vehicle or its use; and
 - it has not made known, either expressly or by implication, to the Trader any purpose for which it requires the Purchase Vehicle and it has the sole responsibility of satisfying itself that the Purchase Vehicle is suitable for the Purchaser's use.
- 13. Defective Goods**
Subject to this Agreement and any Non-Excludable Rights:
- 13.1 the Trader will not be liable for any Defective Vehicle unless the Purchaser gives the Trader full written details and a description of the relevant defect, within the time that it would be reasonable to expect the relevant defect to become apparent (Defect Notice). If no Defect Notice is provided, the Purchaser is deemed to have accepted the Purchase Vehicle;
- 13.2 if the Purchaser gives a Defect Notice to the Trader within the required time, the Purchaser must preserve the Purchase Vehicle in the state in which it was at the time the defect became apparent and allow the Trader to access the Purchaser's premises to inspect the Purchase Vehicle;
- 13.3 if the Trader determines, acting reasonably, that the Purchase Vehicle is a Defective Vehicle, the Trader may, at its option:
- replace the Purchase Vehicle;
 - repair the Purchase Vehicle; or
 - refund the Purchase Vehicle Price; and
- 13.4 the Trader will not offer a return for a Purchase Vehicle that:
- has been specifically produced, imported or acquired to fulfill this Agreement;
 - is a discontinued Purchase Vehicle or is a vehicle no longer stocked by the Trader; or
 - has been altered in any way.
- 13.5 In the event that the manufacturer, distributor or importer that made the original supply of the Purchase Vehicle goes into liquidation or administration or ceases to trade, or where a receiver is appointed in respect of that person, it is acknowledged that:
- the Trader's responsibility to provide repairs under any express warranty provided by the manufacturer, distributor or importer will cease; and
 - the Purchaser must deal directly with the representative acting on behalf of the manufacturer, distributor or importer in relation to a claim made under any express warranty,
- except that, nothing in this clause will affect any obligations the Trader may have to the Purchaser under the Australian Consumer Law in its capacity as a supplier or deemed manufacturer (if applicable).
- 14. Subject to Finance**
- 14.1 Where this Agreement is subject to the Purchaser obtaining finance, the Agreement is conditional upon the Purchaser obtaining finance approval:
- within the time stated in this Agreement;
 - of the amount stated in the Commercial Terms of this Agreement;
 - from the credit provider named in this Agreement (or from a similar type of credit provider);
 - for the type of finance stated in this Agreement; and
 - on reasonable terms and conditions in the circumstances.
- 14.2 The Purchaser agrees to take all reasonable steps towards obtaining finance approval.
- 14.3 The Purchase must notify the Trader on or before the Approval Date of the outcome of the Purchaser's finance application.
- 14.4 If the Purchaser does not obtain finance approval then either the Purchaser or the Trader may terminate this Agreement by giving notice to the other party.
- 15. Transfer to Credit Provider**
Where requested by the Purchaser, the Trader shall transfer title of the Purchase Vehicle to the Purchaser's credit provider on payment of the Price Payable to the Trader.
- 16. Force Majeure**
If the Trader is unable to deliver or provide the Purchase Vehicle as a result of a Force Majeure Event, then it may terminate this Agreement by written notice to the Purchaser.
- 17. Termination**
- 17.1 Either party (**Non-Defaulting Party**) may terminate this Agreement by written notice to the other party (**Defaulting Party**) if the Defaulting Party commits any of the following breaches:
- where the Defaulting Party is a natural person, the Defaulting Party becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally; or
 - where the Defaulting Party is a body corporate, the Defaulting Party enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Defaulting Party.
- 17.2 The Trader may terminate this Agreement where the Agreement expressly provides the Trader with a termination right or where the Purchaser otherwise breaches a material term of this Agreement, promise or warranty, which cannot be remedied, or can be remedied but is not remedied by the Purchaser within 10 days after the Trader gives notice of the breach to the Purchaser.
- 17.3 The Purchaser may terminate this agreement where the Agreement expressly provides the Purchaser with a termination right or where the Trader otherwise breaches a material term of this Agreement, promise or warranty, which cannot be remedied, or can be remedied but is not remedied by the Trader within 10 days after the Purchaser gives notice of the breach to the Trader.
- 17.4 Where this Agreement is lawfully terminated by the Trader (other than under clause 14 or 16) due to a breach of this Agreement by the Purchaser (including breaches of clauses 5 and 7.2) then:
- the Purchaser must forfeit the amount stated in this Agreement to the Trader provided that amount does not exceed 5% of the Purchase Vehicle Price (**the Forfeitable Amount**); and
 - where an amount has been paid towards the Price Payable and that amount exceeds the Forfeitable Amount then the Trader must:
 - refund to the Purchaser so much of the amount paid that exceeds the Forfeitable Amount; and
 - return any Trade-in Vehicle to the Purchaser; and
 - where an amount has been paid towards the Price Payable and that amount does not provide the Trader with the Forfeitable Amount and a Trade-in Vehicle has been delivered to the Trader then the Trade-in Vehicle may be forfeited to the Trader and the Purchaser credited with the Net Trade-in Allowance. If this amount and any other amount paid by the Purchaser exceeds the Forfeitable Amount, then the excess must be refunded to the Purchaser.
- 17.5 Where this Agreement is lawfully terminated by the Purchaser due to a breach of this Agreement by the Trader then the Trader shall:
- refund to the Purchaser all money paid by or on behalf of the Purchaser; and
 - return any Trade-in Vehicle to the Purchaser.
- 17.6 Where this Agreement is lawfully terminated by either the Purchaser or the Trader (as applicable) under clauses 7.1, 14 or 16 or for any reason other than a breach of this Agreement then the Trader shall:
- refund to the Purchaser all money paid by or on behalf of the Purchaser; and
 - return any Trade-in Vehicle to the Purchaser.

PART C – TERMS AND CONDITIONS FOR SALE OF USED MOTOR CAR

- 17.7 Where this Agreement provides for the Trader to return any Trade-in Vehicle to the Purchaser but the Trader has, with the prior written consent of the Purchaser, sold or agreed to sell the Trade-in Vehicle, then this Agreement will be complied with if the Trader pays to the Purchaser:
- (a) an amount equal to the Net Trade-in Allowance; or
 - (b) where the Purchaser or Trader have agreed on a value as the fair market value of the Trade-in Vehicle, that agreed value less any trade-in payout made or to be made by the Trader.
- 17.8 Where the Trader returns any Trade-in Vehicle to the Purchaser and the Trader has carried out repairs on the vehicle with the consent of the Purchaser then the Trader shall be entitled to an amount equal to the reasonable cost of those repairs.
- 17.9 Where either the Purchaser or Trader wishes to terminate this Agreement in accordance with this clause they must give written notice to the other party of the decision to terminate.
- 17.10 Nothing in this clause affects the rights and duties conferred by section 43 of the *Motor Car Traders Act 1986* (Vic).

18. Survival

- 18.1 The termination or expiry of this Agreement for any reason will not extinguish or otherwise affect any rights of either party which accrued prior to the termination or expiry of the Agreement.
- 18.2 Any provision of this Agreement which is expressly stated to, or which by its nature must, will survive the termination or expiry of this Agreement.

19. Non-exclusion of Statutory Warranties and Other Rights

The benefits conferred by this Agreement and by the Trader's warranty, if any, are in addition to all other rights and remedies in respect of the Purchase Vehicle which the Purchaser has under the Australian Consumer Law (Victoria) and any other Commonwealth, State and Territory laws.

Note: The parties to this Agreement may include other conditions if those conditions do not reduce the rights given to either party by or under the Motor Car Traders Act 1986.

VACC is not a party to this Agreement, and makes no representation relating to the Trader or the performance of the Trader's obligations under this Agreement.

PRIVACY STATEMENT

Purposes of collection and use of personal information

This Agreement of Sale and other transfer documentation that you sign when you purchase a vehicle contain personal information about you, including your name, telephone number, address, drivers licence number, email address, details of any Trade-in Vehicle you own. The Trader holds your personal information and is stored on file. The Trader collects and holds this personal information to facilitate your purchase of a vehicle and to meet the requirements of the legislation associated with the supply of a motor vehicle, and related services and goods.

Associated services and goods include the provision of warranty, insurance and registration. Unless otherwise required or permitted by law, the Trader will generally only collect personal information that you provide to it directly.

Where you do not wish to provide the Trader with your personal information, the Trader may not be able to sell the vehicle to you.

Disclosure of Personal Information

The Trader will only disclose your personal information in accordance with the Australian Privacy Principles (APPs) as set out in the Privacy Act 1988 (Cth) (Privacy Act). The Trader will disclose your personal information to VicRoads, and any other organisation that requires your details in order to carry out the transfer of registration of your vehicle. If you apply for finance in connection with the purchase of a vehicle, the Trader will provide your personal information to the financier for the purposes of the financing arrangements. Your personal information may also be disclosed to the

Trader's contracted suppliers, service providers and other entities that are associated with the supply of motor vehicles and related goods. Finally, the Trader may disclose your personal information if it determines that disclosure of such information is required or permitted by law.

Your personal information may be disclosed to overseas recipients. As the internet is a global environment, where we use the internet to collect and process personal information this will necessarily involve the transmission of that information worldwide. We may also share your personal information with our associates and suppliers overseas. If we transfer your personal information overseas, we will only do so in compliance with the APPs.

Access and correction of your personal information

The Trader's privacy policy states how you can seek to access or correct any personal information we hold about you, how to complain about a privacy breach and how we will deal with a privacy complaint. For a copy of the Trader's privacy policy, or to access, correct or make a privacy complaint, contact the Trader using the details in Part A of this Agreement. You have a right to access your personal information. The Trader will generally provide it to you but in some cases where and to the extent permitted by law, the Trader may refuse access to some or all of that information. In those circumstances the Trader will provide reasons. To make a request for access to your personal information, you will need to obtain and complete an application form verifying your identity and specifying what information you require. You should contact the Trader's Privacy Officer via the contact details in Part A of this Agreement to make a request. The Trader will take reasonable steps to ensure your personal information is accurate, complete and up to date. If you believe that any personal information the Trader holds about you is not accurate, complete or up to date, then please contact the Trader's Privacy Officer via the details in Part A of this Agreement.

Complaints

You can contact the Trader's Privacy Officer (details as set out above) if you believe that the Trader is in breach of the APPs set out in the Privacy Act. The Trader will endeavour to respond to any complaints it has received within 30 days. If the Trader is unable to resolve your complaint you may take your complaint to the Office of the Australian Information Commissioner. The Trader's Privacy Policy also contains further information about how you may complain about a breach of the APPs.

Security

The Trader will take all reasonable steps to ensure your personal information is kept secure. The Trader only permits its authorised personnel to access your personal information.

Your consent

By signing this Agreement, I consent to the use and disclosure of my personal information as set out above.

Appendix 2.

SUMMARY OF KEY TERMS AND CONDITIONS - USED VEHICLES

This disclosure notice has been prepared to bring to your attention the substance and effect of the enclosed agreement for your purchase of a used motor vehicle from us.

This document is only a summary of some of the key terms and conditions in the agreement. You should read the agreement in full before agreeing to its terms.

Key Terms

- Cooling off:** within 3 business days after signing the agreement you can decide you no longer wish to proceed with the purchase. If you do so you will sacrifice \$100 or 1 per cent of the purchase price (whichever is higher). There is no cooling off period if you are a body corporate, a motor car trader or if the purchase vehicle is a commercial vehicle.
- Forfeitable Amount:** If we terminate the agreement because you do not pay for, or do not collect, the vehicle in time you must pay the Forfeitable Amount. If what you have already paid us before the agreement is terminated is greater than the Forfeitable Amount, we will refund any amounts that are above the Forfeitable Amount. If you have not paid us anything or you have paid us less than the Forfeitable Amount when the agreement is terminated and you do not pay us the outstanding Forfeitable Amount we may retain your trade-in vehicle (and refund you any difference in the Net Trade-in Allowance and the Forfeitable Amount) or initiate legal action against you for the outstanding Forfeitable Amount.
- Personal use:** you agree that you will only use the motor vehicle that you purchase for personal use, not for resale or for a profit-making purpose. If you do use the motor vehicle for a profit-making purpose you must indemnify us for any loss that we suffer as a result.
- Payment:** you must pay for the vehicle on or before delivery of the vehicle. If you do not pay within 7 days of us telling you the vehicle is ready to be collected (or within another period of time that we both agree to in writing) we may terminate the agreement and you must pay the Forfeitable Amount.
- Pick up:** you will have 7 days (or another period of time that we both agree to in writing) to pick up the vehicle once we tell you it is ready to be collected. If you do not collect the vehicle within 7 days or the other agreed time period, we may terminate the agreement and you must pay the Forfeitable Amount.
- Trade-in vehicle:** if you are providing a trade-in vehicle you must deliver it to us (in the same condition as it was when we assessed it) no later than the date you pick-up the purchase vehicle. If you do not provide the trade-in vehicle, or provide the trade-in vehicle in a poorer condition, the credit you receive for the trade-in will be reduced accordingly.
- Defects:** if you notice any defect in the purchase vehicle you must inform us as soon as you notice it and within the period that it would be reasonable to expect that the defect would become apparent in order for us to repair or replace the vehicle or give you a refund. However, this is in addition to, and will not affect any rights you have under the Australian Consumer Law. There is no Statutory Warranty under the *Motor Car Traders Act 1986 (Vic)* for a used motorcycle or used commercial vehicle.
- Finance:** if you are sourcing finance to help purchase the vehicle, you must take all reasonable steps to obtain this finance before the delivery date for the vehicle. If you don't get finance by that date you may terminate this agreement and you will not incur any penalty.

Acknowledgement

By signing the below you acknowledge that you have read this Key Summary and that you are aware of the substance and effect of key terms and conditions contained in the agreement.

Signature: _____ Date: _____

SAMPLE

Appendix 3.



Motor Car Traders Act 1986

SECOND-HAND MOTOR CAR STATUTORY WARRANTY

Section 54 of the Motor Car Traders Act 1986 provides that a statutory warranty be given by a motor car trader who sells a second-hand motor car to a person and the car; (a) was manufactured not more than 10 years before the date it is sold; and (b) has been driven for less than 160,000 kilometres. The Act says that, subject to certain provisions, the motor car trader warrants that if a defect appears in the motor car before the end of the statutory warranty period, being the shorter of 5,000kms or 3 months, the motor car trader at her, his or its own expense – (a) will arrange for the car to be taken to a place where it can be repaired or made good; and (b) will repair or make good, or cause to be repaired or made good by another motor car trader or a qualified repairer, the defect so as to place the car in a reasonable condition having regard to its age. **Motor cycles and commercial vehicles are not covered by statutory warranty**

YOUR ENTITLEMENT

The statutory warranty by the selling trader provides for the rectification, at no cost, of defects which occur in the vehicle before expiration on the statutory warranty. A motor car has a 'defect' if one or more of its components –

(a) is no longer in proper working condition having regard to its likely age or the number of kilometres it has travelled;

or

(b) is defective to the extent that the car is unroadworthy or is not able to be driven.

A part or unit may be worn but still be quite safe and serviceable. It must be remembered that the vehicle purchased is second-hand and many of its parts will be worn.

It is the responsibility of the motor car trader to repair the defect and place the motor car in a reasonable condition having regard to its age. This could mean in some cases the use of serviceable second-hand parts may be used to effect the repair.

YOUR OBLIGATIONS

Statutory warranty repairs must be effected by, or done at the direction of, the selling trader. The selling trader has no liability for repairs performed without the knowledge or authority of the trader, nor for any towage or transport costs incurred without prior consent.

It is your obligation to maintain and service the motor vehicle and not misuse or abuse it. The statutory warranty does not cover defects arising from accidental damage, misuse or negligence which occur after taking delivery.

AUSTRALIAN CONSUMER LAW

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

EXCLUSIONS

Section 54 also describes several conditions under which Statutory Warranty is not provided, which includes:

- The sale of a commercial vehicle or motor cycle
- Defects in tyres and battery
- The sale of a car to a person who has had possession or control of the car for at least 3 months prior to its sale
- The sale of a car sold by auction at a public auction

Regulation 24 of the Act provides a list of prescribed accessories not covered by Statutory Warranty, as follows;

- | | |
|---|---|
| (a) radios; | (l) sealed beam lights; |
| (b) cassette players; | (m) fog lights which are not standard to the motor car; |
| (c) compact disc players; | (n) alarms which are not standard to the motor car; |
| (d) telephones and in-car telephone kits; | (o) digital video disc players and video display panels; |
| (e) car aerials; | (p) MP3 and MP4 players and docks; |
| (f) clocks; | (q) global positioning systems and satellite navigation systems; |
| (g) cigarette lighters; | (r) other computerised navigation systems; |
| (h) body hardware which is not standard to the motor car; | (s) keyless entry systems and remote key pads that are not standard to the motor car. |
| (i) power outlets, including cigarette lighter sockets; | |
| (j) tools other than jacks and wheel braces; | |
| (k) light globes; | |

For further information, please consult sections 54 and 55 of the Motor Car Traders Act, 1986.

Obviously excluded are "cosmetic" items such as body dents and paint and trim defects.

Further exclusions may be made of the use of a 'Statement of Defects'. Where a 'Statement of Defects' notice has been attached to a vehicle offered for sale and the purchaser has signed duplicate copies of the not, statutory warranty will not apply to the items name in the notice.

HOW TO CLAIM UNDER THIS WARRANTY?

Claims under this warranty must be made by contacting the LMCT on the telephone number, email or postal address below:



LMCT Stamp

STATUTORY WARRANTY

The statutory warranty period is for 3 months or 5,000 kms whichever first occurs commencing the day after taking delivery.

Make

Signed
(Purchaser)

Registration No.

Signed
(Licensed Motor Car Trader) (LMCT NO.)

Warranty starts
Date km

Appendix 4.



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.

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

Appendix 5.

Used motor car price and data sheet

LMCT No.

PART A – USED MOTOR CAR WARRANTY

Warranty Information

Is this motor car automatically covered by a statutory warranty under section 54 of the *Motor Car Traders Act 1986*?

- Yes
- No

Please note:

Motor cars that are less than 10 years old and that have been driven less than 160,000 km are automatically covered by a statutory warranty under section 54 of the *Motor Car Traders Act 1986* for the first 3 months or 5,000 km after delivery, whichever occurs first.

If this motor car is not automatically covered by the statutory warranty, the trader does not have any obligation under the *Motor Car Traders Act 1986* to repair or make good any defects after delivery. However, the trader may have other obligations under other legislation including the Australian Consumer Law (Victoria).

PART B – USED MOTOR CAR NOTICE

Name and business address of the current owner of the motor car:

.....

PARTICULARS OF MOTOR CAR

Make of motor car (if any)	<input type="text"/>
Model of motor car (if any)	<input type="text"/>
Odometer reading at the time acquired by LMCT	<input type="text"/>
Built date (if it appears on motor car)	<input type="text"/>
Compliance date	<input type="text"/>
Registration number of the motor car (if any)	<input type="text"/>
Vehicle identification number (VIN) of the motor car	<input type="text"/>

If the VIN is not available, another number capable of identifying the motor car

PRICE OF MOTOR CAR

Cash price of motor car excluding fees and duties*	\$	<input type="text"/>
Transfer fees (if applicable)	\$	<input type="text"/>
Motor Vehicle Duty (if applicable)	\$	<input type="text"/>
Registration (if applicable)	\$	<input type="text"/>
Total price of motor car including fees and duties	\$	<input type="text"/> inc. GST

Registration

Is the motor car to be sold with registration?

- Yes
- No

Written off register

Is the motor car entered on the register of written-off vehicles or on an interstate written-off vehicles register within the meaning of the *Road Safety Act 1986*?

- Yes
- No

Signature of motor car trader	Name	Date
Signature of purchaser	Name	Date

* The cash price of the motor car means the price at which the vendor is willing to sell the motor car for cash (excluding duties and transfer fees). Motor cars sold, offered or displayed for sale at public auction are not required to show the cash price of the vehicle

AFFIX TO RIGHT SIDE WINDOW (Rear where applicable)
 (NOTE: On the sale of the motor car the purchaser must sign and be given a copy of this form under sections 52(6) and 83C(1) of the *Motor Car Traders Act 1986* and regulations 11 and 30 of the Motor Car Traders Regulations 2018).

Appendix 6.

The rise of the vehicle on-seller: a guideline to the risks for franchise dealers and the consumer.

September 2023



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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.

About VACC and its new vehicle franchise dealer members

The Victorian Automotive Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of over 5,000 members in over 20 retail automotive sectors that employ over 50,000 Victorians.

The following are franchise dealer divisions of VACC which set the agenda for VACC to seek legislative, regulatory, or industry reform. Those divisions are the:

- Victorian Automotive Dealers Association (VADA), the peak body representing Victorian new car dealers in Victoria.
- Farm and Industrial Machinery Dealers Association (FIMDA), the peak body representing farm machinery dealers in Victoria.
- Motorcycle Industry Division (MID), the peak body representing motorcycle dealers in Victoria.
- Commercial Vehicle Industry Association of Victoria (CVIAV), the peak body representing truck dealers in Victoria.

VACC is also an active member of the Motor Trades Association of Australia and contributes significantly to the national policy debate through Australia's peak national automotive association.

Purpose of this document

This guidance alerts VACC members of VADA, FIMDA, MID and CVIA franchise dealers of the presence of on-sellers and the impact they can have on your relationship with your franchisor and your customers.

There are many potential pitfalls for consumers who inadvertently fall into arrangements to purchase a new vehicle with on-sellers. The unintended consequences for a consumer purchasing through an on-seller are significant. For example, if an on-seller installs substandard wheels, tyres, or safety-related equipment on the vehicle, the ultimate buyer may be unaware of these modifications. This could potentially compromise their safety and lead to accidents or harm as well as a devaluation of the vehicle. There are also consequences for dealers who are often left facing an irate consumer who has paid too much for a new vehicle from an on-seller and will often target their displeasure towards the dealer via negative Consumer Satisfaction Index scores or spurious claims under the Australian Consumer Law.

Too often, dealers are placed in precarious legal positions when instructed by manufacturers to terminate contracts of sale with on-sellers. This guidance aims to provide franchise dealers with a way of identifying and dealing with this issue without the risk of costly legal action and to inform Victorian and Australian Consumer facing organisations of the risk to consumers conducting business with on-sellers.

The best protection for consumers is to always purchase their vehicle directly from a dealer.

The rise of the on-seller of new vehicles

Over the past two years, the supply chain of new vehicles to dealers from overseas based manufacturers was severely disrupted. VACC has received many calls from new car, motorcycle, farm machinery and commercial vehicle dealers who were experiencing a marked increase in the number of individuals purchasing new vehicles from franchise dealers with the sole intention of on-selling these vehicles at inflated prices. Those individuals are referred to as 'on-sellers'.

The difference between a motor vehicle broker and an on-seller

It is important to make a distinction between a motor vehicle broker and an on-seller.

VACC member franchise dealers have relationships with many reputable and professional vehicle brokers, novated lease companies and fleet companies. Those brokers offer a complete end-to-end transactional solution for their customers and often enjoy a long-lasting relationship with the consumer and the dealer. Many times, the motor vehicle broker also enjoys a positive relationship with manufacturers and finance companies.

The on-seller buys the vehicle at the lowest possible price from the dealer with the sole purpose of reselling the new vehicle, with the only purpose of gouging a consumer on price for the prospect of making a 'quick buck'. The on-seller typically operates on a mobile phone and uses different on-line classifieds providers and is gone the moment a vehicle sells to the consumer. The on-seller offers no post purchase support to the purchaser.

VACC advice

Ensure your dealership staff knows the difference between a genuine motor vehicle broker and an on-seller.

Who are on-sellers of these vehicles?

On-sellers of new vehicles typically target vehicle models that have long delivery lead in times or that are very popular. They source clientele on social media platforms by advertising the new car. They have no administrative set up or fixed address where to host their business. Part of the on-seller advertising strategy can be to advertise new stock that does not actually exist, draw in the consumer and then put pressure on the dealership to sell them a vehicle that is unregistered and at a heavily discounted price. The on-seller then creates a deal with their customer that sees the vehicle delivered at an inflated price without the onboarding advantages a consumer would normally experience if they purchased a new vehicle from a dealership.

At times on-sellers can be other Licensed Motor Car Traders (LMCTs). Whilst dealer agreements still preclude on-selling a vehicle to any person, dealership staff should inquire with the purchasing LMCT what their intentions are with that vehicle before the contract has been executed.

What you need to know about on-sellers, they:

- are usually not licensed.
- usually do not meet the criteria as defined under the Motor Car Traders Act 1986 (Vic) (the Act) to trade as a special trader.¹
- are not representatives of the manufacturer or dealer.
- are not registered with the Australian Securities and Investment Commission (ASIC) to act as credit intermediaries or providers of credit to consumers.
- can leave the purchasing consumer in an invidious position regarding clear title and vehicle value.

1. Motor Car Traders Act 1986 (Vic) Section 3 (1) 'Special trader means a financier or manufacturer or a related company of a financier or manufacturer being a body corporate.

VACC advice

Ensure consumer facing staff at your dealership(s) are alert to on-sellers and what your dealership policy is which regard to retailing a new vehicle to an on-seller.

What to do if you suspect unlicensed trading of motor vehicles

If you suspect a person who is on-selling vehicles is trading without a licence, you can report them to *Consumer Affairs Victoria*.² You should include VACC in that communication.

If LMCTs supply vehicles to a person they know is likely to dispose of the vehicle(s) in a manner that constitutes trading in motor vehicles, or in any other way aids and abet a person to carry on business as an unlicensed motor car trader, then that LMCT can be penalised up to \$11,538.60 per infringement under the Act.³ Potentially, your dealership has much to lose by dealing with on-sellers in this regard.

Under the *National Consumer Credit Protection Act 2009* (Cth), an on-seller may be required to hold a license if they 'act as an intermediary'.⁴ This may apply even if the on-seller simply passes on information to a finance company seeking credit at the request of the customer.

If you suspect any on-seller is operating as an unlicensed credit intermediary, make a report with the *Australian Securities & Investments Commission (ASIC)*.⁵ You should include VACC in that communication.

VACC advice

Dealers must become vigilant of on-sellers and if dealers believe that a person is participating in unlicensed vehicle trading or a person is acting as a credit intermediary, then you should report that on-seller to the appropriate regulator.

What does your franchise or dealer agreement say about selling a vehicle to an on-seller?

Below is a sample of terms that have been inserted into various franchise and dealer agreements that summarise how manufacturers' contracts forbid dealers to sell a new vehicle to an on-seller:

- **Agreement 1**

The Dealer shall not, without the prior written consent of the Distributor, sell any Products either directly or indirectly to any person who the Dealer ought reasonably to suspect is not a final retail purchaser of the products.

- **Agreement 2**

The Dealer must not, without the prior written consent of the manufacturer, sell any product directly or indirectly to any person in Australia or overseas who the dealer ought reasonably to suspect is not a final retail purchaser of the product.

- **Agreement 3**

You must not supply the products to a person who will re-supply those Products, whether in original or altered form or condition and whether within or outside Australia except with our prior written consent.

2. See <<https://www.consumer.vic.gov.au/licensing-and-registration/motor-car-traders/licensing/unlicensed-motor-car-trading>>.

3. Motor Car Traders Act 1986 (Vic) Section 50A(1)(a)-(b).

4. ASIC Regulatory Guide 203, Do I need a credit licence? (2017) <<https://download.asic.gov.au/media/5807183/rg203-published-12-october-2017-20201001.pdf>> 23, RRG203.72 [1].

5. See <<https://asic.gov.au/about-asic/contact-us/reporting-misconduct-to-asic/investment-scams/>>.



- **Agreement 4**

The dealer must not sell a new vehicle (brand name redacted) to any person if the dealer is aware or should reasonably be aware that the person:

- i. may resell the new vehicle as a new vehicle and*
- ii. is not authorised in writing by the distributor to sell the new vehicle.*

There may be reasons that the manufacturer has inserted such clauses into their agreements with you. However, the use of terms such as ‘*ought to be reasonably aware*’, ‘*directly or indirectly*’ or ‘*reasonably suspect*’ of a person’s undisclosed intent does at times place the dealer in an unclear position.⁶ Those terms could be construed as being contextually ambiguous, which may lead to uncertainty in the contract. It is unlikely that a dealer could ascertain that a purchasing consumer’s initial intention is to on-sell the vehicle, and under this basis can do nothing to terminate the sale. This position is exacerbated if the contract of sale has been executed and the individual identified as an ‘on seller’ after that point faces a demand from the manufacturer to terminate the agreement of sale.

VACC offers no view on whether the conditions as stated above in the franchise/dealer agreements amount to unfair contract terms (UCT). Ultimately it will be a court who would decide whether such terms are an UCT.⁷ If a court finds a term is unfair, that term may be treated as if it never existed. If the contract can operate without the unfair term, the contract may still be binding.

It is important to flag with dealers and manufacturers in their approach to on-sellers that the *Competition and Consumer Act 2010* (Cth)(CCA) mandates that contracts, agreements, understandings, or concerted practices that have the purpose of lessening competition within the market are strictly prohibited.⁸

6. Corey and Lind Lawyers, Interpreting contracts: More art than science? (2020) <<https://www.corneyandlind.com.au/litigation/interpreting-contracts/>> [7].

7. ACCC, unfair Contract Terms A guide for business and legal practitioners, (2016), <https://consumer.gov.au/sites/consumer/files/2016/05/0553FT_ACL-guides_ContractTerms_web.pdf>,12,[12].

8. Competition and Consumer Act 2010 (Cth) s 45.



What if you sell a new vehicle to an on-seller?

Over the past 2 years, many dealers have contacted VACC seeking advice on what they should do after they have identified an on-seller of a vehicle after the agreement for sale of a new vehicle (the agreement) has been signed between the on-seller and the dealership.

Quite often, the dealer has alerted the manufacturer of the sale to an on-seller after executing the agreement. Invariably, the dealer may receive instruction from the manufacturer to terminate the agreement. If it is the case that manufacturers apply pressure on dealers to prevent this kind of transaction from occurring, and they demand the dealer terminate a contract, then the dealer should insist upon written identification from that manufacturer.

Terminating an agreement for sale under this pretext is fraught with danger for the dealer. The agreement has been entered into in good faith with an individual who, at the time of contracting, was not identified as an on-seller but identified as a bona fide consumer as far as the dealer and the manufacturer is concerned.

The on-seller has no obligation to inform the dealer of their intention to on-sell the vehicle or to inform the dealer of what their future intention(s) is for that vehicle. If a consumer has legitimately purchased a vehicle from you, there is nothing your dealership can do to stop them from on-selling or re-selling it.⁹

VACC advice

A dealership cannot stop a person from selling a product that the consumer owns.
You may consider introducing a policy to never sell a new vehicle without it being registered.

⁹ Bella Duncan, Sprint Law, 'Can I stop people reselling my business' products?', (2020), < <https://sprintlaw.com.au/articles/laws-on-reselling-products/>, [3].

Can a dealer refuse to sell a vehicle to a person who they know, or suspect, is an on-seller?

You can stop someone from entering your business, or refuse to serve someone, as long as you don't breach any anti-discrimination laws.¹⁰ Dealers must tread carefully with this aspect and ensure that all dealership staff do not discriminate in the supply of goods or services to a consumer. The attributes of discrimination are based on legislation in the *Equal Opportunity Act 2010 (Vic)*.¹¹ These attributes include, amongst other things, age, disability, race and gender.

The Australian Consumer and Competition Commission (ACCC) advises that in most cases, suppliers may decide who they do business with. You are generally not required to supply a small business just because the small business or customer has asked you to. Factors may sway your decision as a supplier such as the customer's reliability, delivery costs, how the goods will be sold/advertised and adherence to certain standards.¹² So, the situation you find yourself in can be based on the above criteria. However, once you have a contract in place with the on-seller, the situation will change.

As a due diligence reminder to dealers, the *Competition and Consumer Act 2010 (Cth)(CCA)* does not typically force a manufacturer or wholesaler to supply goods or services to a small business. However, a supplier's refusal to supply may break the law where they are:

- misusing their market power
- involved in a cartel or a boycott
- imposing minimum prices on retailers
- engaging in exclusive dealing with the purpose or likely effect of substantially lessening competition.¹³

VACC advice

Remind all staff of their obligations under law to not discriminate against a consumer.

Can the dealer terminate a sale to an on-seller and rely on the terms in the franchise/dealer agreement?

Dealers have limited capacity to terminate an agreement of sale for a new car because they 'ought to reasonably know' or 'suspect' that a person is an on-seller. The only way dealers can validate this is to ask the question, "Are you a vehicle on-seller?" Even then, that identification is moot if it is identified after a contract has been executed. That limited capacity extends to your manufacturer as well.

Stating that you 'suspect' that a person is an on-seller, or for the manufacturer to contract you by stating that you 'ought to reasonably know' that a person is an on-seller, and therefore be the basis for terminating a contract may not be a position that a dealer could rely upon if challenged in a court or tribunal whether a contract termination was legal or not. The same may well apply if a manufacturer was to breach you for selling a vehicle in the first place on this basis.

VACC advice

Dealers should negotiate with their franchisor regarding the intent or requirement of clauses prohibiting on-selling and obtain clear guidance.

¹⁰ Australian Government, business.gov.au, Refuse Service (n.d), < <https://business.gov.au/people/customers/refuse-service>>.

¹¹ Equal Opportunity Act 2010 (Vic), Section (a)-(q).

¹² ACCC, Small business and the Competition & Consumer Act: Your rights and responsibilities(2018) 12 [1].

¹³ Ibid.

How the terms and conditions of your agreement for sale of a motor vehicle and your franchise agreement may clash and unfair contract terms.

Those types of terms as inserted by your manufacturer regarding on-selling or re-selling will come into the spotlight further with a change in law taking effect from 10 November 2023 that will result in Unfair Contract Terms (UCT) being banned.¹⁴ Under the new laws there will be the potential for significant penalties to be applied under the CCA or the *Australian Securities and Investments Commission Act 2001* (Cth) under the UCT regime.

The reform to the UCT regime applies to all businesses that use standard-form contracts in dealings with consumers and small businesses who supply goods or services.¹⁵

Typically, a standard form contract is when a dealership will use a pre-written contract for all their customers, and the customer can't change any, or the majority, of the terms of the contract. The only option for the consumer is to 'take it or leave it.'¹⁶ Small businesses will be covered by UCT regime for any new or varied standard form contract from 10 November 2023 if they have 100 or fewer employees or make less than \$10 million in annual turnover.¹⁷ For dealers these protections also apply when entering into contracts for the supply to your dealership of various goods and services. Many dealerships would sign standard form contracts with a raft of suppliers (for e.g., Waste disposal, fuel retailers) .

It is important that in future dealings with your manufacturer that you agree on a collective and legally validated position on whether the term regarding 'reselling' is fair and not an UCT under the new reforms.

14. ACCC, Contracts, Unfair terms in standard form contracts,(n.d) < <https://www.accc.gov.au/consumers/buying-products-and-services/contracts#:~:text=Changes%20to%20the%20laws%20on,of%20the%20law%20will%20apply>>.

15. Lander and Rogers, Legal Insights 'Changes to unfair contract terms laws in Australia: what businesses need to know to be compliant' (2022),< <https://www.landern.com.au/legal-insights-news/Changes-to-unfair-contract-terms-laws-in-Australia>>,[6].

15. ACCC (n 14) [1].

16. ACCC (n 14) [37].





What about dealer agreements for the sale of new or used cars?

In preparedness for the changes to the CCA that are law from 10 November 2023, VACC has appointed HWL Ebsworth Lawyers to review the VACC sales agreements with instructions to complete the following:

- Review and revisit potential unfair contract terms in the VACC generated agreement for sale of new and used vehicles.
- An addition of new conditions that announces conditions of sale for a new car not being for the purposes of export or re-sale or for a commercial or profit-making purpose by the consumer.
- An addition to the agreement for sale of a new car that a breach of the requirement by the purchaser to not on-sell the vehicle may trigger a breach by the trader of its obligations under its agreement with the supplier of the purchase vehicle. This may result in severe financial consequences for the Trader and that the purchaser must indemnify the Trader from, and against, any loss the trader suffers from, or in connection, with the on-selling event.

Whilst the new conditions added to the VACC agreements of sale are not prescribed by legislation, they have been inserted by the team at HWL Ebsworth using the new UCT regime as a foundation.

VACC advice

The new version VACC Agreements for Sale of New and Used Motor Cars will be available for purchase from early October 2023.

What about terms currently inserted in contracts of sale by new vehicle dealers who do not use the VACC generated agreements of sale for new and used vehicles?

Members of VACC's franchise dealer divisions have provided VACC with versions of special terms inserted in dealer contracts of sale that deal with on-sellers. Those versions have been constructed and recommended to dealers from a variety of sources.

The examples of various terms written by dealers that were provided to VACC from franchise dealers clearly display that there are many demands being placed on the consumer regarding restricting them from on-selling. To be frank, some of those terms that have been inserted could be questionable and maybe unenforceable in many cases in that they:

- cause a significant imbalance in the parties' rights and obligation.
- include terms that allow one party (but not the other) to end the contract.
- include terms that allow one party (but not the other) to change the terms of the contract.

VACC advice

That dealers who will continue to insert their own terms in their own versions of a contract of sale should obtain their own legal advice to ascertain the contract status under the UCT regime.

Summary

- It is VACC's advice that you cannot stop a person from selling a product that they own.
- Dealers should negotiate with their franchisor regarding the intent or requirement of clauses prohibiting on-selling and obtain clear guidance.
- If your dealership is not using the VACC Agreement for sale of new and used vehicles, you should have the agreement of sale or contract you are using reviewed by your own legal representative to test for UCTs.
- That dealers must become vigilant of on-sellers and if dealers believe that a person is participating in unlicensed vehicle trading or a person is acting as a credit intermediary, then you should report that on-seller to the appropriate regulator.
- Before your dealership terminates any agreement for sale of a new or used vehicle you seek legal advice.
- You should ensure your staff know under what circumstances they can refuse to deal with a consumer.
- You may consider introducing a policy to never sell a new vehicle without it being registered.



