

# VACC submission

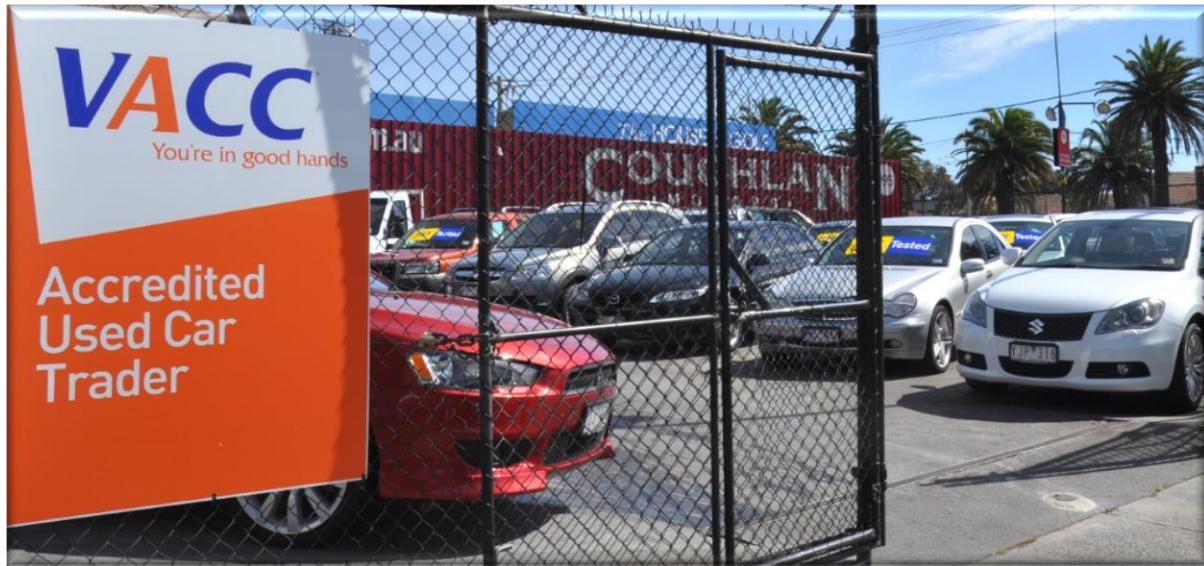
## Red tape reduction review Motor Car Traders Act 1986

November 2013



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## VACC

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak retail automotive industry association, representing the interests of 5,500 members in over 20 retail automotive sectors that employ over 50,000 Victorians.

## Executive Summary

### Overview

VACC is fully supportive of the Victorian Government's red tape reduction program and welcomes Consumer Affairs Victoria's (CAV) Issues Paper on the Motor Car Traders Act 1986.

VACC considers there is significant transactional regulatory red tape and scope for reform without causing consumer detriment. VACC supports many of the reforms being proposed but is strongly opposed to the repeal of the statutory warranty.

There is considerable scope to abolish Form 4, to consolidate the identical Forms 5, 6 and 7 and to remove information requirements about the former owner. In addition, there is scope to simplify the rules pertaining to all MCTA forms with consistent layout rules and the use of the Vehicle Identification Number (VIN) as the primary identifier.

VACC has proposed changes to the contract of sale that would enable the record-keeping requirements for some forms such as Forms 4, 5, 6, 7 to be abolished or be significantly reduced to one year rather than the current requirement of 7 years.

The removal of this red tape would not only reduce the regulatory burden for Licensed Motor Car Traders (LMCTs) but it would also simplify the process and reduce the current confusion amongst consumers about the need to sign so many forms in addition to the contract of sale and VACC statutory warranty that is effectively required to meet Australian Consumer Law (ACL) obligations.

With a few minor exceptions, VACC supports the retention of the licensing regulation to ensure the ongoing protection of consumers and to reduce the potential increase in MCTA compensation claims that are funded from LMCT licence fees.



## Effectiveness of the Motor Car Traders Act 1986

VACC believes the operation of the Motor Car Traders Act 1986 has been effective in keeping consumer detriment at a low level relative to the total number of new and used motor vehicle sales. In Victoria, about 300,000<sup>1</sup> new cars and 730,000 used cars<sup>2</sup> are sold each year. Despite the high volume of sales, an estimated 1,000 or 0.09 % of the 1,030,000 car sales result in some form of a serious dispute that requires resolution in a court or tribunal.

The \$500,000 (circa) in claims awarded each year by the MCTA Guarantee Fund and Compensation Claims Committee represents a drop in the ocean relative to the estimated \$21 billion in annual sales for new and used cars.<sup>3</sup>

Based on Figure 3 in the Issues paper, it is reasonable to conclude that most of the 11,008 enquiries are consumers seeking information about their rights and a LMCT's responsibilities prior to purchasing a motor vehicle. This is understandable. However VACC does not believe the analysis of the enquiries fielded by CAV provides any real insight into real or perceived consumer detriment. If anything, it shows the industry is operating well in its compliance with the regulatory framework with the 11,008 enquiries representing about 1% of total annual motor vehicle sales.

It would seem reasonable to conclude that LMCTs have a high level of compliance with the Act and Regulations, and that consumer detriment is invariably caused by unlicensed persons.

This needs to be kept in perspective in the Government's deliberations for any changes to the Act or Regulations. The old adage, "If it ain't broke, don't fix it" applies.

Notwithstanding this, VACC understands there is always scope to improve the efficiency of the regulatory framework in response to market and technological changes that occur over time, and welcomes the opportunity to comment on each red tape issue canvassed in the Issues Paper.

## Impact of Technological and Market Changes on the MCTA Regulatory Framework

The Issues Paper rightly acknowledges the internet has changed the motor vehicle buying landscape for consumers. But internet based selling has also significantly changed the landscape for LMCTs. It has led to, among other things, the creation of a national market where increasingly consumers purchase used motor vehicles off the internet from Victorian and other interstate LMCTs. Many LMCTs are now selling a significant proportion of their stock, particularly used vehicles, to interstate consumers. In some cases, used LMCTs are selling up to 40 percent of their annual turnover to interstate customers.

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<sup>1</sup> Australian Bureau of Statistics 9314 Sale of New Motor Vehicles, Australia, April 2013

<sup>2</sup> VicRoads Roadworthiness Consultation Paper

<sup>3</sup> The \$21 billion in Victorian car sales is calculated from the \$647 million stamp duty/transfer fees revenue budgeted for 2012-13 (Budget Paper No 5)

Even where buyers still purchase a car locally, the internet has provided powerful information that they previously would not obtain due to the high transaction costs involved (driving around to many LMCT locations), traveling by internet is much cheaper and easier. There are over 250,000 vehicles offered for sale on the Carsales.com website including dealer and private advertisements.

Similarly, access to basic information regarding the identity of a motor vehicle, registration status, written-off status, stolen status, encumbrance status are now available on-line to anyone following the establishment of the Commonwealth Personal Property Securities Register (PPSR) and VicRoads Vehicle Registration Enquiry Service (VRE). Both services are easily accessible, efficient, accurate and have significantly improved access to information via digital media.

The LMCT regulatory framework was designed in 1973, pre-internet with paper-based information requirements directed at in-person consumer transactions.

The Issues Paper provides an opportunity to review whether the paper-based information requirements need to be amended in view of the growth of internet-based internet motor vehicle sales.

### **Overview of Red Tape Issues**

The identified red tape issues can be divided into two categories:

- Licensing regulation – entry requirements
- Transactional regulation – statutory warranties, disclosure information and cooling-off rights

Essentially, each of the red tape issues discussed in the Issues Paper needs to be assessed against whether it meets the high-level policy objective and is actually addressing the perceived problem (market failure), and whether these problems have increased or decreased as a result of technological changes with internet based motor vehicle sales, market changes and indeed inter-related legislative changes such as the introduction of the ACL and PPSR.

A well-designed regulatory framework does not impose additional obligations that duplicate key obligations or rules within that regulatory framework. This is VACC's understanding of red tape – a cost that provides no benefit to LMCTs or consumers, including unnecessary record keeping and compliance without good reason.

## Licensing Regulation

VACC supports the retention of the licensing regulation to ensure the ongoing protection of consumers and to reduce the potential increase in MCTA compensation claims that are funded from LMCT licence fees. Based on the 2008 RIS<sup>4</sup>, about a quarter of claims were attributable to persons with a criminal background. Some of the largest (multiple) claims are against unlicensed persons masquerading as licensed LMCTs. For example, the accumulated claims made against the unlicensed business Phoenix Motor Brokers cost more than \$1.1million.

The licensing regulation was not found by the National Competition Policy Legislative review to be anti-competitive. Most of the entry requirements deal with preventing persons with a criminal background from entering the industry to protect consumers.

## Summary of VACC recommendations:

<b>Statutory Warranties</b>	VACC Strongly supports the retention of the statutory warranty.
<b>Display of warranty information</b>	Support for the proposal in Option 2 that would require the information prescribed in regulation 90 to be provided to purchasers in the contract of sale.
<b>Layout   Display of Notices and Advertisements</b>	Support for the first option to ensure text is presented clearly and is legible with headings and other key text, such as warnings, printed in prominent text.
<b>Miscellaneous</b> <b>Consolidation of Forms</b>	VACC supports a reduction in the number of forms to remove red tape and consumer confusion.
<b>Display of Price</b>	VACC is opposed to making the 'Drive Away' price mandatory on Forms 5, 6 and 7.
<b>Record-keeping</b>	Support the retention of the seven year requirement to keep records of the dealing book, contracts for sale, Form 4 cooling-off waiver (if it is to be retained in the regulations) and Form 8 (defects) and police checks/Form 3 declaration for persons employed in a customer service capacity. There should be no requirement to maintain any other records.

<sup>4</sup> Consumer Affairs Victoria, Regulatory Impact Statement for the Proposed LMCTs Regulations 2008, July 2008, p 33

**Former Owner Information**

Support the first option to remove the requirement to disclose the last owner of a vehicle in Forms 5, 6 and 7.

**Vehicle Identification**

Support for the proposal to apply a single identifier in the VIN to all regulatory documentation. In cases where the VIN identifier is not available such as on pre-1989 vehicles, the engine number or chassis number is proposed as the alternative single identifier.

**Cooling-Off Rights**

Support the abolition of the Form 4 and the inclusion of the cooling-off information in the contract of the sale but not the removal of a waiver.

**Eligibility Criteria  
Associates**

Support the retention of the current requirements.

**Financial Check**

Support the retention of the current requirements.

**Knowledge Check**

Support the retention of the current requirements and Option 3 to provide an information pack to all applicants.

**Premises Requirement**

Support Option 3 to allow LMCTs to keep trading during the period after which they have notified the BLA of a change of address provided the LMCT provides the appropriate documentation within 60 days. A longer period or an extension should be available upon request by the LMCT.

**Scrap Dealers and Auto Recyclers**

Strongly supports the current licensing requirements and fees for scrap dealers and auto recyclers.

**Customer Service Employees**

Support the retention of the current requirements.

## Transactional Regulation

### a) The statutory warranty must be retained

In respect to transactional regulation, VACC considers there is red tape and scope for reform without causing consumer detriment. VACC supports many of the reforms being proposed but is strongly opposed to the repeal of the statutory warranty. This is a well-known and understood system within the Victorian community. The 3 months and 5,000 km limitation provides a clear definitive period for the LMCT and the buyer. The period is appropriate given that about 95% of motor vehicle defects occur within this period.<sup>5</sup>

The statutory warranty system has worked well given that of the estimated 400,000 vehicles sold each year by LMCTs in Victoria very few result in disputes.

VACC does not consider that the statutory warranty duplicates the ACL consumer guarantees. Recent Tribunal cases such as *Burton v Crystal Cars NSWCTTT 234* strongly suggests due recognition of the statutory warranties in LMCT legislation.

LMCTs and consumers need to have boundaries set for them in terms of their rights and obligations in respect to warranties against defects that are fair and reasonable. The ACL and the ACCC does not provide definitive guidance in this respect. The ACL is new and open to interpretation and leads to total confusion, high transaction costs and consumer detriment if it were solely relied upon.

Rather than duplication, the statutory warranty period in the Motor Car Traders Act provides certainty and industry specific protection for the consumer. Even if the LMCT refuses warranty or has left business a consumer can make application for warranty under the LMCTs Guarantee Fund. The Motor Car Traders Act warranty is specific compared to the ACL which is general. The ACL also provides a host of other matters that can be addressed to resolve potential consumer detriment that are unrelated to a warranty against defects.

It should be noted that the NSW Government has introduced a new Motor Car Dealers Bill into Parliament that, inter alia, seeks to retain the statutory warranty but incorporates the ACL consumer guarantees. Similarly, the QLD Government also introduced last week the Motor Dealers and Chattel Auctioneers Bill into Parliament. This Bill also retains the statutory warranty for used cars.

If Victoria was to go it alone with no statutory warranty, LMCTs would be placed at a competitive disadvantage to their interstate counterparts, the latter likely to advertise the features of their state's statutory warranty protection.

### b) Scope for reform to reduce transactional regulatory red tape

Informational asymmetry is generally used to justify regulation including the requirements for disclosure information – forms 5, 6, 7 & 8 in the Motor Car Traders Act Regulations.

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<sup>5</sup> Based on a random selection of 16 cases from the New Zealand Motor Vehicle Tribunal held in 2013.

Informational asymmetry relates to the LMCT having a better knowledge than the prospective buyer about the quality, performance and reliability of the motor vehicle. Hence, the statutory warranty and the Form 8 that relates to the disclosure of known defects helps to address the informational asymmetry between a LMCT and the prospective buyer.

However, the same cannot be said in respect to the information disclosed in Forms 5, 6 & 7. All of the information other than the cash price can be easily and readily obtained by checking the odometer, registration label and the compliance plates under the hood of the motor vehicle. In the absence of the regulated requirements to disclose this information, the prospective buyer can check this information easily from physically inspecting the motor vehicle.

However, the requirement to disclose which motor vehicles are covered by statutory warranty helps to inform prospective buyers. Again, this cannot be construed to be an informational asymmetry matter as the criteria for statutory warranty is widely available from the websites of CAV, VACC, Carsales as well as not-for-profit legal services.

There is considerable scope to abolish the Form 4 and to consolidate the identical Forms 5, 6 and 7 and to remove information requirements about the former owner. In addition, there is scope to simplify the rules pertaining to all MCTA forms with consistent layout rules and the use of the VIN as the primary identifier. VACC has drafted simplified forms which we recommend be adopted in the interests of red tape reduction. See attachments to this submission.

VACC has proposed changes to the contract of sale that would enable the record-keeping requirements for some forms such as Forms 4, 5, 6, 7 to be abolished or significantly reduced to one year rather than the current 7 years.

The removal of this red tape would not only reduce the regulatory burden for LMCTs but it would also simplify the process and reduce the current confusion amongst consumers about the need to sign so many forms in addition to the contract of sale and the statutory warranty. This result can be achieved to the benefit of practicality and without detriment to consumers.

## Detailed Response to the Issues Paper

### Statutory Warranties

#### Key Issues

The Issues Paper claims there is a significant duplication between the statutory warranty for used motor vehicles contained in the MCTA and the statutory guarantees contained in the ACL, and that this may be imposing additional red tape for LMCTs who are required to comply with two separate statutory warranty schemes.

VACC would argue that the MCTA statutory warranty does not duplicate the ACL consumer guarantees. However, there is considerable uncertainty and conflicting interpretations within VCAT and interstate tribunals regarding the application of the ACL

By way of example, in a recent case this year in the NSW Consumer, Trader and Tenancy Tribunal, (NSWCTTT) *Burton v Crystal Cars NSWCTTT 234*, the Tribunal did not view the ACL and Motor Dealers Act to be in conflict.

The Tribunal gave due consideration to the statutory and non-statutory warranty provisions in the Motor Dealers Act by also taking into consideration the non-warranty period to mean that the consumer was aware of the risks associated with possible defects given the age and number of kms driven, and dismissed the application for a refund.

*"The Tribunal is of the view that any reasonable consumer, on signing a Form 8, could be considered to be fully acquainted with the state and condition of the vehicle, including any hidden defects, and realise that the vehicle is sold, as is, perhaps with defects either apparent, hidden or latent, and that by purchasing the vehicle, the purchaser assumes the risk of the vehicle being in an acceptable quality under the guarantees given by the ACL". (Para 33)*

*"The Tribunal is reinforced in adopting this conclusion due to the applicant obtaining, at no cost, an extended warranty. He did not decline that bonus. He must have realised that there may have been defects which would appear in the vehicle later, and so accepted that possibility, realising that should such defect manifest itself, he could rely on that warranty. There was no evidence before the Tribunal about any claim made by the applicant on that extended warranty. The applicant was aware that by signing the Form 8, there could be future problems with the mechanics of the vehicle, but nevertheless, took advantage of that situation by being covered by an extended warranty". (Para 34)*

*"As well, the Tribunal notes that even if the vehicle had the characteristics to have been sold subject to the dealer's obligations under a Form 4, then the time limit for a dealer to make good any repairs would have expired anyway". (Para 35)*

*"Consequently, the Tribunal is of the view that the claim against the dealer, seeking to enforce any consumer guarantee under the ACL, must fail. There is no cause of action under the Motor*

*Dealers Act. Whether the applicant wishes to pursue his losses against the company which issued the extended warranty is a matter for the applicant to consider". (Para 36)*

The ACL is modeled on the New Zealand Consumer Guarantees Act 1993. The New Zealand Government amended the Motor Sales Act in 2003 and repealed the statutory warranty for new and used cars on the basis that it was duplicating the consumer guarantees. The Motor Sales Act 2003 also deregulated licensing of Motor Car Traders and repealed the fidelity fund (equivalent to the MCTA compensation fund).

However, in New Zealand where the used motor vehicle statutory warranty was repealed in 2003, the NZ Motor Vehicle Tribunal would probably have decided in favour of the applicant in *Burton v Crystal Cars NSWCTTT 234* provided the applicant rejected the vehicle within a reasonable period of time. There are many MVT cases where motor vehicles older than 10 years and that have traveled more than 160,000 kms that have been rejected and the purchaser's decision has been upheld in the MVT.

It would appear the absence of a used motor vehicle statutory warranty in New Zealand does not provide the prospective purchaser with prior knowledge of what could be construed as acceptable and unacceptable risk. Whereas the MCTA statutory warranty demarcates vehicles less than 10 years and less than 160,000 kms as being expected to be of acceptable quality and not to incur substantial defects. For vehicles more than 10 years old and more than 160,000 km, the no statutory warranty communicates to the prospective purchaser that the goods are older and used and 'like new' performance and longevity cannot be expected. However LMCTS are always likely to assist consumers with requests with issues that arise even outside the MCTA warranty.

## **1. What are the advantages and disadvantages of the statutory warranty contained in the MCTA?**

A key advantage of the statutory warranty is that the 3 months or 5,000 km empowers the purchaser to take action and seek redress from the trader for defects detected during this period.

The empirical evidence shows that any defects (including major failures) in a motor vehicle is likely to occur within the prescribed timeframe of 3 months or the traveled 5,000 kms. A review of New Zealand's MVT cases shows 95% of cases brought before the MVT, the vehicles had defects within 3 months or 5,000 km.

The ACL provisions enable consumers to make claims up to 6 years after purchase for a motor vehicle that is found to be not of acceptable quality at the time of sale. Successful compensation is dependent on the consumer acting decisively within a reasonable period of time.

The key disadvantage of the ACL from a consumer perspective is the requirement to make a claim within a reasonable period of time. Not all consumers are going to be aware of their ACL rights or may become aware of their ACL rights too late to exercise their rights.

New Zealand repealed its statutory warranty for used cars in 2003 and has relied upon the provisions in the Consumer Guarantees Act 1993. However, there have been a number of cases where the NZ Motor Vehicle Tribunal has found that a vehicle was not of acceptable quality but the consumer had not met other critical aspects such as advising the trader within a reasonable period of time.

In New Zealand, the Court of Appeal *Nesbit v Porter 2000 NZCA 288* found that the purchaser had not exercised their consumer guarantee rights in a reasonable time. Similarly, the New Zealand Motor Vehicle Tribunal cases show that consumers need to advise a trader within several days and in most cases no more than a few weeks upon being made aware of the nature and extent of the defect. Several cases are highlighted below.

*Panchalingham v Alfa Motors Limited t/a Car4U MVD 80/2013*

In this case, the Motor vehicle Tribunal found that the vehicle was not of an acceptable quality. However, the purchaser had failed to reject the vehicle within a reasonable period of time and the case against the LMCT was dismissed. This vehicle would have been covered by a statutory warranty as the vehicle age was 2005 and had an odometer reading of 111,101 kms.

*Knox v Power Vehicle Management Limited MVD 42/2013*

In this case, the Motor vehicle Tribunal found that the vehicle was not of an acceptable quality and it had a substantial defect. However, the purchaser failed to reject the vehicle within a reasonable period of time and the case against the LMCT was dismissed. As a result, the purchaser incurred the \$3,684 in the required repairs. While the age of the vehicle was 2005, the vehicle had an odometer reading of 165,208. This would preclude this vehicle from the MCTA statutory warranty. However, this case is provided as an example of the negative impact on consumers who do not exercise their rights in a reasonable period of time.

Title MVDT/87/2008

Failure by Purchaser to require Trader to Repair

*"MVDT 87/08 was an application heard in Hamilton from a 19-year-old apprentice who had saved \$6,990 to purchase a 7-year-old Toyota Hiace van from a Waikato trader. The van's big end bearing failed within 2 months of the date of purchase and after only 2,700 kilometres of use by the purchaser. The purchaser's application was for the costs he incurred in reconditioning the van of \$6,800.*

*The Tribunal was told that when the purchaser's mother telephoned the trader to tell it the vehicle's engine had failed, the trader's owner had laughed at her. She had been so surprised and upset by that response that she omitted to ask the trader to repair the vehicle or even if the trader would contribute to the repair costs. Regrettably, the vehicle was not taken back to the trader and it was not contacted until after the repairs had been completed by the purchaser.*

*The Tribunal found that a reasonable purchaser, having paid \$6,990 for a vehicle with 157,000 kilometres on the odometer at the date of purchase would not expect the vehicle's*

*big end bearing to fail within 2 months and 2,700 kilometres of use. Thus the vehicle was not of acceptable quality under the Consumer Guarantees Act.*

*However, the Tribunal were unable to order the trader to pay the purchaser's reasonable repair costs because under section 18(2) of the Consumer Guarantees Act neither the purchaser nor his mother had ever requested the trader to remedy the failure before they proceeded to have the work done elsewhere. The purchaser was therefore unable to recover his reasonable repair costs from the trader"*

## **2. What is the burden imposed on LMCTs by having to comply with two separate warranty schemes?**

LMCTs are complying with a statutory warranty against defects scheme under the MCTA and most consumers resolve their issues and obtain remedies under this scheme.

The burden with the ACL is that there is no definitive guidance other than a general reference to the age and condition of the motor vehicle. Many of the terms and provisions including major failure and minor failure are general, unmeasurable and open to incorrect interpretation.

Many consumers misinterpret the ACL, thinking that any displeasure with the product entitles them to return the goods for a full refund. This is not so.

The lack of consistency and understanding in VCAT and interstate tribunal cases together with the lack of clear guidance in the ACL consumer guarantees has caused confusion and uncertainty amongst the LMCT industry, consumers and VCAT members.

In many cases, it is difficult for LMCTs to comply with a law that is unclear as to exactly what is required. The general principles of the ACL consumer guarantees are not in dispute – the question is when does it apply in respect to a used motor vehicle?

## **3. Should the statutory warranty under the MCTA be retained? Explain**

Notwithstanding the confusion and uncertainty experienced by LMCTs with the application of the ACL consumer guarantees, most LMCTs find that their customers seek remedy under the statutory warranty. Perhaps that is due to the fact that most consumers also like to know the boundaries in respect to the period when defects are required to be remedied by the LMCT.

Additionally, most defects become apparent within the prescribed period for statutory warranties as evidenced from the New Zealand Motor Vehicle Tribunal.

Victoria has about 1,030,000 car sales per annum and the estimated 1,000 disputes that require resolution in a court or tribunal represent about 0.09% of these sales. Not all are related to acceptable quality or warranty against defect issues. It would appear these represent the residual issues that are uncommon to most motor vehicle purchases or cannot be resolved amicably between the LMCT and the purchaser.

On this basis, VACC considers the statutory warranty scheme is working well and is strongly opposed to the repeal of the statutory warranty. Reliance on the ACL only will create further uncertainty and more disputes.

**4. If the statutory warranty under the MCTA is retained, could it be modified to minimise the regulatory burden for LMCTs arising from any duplication with the ACL?**

VACC would suggest that CAV err on the side of caution and not rush to make amendments to the current statutory warranty provisions in the MCTA. Due consideration needs to be given to varying interpretations between jurisdictions in the application of the ACL to new and used motor vehicles.

The lack of any real ACL guidance to terms such as ‘major failure’ and ‘minor failure’ is causing uncertainty for the LMCT industry. The lack of any real guidance in respect to provision such as ‘consideration to the age and condition’ leaves many of the provisions in the ACL consumer guarantees open to wide interpretation on a case by case basis by courts in the various jurisdictions.

In respect to Option 2, VACC is always supportive of educating the industry regarding improved compliance. However, until the current uncertainty is resolved, VACC does not believe an education campaign will assist in reducing that uncertainty.

## **Forms and Notices**

### **Display of warranty information**

**5. Does the requirements to display the additional information required by regulation 90 of the ACL Regulations impose an additional burden on LMCTs?**

The Issues paper states that CAV has reviewed the prescribed wording of Form 5, and has determined that it does not contain all of the particulars required by regulation 90 of the ACL regulations.

The current regulatory requirement for Form 5 is inconsistent with regulation 90 of the ACL regulations. In view of the need for LMCTs to comply with regulation 90, VACC developed and distributed widely a version of Form 5 that complies with both the MCTA and Regulation 90.

Another issue appears to be around the purpose of the Form 5. That is, whether the Form 5 is a statutory warranty against defects document for buyers or whether Form 5 is really an information disclosure document for prospective buyers.

As is explained below, VACC believes the Form 5 should now become an information disclosure document for prospective buyers and VACC statutory warranty document together with the contract of sale should replace the statutory warranty attributes of the Form 5 (the signing by the customer and trader).

Section 102 of the ACL enables regulations to be made prescribing requirements about the form and content of warranties against defects. Section 102(3) states, “**A warranty against**

**defects** is a representation communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions):

- (a) repair or replace the goods or part of them; or
- (b) provide again or rectify the services or part of them; or
- (c) wholly or partly recompense the consumer;

if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced".

Some of the key words in section 102(3) include "at or about the time of supply". The definition of "supply" in the Act states in respect to goods, "*supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase. In this Part, unless the contrary intention appears, a reference to the supply of goods and services includes a reference to agreeing to supply goods or services*".

Based on the definition of supply in the Act, section 102 (3) effectively states that a warranty against defects is a representation communicated to a consumer in connection with the sale of goods or services, at or about the time of sale.

Accordingly, most of the information prescribed in regulation 90 of the ACL regulation pertains to matters that are pertinent once a sale has been conducted.

VACC would argue that Form 5 serves two purposes. The first purpose is to enable prospective purchasers to quickly identify whether the used motor vehicle is covered by a statutory warranty and other basic details about the vehicle. This information is not pertinent to section 102 of the ACL as prospective buyers are not using this document for the purposes of "at or about the time of a sale". The second purpose is to ensure a buyer is aware of the statutory warranty and signs a copy and keeps the original at "at or about the time of a sale". This MCTA requirement brings the Form 5 within the meaning of section 102 of the ACL – "at or about the time of sale".

## **6. What are the advantages and disadvantages of including the additional ACL information in Form 5 or the contract of sale?**

Providing all of this information on the Form 5 would impose red tape. It is not relevant to prospective purchasers who are browsing many vehicles at a LMCTs' yard. It is the type of information that most prospective purchasers would develop glazed eyes as they are only really interested in the current critical information that is contained in Form 5.

Additionally, a document that is affixed to a vehicle's window (usually enclosed in a plastic sleeve) and has probably deteriorated and faded from the sun and would appear to the buyer as a less than professional document compared with the standard of warranty documentation that is provided by most other industries.

Once the prospective purchaser has selected and decided to purchase a motor vehicle, the LMCT must comply with section 102 (2) "*A person must not, in connection with the supply (sale), in trade or commerce, of goods and services to a consumer: (a) give to the consumer a*

*document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1)".* This is in effect the information prescribed in regulation 90 of the ACL regulations.

VACC supports the proposal in Option 2 that would require the information prescribed in regulation 90 to be provided to purchasers in the contract of sale. The contract of sale is the appropriate document for the inclusion of the statutory warranty and the required information to be in compliance with regulation 90 of the ACL regulations. This is likely to provide greater consumer protection to the purchaser, as it is being provided in a document at or about the time of sale.

LMCTs currently produce the contract of sale and the separate, unregulated VACC statutory warranty description for signature. As a result, the proposed solution would not increase the current regulatory burden but ensure that purchasers were aware from reading the contract of sale that they were entitled to receive a separate statutory warranty document. Refer to the following form. The form also complies with the ACL regulations.



**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.

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**STATUTORY WARRANTY**

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

Make

Registration No. ....

**Warranty starts** 1 year from date of purchase. Excludes batteries.

## EXCLUSIONS

Section 54 of the Act 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:

- accessories not covered by Statutory warranty, as follows,

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

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

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 note, statutory warranty will not apply to the items named 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:

Signed .....  
(Purchaser)

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

The advantage of putting the regulation 90 information in the contract of sale or a separate statutory warranty document is that it would remove the need for the customer to sign the Form 5 and to provide the original Form to the customer as this would be simply duplicating the signed copy of the statutory warranty document and/or contract of sale. Accordingly, the status of the Form 5 would change from a statutory warranty against defects type document to an information document. With the significant change to the status of the Form 5, there is really no need for the LMCT to keep these records for seven years. The record-keeping requirements for the Form 5 could be either abolished or significantly reduced to a shorter period of time such as 1 year.

**7. Do stakeholders have any other suggestions regarding how to reduce the regulatory burden imposed on LMCTs by these provisions?**

It would seem the current disclosure in Form 5 that is affixed to the used motor vehicle provides the necessary identifier that the vehicle is covered by a statutory warranty for 3 months or 5,000 kms.

The adoption of Option 2 would legally enshrine the statutory warranty into the contract of sale and provide added reassurance to purchasers of the serious intent of the warranty.

It may be useful for LMCTs to make available separate plain English hard-copies on the statutory warranty and perhaps other rights and remedies that are available under the ACL.

VACC seeks to hold discussions with CAV regarding the reduction of forms and provision of concise information to consumers that they may readily understand.

**Layout and Display of Notices and Advertisements**

**8. Are the current requirements regarding the layout and display of forms and notices imposing an unreasonable regulatory burden on LMCTs?**

The current requirements prescribe different font, colour and other layout requirements for each of the forms, notices and types of advertisements. Having different layout rules for each notice and advertisement type increases the probability of inadvertent application of one set of rules for a particular form. This is likely to occur with PC and software upgrades and/or when new administrative personnel undertake these tasks. This can add unnecessary administrative costs to LMCTs particularly where experienced personnel detect the error and order the removal and destruction of the non-compliant printed notices and request new compliant notices. Similarly, the copy for an advertisement placed in the electronic or newspaper media with the incorrect font must be corrected which may lead to additional media charges and/or delays that result in the advertisement not being placed within the media organisation's deadline.

While these errors could also occur with standardized layout rules for all notices and advertisements, the probability of error is heightened when new or inexperienced personnel have to learn a multitude of layout rules as required under the current regulatory regime.

## 9. Would either of the options identified above reduce the regulatory burden for LMCTs?

The first option is to provide text presented clearly and is legible with headings and other key text, such as warnings, printed in prominent text. This is consistent with the general requirements in the ACL. VACC prefers this Option to the second Option that prescribes a minimum font size.

## 10. Would either of the options identified above reduce consumer protection?

The prescriptive requirements for the layout of notices and advertisements is unnecessary and is likely to lead to some LMCTs applying inadvertently the wrong prescription to a particular notice or advertisement.

The ACL and the former Fair Trading Act provide performance based regulation and the ACCC *Pricing Manual for the Motor Industry* is the type of document complete with illustrations of suitable and unsuitable practices (Exhibits 1 & 2) CAV should take a similar approach by providing examples of acceptable standards for the layout and display of notices and advertisements to guide LMCTs as to what is likely to meet the requirements and make this information available online for ease of LMCT reference.

### Exhibit 1: Example of compliance -ACCC Pricing Manual for the motor vehicle industry

A motor vehicle is advertised as:

**\$22 990 RRP\***

\* RRP is the recommended retail price inclusive of stamp duty, CTP, registration, vehicle cost and dealer delivery

EXAMPLE

This manufacturer advertisement provides a single price made up of all components including a price for the vehicle and dealer delivery. This advertisement is likely to meet the requirements of the component pricing rules.

### Exhibit 2: Example of non-compliance - ACCC Pricing Manual for the motor vehicle industry

A motor vehicle is advertised as:

**\$15 990**  
+ **\$500** (dealer delivery) + **\$1000** (registration)  
+ **\$1000** (stamp duty) + **\$500** (CTP)  
for a total price of \$18 990

EXAMPLE

The advertisement uses component pricing and does provide a single price.

However, due to the size, colour, font, background and placement of the total (\$18 990), it is not able to be as easily identified as the most prominent component (\$15 990) and is unlikely to comply with the component pricing rules.

It does not matter that the component amounts themselves vary in size, font and style, it is the most prominent component which is to be used as the point of comparison for the total price.

## Miscellaneous

### Consolidation of Forms

#### 11. What are advantages and disadvantages of merging Forms 5, 6 and 7?

The prescribed information contained in Forms 5, 6 & 7 are identical other than the statutory warranty status. The advantage of merging these separate forms into a single form reduces inadvertent mistakes made by administrative staff preparing and attaching the wrong form to a particular motor vehicle.

The Issues Paper has proposed two options. The first option would be to merge the three forms into a single form with presumably a section where the LMCT needs to indicate whether the motor vehicle is subject to a statutory warranty or is not covered by a statutory warranty. VACC would recommend these alternative title headings remain prominently at the top of the form and require the LMCT to strike-out the inappropriate heading.

The second option is to merge Forms 6 and 7 and keep Form 5 as a separate form. The rationale of merging Forms 6 and 7 is that both of these forms inform the prospective buyer that the motor vehicle and motorcycle are not covered by a statutory warranty. At a minimum, VACC believes that this option should be adopted if CAV has concerns about merging all three forms into a single form. Refer to the following example on the next page.



## USED VEHICLE PRICE AND DATA SHEET

Motor Car Traders Act 1986 - Regulation 11 & 12  
(Section 52)

LMCT No:

Does this vehicle come with Statutory Warranty  Yes  No  
(3 months/5000kms)

A. Name and business address of the current owner of the motor car (LMCT):  
.....  
.....  
.....

B. Odometer reading at time vehicle acquired by LMCT

C. Except in the case of a motor car offered or displayed for sale at a public auction, the cash price of the

\$  
INCLUDING GST

The price shown includes:

Transfer Fee  Yes  No    Stamp Duty  Yes  No    Registration  Yes  No

D. Built date if it appears on the motor car.....

Compliance date:.....

E. The make and model designation (if any) of the motor car: .....

F. Registration number (if any) of the motor car:.....

G. Vehicle Identification number of the motor car:

H. Does the vehicle appear on a written-off vehicle register? Yes  No

AFFIX TO RIGHT SIDE WINDOW (REAR WHERE APPLICABLE)

### 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.

### IMPORTANT INFORMATION

Buying a used car or motorcycle from a licensed motor car trader

1. If this vehicle is NOT **MORE THAN 10 years old AND has been driven LESS THAN 160 000 km**, it is automatically covered by statutory warranty under section 54 of the **Motor Car Traders Act 1986** for the first 3 months or 5000 km after delivery, whichever occurs first.
2. If this vehicle is **MORE THAN 10 YEARS OLD and/or been driven MORE THAN 160,000 KM** it is not covered by statutory warranty under section 54 of the Motor Car Traders Act 1986.
3. Motorcycles , commercial vehicles and cars bought at public auction are **NOT COVERED** under Section 54 of the Motor Car Traders Act 1986
4. Licensed Motor Car Traders may offer a warranty on vehicles which are not covered by the Statutory Warranty under section 54 of the Motor Car Traders Act

For most used cars, there is a **3 day cooling off period** commencing the day after signing the sale agreement. This reference to

3 days means 3 clear days not including Saturdays, Sundays or days that are wholly or partly observed as Victorian public holidays. If a purchaser decides to cancel the sale agreement, the purchaser must notify the licensed trader in writing, before the close of business on the third day. The licensed trader can withhold 1% of the purchase price or \$100, whichever is greater. The cooling off period applies to all used cars except commercial vehicles, used cars bought at public auction and vehicles sold to a body corporate.

The key disadvantage of the first option would be in cases where a motor vehicle or motorcycle had affixed a form that wrongly indicated that it was covered by a statutory warranty. This would mislead the prospective buyer.

However, VACC believes this can be overcome by inserting a similar statement to the cooling-off acknowledgement in the contract for sale and to also making reference to the conditions for the application of the statutory warranty and a reference to the associated statutory warranty document (refer to VACC standard statutory warranty form that is compliant with regulation 90 of the ACL).

VACC believes that the current silence in the contract of sale of the statutory warranty status of the vehicle being purchased provides no protection to the consumer if the trader has inadvertently affixed the wrong form to the vehicle.

The inclusion of the criteria for the statutory warranty in the contract of sale provides an opportunity for the buyer to query any incorrect use of forms that have been affixed to a vehicle.

## **12. Would merging these forms reduce the regulatory burden on LMCTs?**

Any reduction in the number of forms to fill out and the ease of processing would be welcome. There are currently too many forms and duplication of recording information.

### **Display of Price**

## **13. Would requiring LMCTs to only display the ‘Drive Away’ price in advertisements reduce consumer protection?**

The ‘Drive Away’ price is the most critical price for a consumer and should enable price comparison for consumers. However, the different regulations regarding stamp duty and transfer fees operating between the States and Territories undermines the policy objective of the ‘Drive Away’ price regime. Each jurisdiction has different rates and thresholds for stamp duty. Some jurisdictions require the LMCT to collect and pay for the stamp duty. Other jurisdictions require the buyer to pay the stamp duty.

For example, Victorian LMCTs are required to collect the stamp duty and transfer fee upon the buyer signing the contract of sale of a registered vehicle. However, NSW LMCTs do not collect stamp duty and transfer fees. As a result, the ‘Drive Away’ price is not providing genuine price comparison for consumers. By way of illustration, a Victorian LMCT plans to sell a used motor vehicle for \$9,999. With about \$300 in stamp duty and \$18 in transfer fees, the ‘Drive Away’ price is \$10,317, yet in NSW the LMCT can advertise a comparable used car for \$9,999 without disclosing the stamp duty and transfer fee as this is paid by the buyer.

As a result of the disparity in the operation of the ‘Drive Away’ price regime, a Victorian LMCT is placed at a competitive disadvantage to his/her NSW counterpart on several levels. The major car-selling websites e.g. carsales.com and Gumtree, use price-bands to enable prospective buyers to search for particular types of vehicles. In this case, the \$9,999 used

motor vehicle would be within a \$5,000 to \$10,000 price band. The Victorian LMCT's advertisement would be excluded from this price band due to the stamp duty and transfer fees while the NSW LMCTs' motor vehicle priced at \$9,999 would fall within the price band. The prospective buyer finds the NSW motor vehicle but not the Victorian motor vehicle.

From a buyer's perspective, the 'Drive Away' price could mislead them into thinking that a motor vehicle advertised in NSW is cheaper than a comparable vehicle in Victoria when in fact the prospective purchaser must add the cost of stamp duty and transfer fee onto the 'Drive Away' price.

For these reasons, VACC is opposed to making the 'Drive Away' price mandatory on Forms 5, 6 and 7. The current requirement to provide the cash price not including stamp duty and transfer fees is consistent with the NSW's 'Drive Away' price.

### **Record-keeping**

#### **14. What are the advantages of either reducing the record keeping requirements to five years, or abolishing the record keeping requirements altogether?**

The objective of record-keeping is to provide a paper trail to enable disputes to be resolved or to investigate the conduct of a licensed LMCT.

In respect to the resolution of disputes, the contract for sale, the cooling-off waiver form and Form 8 in respect to stated defects are likely to be required for any disputes whether heard under the MCTA or the ACL. Given that the time limitation for claims under the ACL regime is six years, VACC considers it prudent to maintain the current regulatory requirement for at least seven years.

In respect to Forms 5, 6 & 7, these forms duplicate most of the information that is required to be documented in the LMCTs' dealings book and the contract for sale. These forms are affixed to the vehicle for display purposes to enable prospective purchasers to quickly ascertain the critical information about the vehicle.

VACC cannot see any value in the LMCT being required to maintain these records as the information is already available in the dealings book and contract for sale. The only regulatory feature associated with forms 5, 6 and 7 is the requirement for the purchaser to sign the form as proof that they have witnessed this form prior to signing the contract agreement for sale.

In respect to Form 3, Declaration, the 2008 RIS noted marginal consumer detriment that may be caused. However, the costs of keeping police check and Form 3 Declaration in personnel files is unlikely to impose any significant burden on LMCTs.

In conclusion, VACC supports the retention of the seven year requirement to keep records of the dealing book, contracts for sale, Form 4 cooling-off waiver (if it is to be retained in the regulations) and Form 8 (defects) and police checks/Form 3 declaration for persons employed in a customer service capacity. There should be no requirement to maintain any other records.

## Former Owner Information

### **15. What are the benefits to purchasers of having access to the details of the former owner?**

There are minimal benefits to purchasers having access to the details of the former owner for the purpose of contacting the person to ascertain information about the quality, performance and reliability of the motor vehicle. The former owner may have had specific mechanical issues prior to trade-in. However, following a mechanical inspection, the LMCT may have fixed these issues. This information is not recorded on a roadworthiness certificate. Hence, in this example, if the prospective buyer spoke to the former owner, the prospective buyer would receive a different version of the quality, performance and reliability of the vehicle to what had transpired following the trade-in.

### **16. Would any detriment arise for consumers if either of the above options were adopted?**

The LMCT is required to ensure clear title of the vehicle and to also check the written-off status and if the vehicle is stolen, it is standard procedure for LMCTs to confirm the physical identification details attached to a vehicle with the details on the PPSR. The PPSR provides information on:

- encumbrance status (monies owing)
- vehicle details (make and model)
- stolen status
- written-off status (on the register and repaired)

VACC supports the first option to remove the requirement to disclose the last owner of a vehicle in Forms 5, 6 and 7. This option would still require the recording of the former owner in the dealings book. However supply of the last owner's name, either a person or LMCT is no longer necessary in order to check on vehicle history. Unlike the time when the Act commenced – 40 years ago, there is now plentiful information available to prospective buyers. Consumers are well protected by a number of laws that LMCTs must comply with. All registered vehicles sold by an LMCT must be accompanied by a current Certificate of Roadworthiness. All vehicles must be correctly described and not misrepresented. The use of a VIN on the form 5 assists prospective buyers to check and confirm the identity and registration status on the spot using the VicRoads Vehicle Registration Enquiry website over a mobile phone connection. It works very well. This service will become more important next year when registration labels are no longer issued by VicRoads upon registration renewal.

Many consumers use the VIN to research vehicles over the internet. Carsales.com now supply a service called "car history" which uses their vast database on information about cars advertised or sold using the Carsales.com network.

Because of the many advancements made in communications and digital media access to information is vast and there is no consumer detriment caused by the removal of the previous owner or other LMCT name from form 5.

VACC does not support option two as it actually creates further questions and compliance issues for LMCTs.

## Vehicle Identification

### **17. Will the burden of obtaining a vehicle's VIN increase following the abolition of vehicle registration stickers?**

As stated in the Issues Paper, following the abolition of registration labels, LMCTs will continue to locate VINs from the vehicle's Australian Design Rule compliance plate that is normally attached to the engine compartment firewall or door aperture.

In addition, the LMCT will be able to access VicRoads' free on-line Vehicle Registration Enquiry Service to confirm the VIN. The service is available to anyone and allows the enquirer to confirm the details of vehicles on the Victorian Vehicles Register. The information includes:

- Registration status (current, expired, suspended or cancelled)
- VIN/chassis number
- Engine number
- Make, colour and body type
- Year of manufacture

The proposal to apply a single identifier in the VIN to all regulatory documentation is welcomed. In cases where the VIN identifier is not available such as on pre-1989 vehicles, the engine number or chassis number is proposed as the alternative single identifier.

This is a common sense approach and will save administrative time involved in collecting the engine number and chassis number and recording this information multiple times.

## Cooling-Off Rights

### **18. Are there any circumstances where traders do not require purchasers to waive their cooling-off rights before taking delivery?**

A cooling off waiver is not required where the vehicle is delivered beyond the three clear business days cooling off period.

Cooling –off does not apply to commercial vehicles or vehicles bought by companies and therefore the waiver does not apply to these vehicles.

It is common practice for new and used vehicles not to be delivered during the cooling off period. The primary circumstance in which traders do not require purchasers to waive their cooling-off rights is mostly in respect to new vehicles, particularly where the motor vehicle selected by the purchaser needs to be ordered as it is not held in stock.

It is standard industry practice for the sale of new motor vehicles where the purchaser selects a particular model in the showroom and then orders the type of model from the factory based on their colour preferences and other requests for options and accessories.

#### **19. Are the current cooling-off requirements imposing an unreasonable regulatory burden on LMCTs?**

The current cooling-off requirements impose an unnecessary document (form 4) that must be supplied to the buyer prior to signing a contract of sale. As this right is not enshrined in the contract of sale, the Form 4 confuses some LMCTs.

As pointed out in the 2008 RIS, the Form 4 costs LMCTs about \$3,360,000 per annum in printing and labour costs, but the benefits of this appear to be minimal given that this information could be included in the contract of sale or elsewhere.

A further burden is created by form 4 which must be supplied to all consumers even if cooling off does not apply to the vehicle concerned i.e. commercial vehicles. It is ridiculous that the regulations require supply of a form that is not applicable to the transaction. Since introduction Form 4 has not been well understood by consumers and some LMCTs. It is creating uncertainty and should be replaced with a simpler system.

The provision of 3 clear business days as the cooling off period is also antiquated as it does not recognize Saturday, Sunday or public Holidays as business days, even though many LMCTs open on such days. The Act should be amended to include Saturday, Sunday and Public Holidays when LMCTs are permitted to trade as business days for the purpose of calculating cooling-off.

#### **20. What are the advantages and disadvantages of the options identified above?**

The contract of sale only includes a reference to the purchaser's acknowledgment of reading and understanding the Form 4 Cooling-off rights. The advantage of including a detailed section about the cooling-off rights in the contract of sale similar to the proposal for inclusion of the statutory warranty, would enshrine these key rights as contractual provisions.

The disadvantages may be that the purchaser does not read this aspect of the contract. However, as pointed out in the Issues Paper, the maintenance of the current arrangement of providing the Form 4 has not always been complied with.

The advantages of option 2 that removes the right to waive cooling rights would remove the current confusion amongst consumers and LMCTs, as in many cases, both parties believe they are simply acknowledging the cooling-off rights.

**21. Would consumer protection be reduced if the cooling-off notice was included in the contract of sale?**

VACC supports the inclusion of the cooling-off information in the contract of the sale but not the removal of a waiver. Customers who wish to take delivery of a vehicle immediately would be required to sign a cooling off waiver. There are too many risks for LMCTs associated with allowing a vehicle to be driven away while the cooling off option remains in place. The inclusion would maintain consumer protection better than the current arrangement where many purchasers are unwittingly signing the waiver not fully realizing that they are rescinding the right to cool-off. This is primarily due to the way in which the Form 4 is written. VACC will propose a new clause in the new and used car contracts that includes the cooling off provisions of the MCTA.

**Eligibility Criteria**

VACC considers that any relaxation of the eligibility criteria for LMCT licence applications is unwarranted particularly if that would lead to a potential increase in MCTA compensation claims that is funded from LMCT licence fees.

Based on the 2008 RIS, about a quarter of claims were attributable to persons with a criminal background. Some of the larger (multiple) claims are against unlicensed LMCTs masquerading as licensed LMCTs.

The licensing regulation was not found by the National Competition Policy Legislative review to be anti-competitive.

The small volume of applications needs to be taken into consideration. In 2011/12, 184 licence applications were received. While VACC does not want to see any unnecessary regulation or red tape, most of the eligibility criteria were established to ensure persons with a criminal background or those that lacked the financial wherewithal to establish and fund a business were prevented from entering the industry and inflicting consumer detriment.

**Associates**

**22. How burdensome is the requirement for applicants to require each associate to complete the required form, provide identification and consent to a police check?**

As is stated later in section 3.6 Customer Service Employees, the time and cost involved in the completion of declarations and a consent to undergo a police check are negligible. Similarly, providing a 100 point identification is a relatively straightforward process that is used for obtaining a passport, opening a bank account and a range of other government and commercial activities. It is a minor inconvenience to most people but could hardly be construed as burdensome given the minimal time and cost involved relative to the total cost of the licence if granted.

**23. Would current consumer protection be diminished if an applicant's spouse or domestic partner were no longer included in the definition of associate?**

As stated in the Issues Paper, "*historically, only a very small proportion of listed associates are found to have been previously convicted of a relevant offence as a result of the police records check*".

If there was a high volume of licence applications each year, there may be some merit in excluding an applicant's spouse or domestic partner particularly if the risk is considered reasonably low. However, given that about 25% of claims against the MCTA compensation fund were attributable to persons with a criminal background up to 2008, VACC believes a zero tolerance should be taken in this regard to ensure LMCT's licence fees that are used to primarily fund the MCTA compensation fund are applied mostly for unfortunate business circumstances that arise from time to time for traders rather than allowing unlicensed or dishonest persons with a criminal background to inflict consumer detriment.

**24. Would current consumer protections be diminished if the process for assessing associates was streamlined?**

Option 2 in the Issue Paper canvasses the streamlining of the process for assessing associates. The proposal for an applicant to only inform the Business Licensing Authority (BLA) about an associate if that associate has been convicted or found guilty of a serious offence or has a claim against the Fund is really only transferring the responsibility for undertaking these checks onto the applicant rather than the BLA undertaking them. VACC is not opposed to the proposal to make the applicant responsible for undertaking and submitting these checks with their application. However, this would not be a red tape reduction, simply a transfer of responsibilities.

The alternative proposal to remove the BLA police check for each associate and instead replace it with a requirement that each associate makes a declaration that they have not been convicted of any relevant offences appears entirely inconsistent with the current declaration and police check process for all prospective customer service employees which VACC fully supports. In view of the small number of licence applications, the cost to CAV and other stakeholders analyzing this issue would far outweigh the cost savings.

As stated before, the small cost associated with this process is not burdensome and while the downside risk is relatively small, the magnitude of the consumer detriment associated with several claims from persons with a criminal background is not worth the risk.

**Financial Check**

**25. Is there an unreasonable regulatory burden imposed by the financial check requirement?**

The evidence the BLA requests in respect to assets and liabilities, a business plan and/or cash flow estimates and funding for the business is standard banking practice requirements for businesses seeking commercial loans. For unincorporated or incorporations with minimal

capital (e.g. \$2 companies), the banks will demand evidence of personal finances including ownership of property etc.)

Many people setting up business or seeking commercial loans will engage professional assistance from accountants.

VACC considers the financial check requirements as a business as usual cost that is likely to be incurred in most instances by business in seeking commercial bank loans to establish a LMCT's business.

**26. Would not requiring applicants to provide any supporting evidence of their financial resources reduce consumer protection in Victoria? Explain.**

The Issues Paper notes that there is no evidence whether the financial check requirements provide any on-going protection to consumers or result in fewer claims against the MCTA compensation fund. However, this misses the point that the financial checks have not been established to ensure ongoing business success but rather to ensure that any prospective LMCT has the financial wherewithal to establish and fund the business. Similarly, the banks in determining a commercial loan application want to know if the applicant has the financial collateral and business nous to run a business and to repay its loan in the event the business is unsuccessful. The banks do not lend to persons untried in business who have no collateral and/or business plans. They are considered high risk.

The LMCTs licence fees fund the MCTA compensation fund, and like the banks, have a right to be reassured that prospective licensees have the financial wherewithal to establish and fund the business - and not go out of business in 3 months leaving consumers worse-off.

**27. Would prescribing a standard set of questions result in a reduction in the red tape imposed by the financial check requirement?**

The MCTA and regulations do not provide any guidance as to the type of evidence required and how the BLA makes its assessment. The fact that the BLA can seek additional information on a case by case basis probably also leads to uncertainty and delays for some applicants financial checking to be completed. It may be useful for the BLA to issue a publication on the types of evidence required for different types of businesses and the way in which the BLA makes its assessment. Such a guide could include case studies to illustrate the type of information required.

**28. Are there any other options to reduce the regulatory burden imposed by these requirements?**

It would seem unreasonable for the BLA to seek the declaration of personal finances from each individual applicant, partner or directors. The financial liabilities of a company are limited and the claims against the MCTA compensation fund are invariably against a proprietary limited company. The BLA request for personal finances of a sole trader is more understandable.

### Knowledge Check

#### **29. Does the current knowledge test process impose an unreasonable regulatory burden on applicants?**

The current knowledge test would probably impose several hours for most metropolitan applicants to complete the test including travel. It is imperative that prospective LMCTs know their obligations under the MCTA and regulations as well as the Australian Consumer Law.

The test does not ensure that the applicant is likely to comply with the MCTA but it probably reduces inadvertent mistakes that may cause consumer detriment in early phases of the business.

#### **30. Would any of the options identified above reduce the regulatory burden on applicants?**

An on-line knowledge test would reduce the time involved in traveling and sitting the test. However, the cost to government in designing and establishing an on-line test needs to be weighed up against the cost savings to a small number of applicants.

VACC does not agree with option 2. LMCT applicants should visit the BLA personally as it adds security and integrity to the process. In regional areas, LMCT applicants should also be required to personally attend a regional state government agency that has been authorized by the BLA to conduct the tests. VACC fully supports the test.

A well designed and simple to read information pack for prospective licensees that covers relevant Commonwealth and State legislation and best practice business systems for LMCTs are collectively important to ensuring regulatory awareness and compliance. VACC would welcome collaboration with CAV, BLA and VicRoads on the development of such information. It should also contain contact phone numbers for the BLA and CAV so that LMCTs have direct access to the regulators.

#### **31. Would any of the options identified above result in diminished consumer protection?**

None of the above options would diminish consumer protection. The first two options are about improving the cost-effectiveness of the current knowledge test from the applicant's perspective and the third option is likely to enhance consumer protection by improving regulatory awareness and compliance.

### Premises Requirement

#### **32. What are the advantages and disadvantages of requiring LMCTs to have a lawful premises to be granted a licence?**

As stated in the Issues Paper, the policy rationale for these requirements is to reduce the use of inappropriate premises for the operation of motor car trading businesses and the likelihood that LMCTs will be viewed as private sellers.

The Issues Paper states that, “*it would still be an offence under the Planning and Environment Act 1987 for a LMCT to conduct their business in a premises that is not appropriately zoned for motor car trading. Maintaining both requirements could be seen as unnecessary duplication*”.

It would be duplication if the BLA assessed the suitability of the premises that had already been granted a planning permit from the local council. This is not the case. Similar to many other regulatory regimes, it is not uncommon for a copy of an approval to be submitted as part of an application.

Otherwise, the BLA would issue a licence to an applicant who may not have obtained a lawful premise by way of a planning permit.

### **33. Is the documentation currently required to be provided in order to meet the premises requirement overly onerous?**

The documentation requirements (planning permit, letter from local council or a copy of a lease agreement) are not overly onerous. The issue is more about how long will it take to obtain these documents from a local council or a landlord’s solicitors. This would seem to be supported by a number of complaints by LMCTs who are attempting to transfer their location and have to cease trading until such time as those documents are obtained and approved by the BLA.

### **34. What are the advantages and disadvantages of the options identified above?**

VACC is supportive of Option 3 to allow LMCTs to keep trading during the period after which they have notified the BLA of a change of address provided the LMCT provides the appropriate documentation within 60 days. A longer period or an extension should be available upon request by the LMCT. This should provide sufficient time for LMCTs to obtain the relevant documents.

### **Scrap Dealers and Auto Recyclers**

### **35. Does requiring scrap dealers and spare parts dealers to be licensed protect consumer interests?**

On the surface it appears that requiring scrap dealers and automotive dismantlers and recyclers to be licensed is unnecessary. However, VACC LMCT and auto dismantler committees are strongly of the view that many scrap dealers also rebuild, repair and sell used motor vehicles when the opportunity presents itself. They also obviously sell dismantled parts, vehicle bodies and eventually sell the vehicle carcass as scrap metal. Consumers are protected by the licensing of these businesses and it should remain so.

Increasingly, insurance companies assess a greater percentage of smashed vehicles as repairable write offs. The insurance company will not repair the vehicle due to the costs involved, declare it an economic write off and will predominantly sell the written-off vehicle via an auction house.

Auto recyclers and others purchase those written-off vehicles at the auction house that they consider are cost effective to dismantle for parts or to repair and sell.

Consumers are fully entitled to know the history of the motor vehicle, particularly if it has been written-off. Not all consumers will be aware that this information is available for a small fee from the PPSR. Accordingly, if these scrap dealers, auto recyclers and others are not required to be licensed, the written-off status, the stolen status, the encumbrance status or any other information required by the MCTA would not apply.

Consumer protection would be eroded and the LMCT system subject to question as to its coverage of the whole industry

### **36. Is it appropriate for scrap dealers and auto recyclers to pay a reduced licence fee?**

If it is appropriate for scrap dealers and auto recyclers to pay a reduced fee presumably on the basis that they are rarely involved in MCTA compensation claims, then it would also be appropriate for LMCTs that rarely or never have claims against the MCTA compensation fund.

While scrap dealers and auto recyclers are probably cross-subsidising MCTA compensation claims, the same can be said for many other LMCTs that operate best practice businesses and never have a claim against their firm.

For these reasons, VACC does not support reduced fees unless it is designed in an equitable manner for all LMCTs and does not affect the financial viability of the MCTA compensation fund.

### **37. What are the risks associated with abolishing the requirement for scrap dealers and auto recyclers to be licensed?**

For those scrap dealers and auto recyclers who from time to time rebuild, repair and sell motor vehicles, the risk is that unsuspecting buyers will have no consumer protection if the motor vehicle is found to not have clear title, is stolen or written-off, or is found to be defective within the statutory warranty period.

From a competition perspective, it would be unfair for LMCTs to have to comply with MCTA regulatory framework while scrap dealers and auto recyclers could work outside the system at a lower cost and provide comparable motor vehicles at a lower price.

VACC is strongly of the opinion that to release these businesses from the licensing regime would create a significant loop hole that would immediately be exploited by those that wish to transact in vehicles without any boundaries. It would in our opinion also facilitate illegal activity in the theft and sale of vehicles and parts.

As CAV knows, these matters are currently the subjects of an interagency taskforce investigation known as Taskforce Discover. This question should be reviewed when the report of Taskforce Discover is delivered and available for discussion. CAV should also consult with the Nation Motor Vehicle Theft Reduction Taskforce on this matter.

## Customer Service Employees

### 38. Are the current requirements in the MCTA relating to customer service employees successful in preventing inappropriate persons from being employed by LMCTs?

The effectiveness of the requirement for a prospective employee to complete a declaration (Form 3) and obtain a police check needs to be considered before making any changes.

The Issues Paper provides only half of the problem from the 2008 regulatory impact statement, “*The actions of prohibited employees being able to work unchecked in customer service roles resulted in 132 claims admitted against the Fund between 2003 and 2006 for a total value of \$348,369. The regulatory impact statement for the regulations published in 2008 noted that 92.7 per cent of these claims related to employees with a criminal record*”.<sup>6</sup>

The Issues Paper failed to mention the following paragraph in the regulatory impact statement, “*Accordingly, a police check would have detected and potentially prevented 92.7 per cent of claims against prohibited employees with a criminal record and the proposed declaration form would have detected and potentially prevented 7.3 per cent of claims against prohibited employees*”.<sup>7</sup>

Based on the 2008 RIS analysis of the problem, the police check clearly would have had a positive impact on preventing the 94 or 92.7% of the claims admitted against the Fund whereas the declaration form would have only addressed the remaining 38 or 7.3% of claims payments totally \$25,548 from 2003 to 2006.<sup>8</sup>

It is clear from the 2008 RIS data that the police check is an effective tool whereas the declaration form makes a marginal contribution to preventing claims.

Notwithstanding the limited benefits from the Form 3 declaration form, the 2008 RIS showed that the estimated annual cost of \$6,330 to the industry to complete the declaration forms was marginally less than the \$6,387 of annual benefits.

Post the 2008 RIS, CAV would be in a better position to advise whether the police check and declaration form has reduced the incidence and degree of claims against the MCTA Compensation Fund.

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<sup>6</sup> Consumer Affairs Victoria, Red Tape reduction review, Motor Car Traders Act 1986 Issues Paper 2013, p 42

<sup>7</sup> Consumer Affairs Victoria, Regulatory Impact Statement for the Proposed LMCTs Regulations 2008, July 2008, p 33

<sup>8</sup> ibid, p 33

**39. Does the requirement to complete a Form 3 and obtain a police check act as barrier for entry for prospective customer service employees?**

The declaration form is a one-page document with Yes/No answers to questions. The 2008 RIS estimated that the time taken to complete the form was about two minutes. The police check has now become a common requirement in a broad range of professions and occupations. These basic requirements could hardly be construed as a barrier to entry for most people. The purpose of these basic checks is to act as a barrier to persons with a criminal background that are likely to behave in a dishonest manner with consumers.

**40. Would consumer protection be reduced if the category of prospective employees these requirements apply to was narrowed?**

If the category of prospective consumers were to be narrowed as in South Australia, it would unlikely to impact consumer protection in most LMCT businesses. However, some smaller LMCTs may employ persons with a criminal background in administrative positions and not provide adequate supervision. These unsupervised persons may undertake sales functions with unsuspecting consumers. While the risk may appear low, CAV should bear in mind a recent MCTA Compensation Claim that involved a large payout to an unlicensed person. A few dishonest persons involved in any shape or form in the industry can impose extraordinary consumer detriment in a very short period of time to unsuspecting consumers.

In view of the very low cost of the police check and the time taken to complete a declaration form, VACC sees no significant financial benefit to individual LMCTs let alone the industry in narrowing the category of prospective employees other than a potentially huge downside and negative press for the government and the industry when a dishonest person with an unchecked criminal background has been found to have caused considerable consumer detriment.



Repairable 'write off' acquired at auction repaired for sale by dismantler

To illustrate the complexity of the regulated forms, copies of the regulated forms 2, 3, 4, 5, 6, 7, & 8 under the Motor Car Traders Regulations and copies of VACC contract of sale of new and used vehicles are included with this submission. Refer to following appendix.

The VACC recommendations would ease the burden of compliance by simplifying these forms; i.e. removal of form 4, and consolidation of forms 5, 6, & 7.



## Appendix

- Contract of sale for new motor vehicle
- Contract of sale for used motor vehicle
- Dealings book form
- Form 3
- Form 4
- Form 5
- Form 6
- Form 7
- Form 8

## CONTRACT FOR SALE OF NEW MOTOR VEHICLE

639702

Salesperson's Name (Print)

Name & address of Motor Car Trader, hereinafter called  
"the Trader"

LMCT Number

## PURCHASER'S DETAILS

Driver Licence Number ABN (If purchased by company)  
or

Surname or Name of Incorporated Body

First Name Second Name Date of Birth

Residential Address Tel.: Private

Tel.: Business

Postal Address – if different from residential

Mobile:

Email

Nominated Registered Owner – if different from Purchaser

Residential Address

The Purchaser HEREBY AGREES to buy from the Trader and the Trader hereby agrees to sell to the Purchaser the undermentioned new motor vehicle including any extras and/or accessories as stated in this contract thereto, for the price payable in the manner and on the terms and conditions contained on the reverse.

## PRIVACY STATEMENT

**The Contract of Sale and Collection of personal information**  
 This Contract of Sale and other transfer documentation that you sign when you purchase a vehicle contain personal information about you. Personal information is information about you from which your identity can be ascertained. Where you do not wish to provide us with your personal information, we may not be able to sell the vehicle to you.

The Trader collects your 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 will include the provision of warranty, insurance and registration.

## Disclosure of Personal Information

The Trader needs to 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.

## DESCRIPTION OF MOTOR VEHICLE

Make and Model Stock Number

Body Type Body Colour Trim

Chassis/Vin/Frame Number

Engine Number

## PRICE OF THE MOTOR VEHICLE

(Subject to clause 2)

\$

Delivery Fee if applicable \$

Sub Total (INCLUDES GST) \$

Stamp Duty \$

Registration and Transport Accident Charge \$

TOTAL PURCHASE PRICE \$

ESTIMATED DELIVERY DATE

## TRADE-IN MOTOR VEHICLE PARTICULARS Refer to clause 8(7)

Make and Model Body Type Build Date(if app.)

Year of 1st Reg. Registration Number Reg. Expiry Date

Chassis/Vin Number

Engine Number Reg. Serial Number

Distance recorded on odometer (Serial no. from windscreen label)

at the time of signing the contract Allowance for trade-in  
(including GST) \$

Owner of motor vehicle being Traded

Does the trade-in vehicle appear on a written off vehicle register? Yes  No 

Signature of Person authorised to trade-in motor vehicle Date of Trade-in

## COMPLETE THIS SECTION IF THIS CONTRACT IS SUBJECT TO PURCHASER OBTAINING FINANCE APPROVAL

Amount of Finance \$

On or Before (Approval Date)

FROM

By way of Hire Lease Purchase Other

(or similar type of credit provider)

## ADDITIONAL CONDITIONS

The purchaser acknowledges that unless stated in this contract, no other additional conditions apply to this contract

Purchaser's Signature

The Purchaser acknowledges that he/she has read and understood the terms and conditions above and on the reverse side of the contract and agrees to be bound by them and also acknowledges having received a copy of the "Cooling off rights and waiving your cooling off rights" (Form 4).

## THIS IS A LEGALLY BINDING CONTRACT

Signature of Purchaser

Signature of Salesperson

Dated the

day of 20

## TERMS OF SETTLEMENT Subject to clause 2

Total Purchase Price \$

LESS – Deposit \$

Receipt No. \$

LESS – Net Trade-in Allowance \$

BALANCE of Total Purchase Price payable in cash, bank cheque or cleared Funds on delivery of motor vehicle

Refer to clause 7 \$

Receipt No. \$

If trade-in not to be part of terms of settlement refund cheque No. \$

# TERMS AND CONDITIONS FOR SALE OF NEW MOTOR VEHICLE

## 1. Definitions

Unless the context otherwise requires:-

"Approval Date" means the Approval Date (if any) listed on the front of this Contract.

"Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

"Consumer" has the meaning given to it in the Australian Consumer Law. "Consumer Guarantees" means any statutory guarantee provided to Consumers under Division 1 of Part 3-2 of the Australian Consumer Law. "Contract" means this Contract which is comprised of the front page hereof and these terms and conditions.

"Forfeitable Amount" means the amount described as the forfeitable amount in the front of this Contract.

"GST" means any goods and services tax and any replacement or similar law.

"GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Net Trade-In Allowance" means the amount allowed on the Trade In Vehicle on the front of this Contract less any amount to be paid by the Trader to discharge the interest of any other person in the Trade In Vehicle.

"Nominated Registered Owner" means the person described as the Nominated Registered Owner on the front of this Contract.

"Personal Property Securities Register" has the meaning given to that term in the Personal Property Securities Act 2009 (Cth).

"Purchaser" means the Purchaser described in the front of this Contract and shall include the heirs, executors and assignees of the Purchaser.

"Purchase Vehicle" means the Motor Vehicle described in the front of this Contract under the panel headed "Description of Motor Vehicle".

"The Trader" means the Trader described in the front of this Contract.

"Trade in Vehicle" means the Motor Vehicle (if any) described in the front of this Contract under the panel headed "Trade in Motor Vehicle Particulars".

## 2. Purchase Price of Purchase Vehicle

(1) There may be an increase in the recommended retail price of the Purchase Vehicle as published by the manufacturer or distributor as at the date of this Contract ("the current recommended retail price") and the recommended retail price as published by the manufacturer or distributor as at the date of the delivery of the Purchase Vehicle ("the new recommended retail price"). The price increase is the amount of the new recommended retail price minus the amount of the current recommended retail price ("price increase"). As well as or instead of such an increase in the recommended retail price there may be an increase in the amount of stamp duty or other tax payable in respect of the Purchase Vehicle between the date of this Contract and the date of the delivery of the Purchase Vehicle ("additional duty").

(2) The Trader shall use reasonable endeavours to notify the Purchaser of any price increase or any additional duty as soon as reasonably practicable. The Purchaser is obliged to pay to the Trader the price increase (if any) as well as the additional duty (if any) in addition to the purchase price shown on the front of this Contract upon delivery of the Purchase Vehicle or when the Purchaser is notified that the Purchase Vehicle is available for delivery (whichever is first) UNLESS prior to accepting delivery and not more than three business days after the Purchaser is notified of the price increase or the additional duty the Purchaser notifies the Trader in writing that the Purchaser wishes to be released from this Contract.

(3) If the Purchaser so notifies the Trader that the Purchaser wishes to be released from this Contract, the Purchaser will be released from the Contract 3 business days after such notification and will be reimbursed for any amounts already paid to the Trader, UNLESS during that time the Trader withdraws the price increase or additional duty notification. If the Trader so withdraws the price increase or additional duty notification, the Contract will continue and the Purchaser will only be required to pay the total price shown on the front page of this Contract.

## 3. Nominated Registered Owner

Where in this Contract a Nominated Registered Owner is designated, the Purchaser hereby authorizes 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.

## 4. Payment

- (1) Where a receipt no. is not provided in the panel headed "Terms of Settlement" on the front of this Contract, this Contract shall be deemed to constitute a duly given receipt for the amount stated.
- (2) If the Purchaser fails to make any payment as provided for in this Contract on the due date for such payment, then the Purchaser shall pay to the Trader interest on such amount until payment of such amount at a rate equal to the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 provided the total amount of such interest shall not exceed an amount equal to 5% of the purchase price of the Purchase Vehicle.
- (3) Upon the Trader giving notice to the Purchaser that the Purchase Vehicle is available for delivery, the Purchaser shall:
  - (a) immediately deliver the Trade In Vehicle (if any) to the Trader; and
  - (b) pay the full outstanding balance of the purchase price of the Purchase Vehicle on or before taking delivery of the Purchase Vehicle.
- (4) Title in the Purchase Vehicle will not pass to the Purchaser unless all amounts owing in respect of the Purchase Vehicle are paid to the Trader in full.
- (5) Despite clauses 4(6) to 4(9), all references to the purchase price of the Purchase Vehicle and any other amounts and allowances in respect of the Purchase Vehicle set out in this Contract (including the front page of this Contract) are inclusive of GST. A separate tax invoice will be issued in accordance with the GST Law.
- (6) Unless otherwise stated, any amount specified in this Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (7) If a party makes a taxable supply under this Contract (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- (8) Notwithstanding the foregoing, the Recipient is not obliged under this Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- (9) If an adjustment event arises in relation to a taxable supply made by a Supplier under this Contract, the amount paid or payable by the Recipient pursuant to clause 4(7) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

## 5. Delivery

The Purchaser shall accept delivery of the Purchase Vehicle at the address of the Trader set out on the front of this Contract and all risk in the Purchase Vehicle shall pass to the Purchaser upon delivery.

## 6. Trade In Conditions

- (1) The Trader agrees to allow part of the total purchase price for the Purchase Vehicle to be discharged by the Purchaser delivering to the Trader the Trade In Vehicle including all extras and accessories now on or attached thereto, free of all encumbrances or as otherwise arranged, at the time and on the terms and conditions contained herein.
- (2) Where the purchase involves a Trade In Vehicle, then the Net Trade-In Allowance shall be deducted from the total purchase price.
- (3) 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 Contract, 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 Contract and the date of delivery of the Trade In Vehicle to the Trader.
- (4) The Purchaser's title in and to the Trade In Vehicle shall pass to the Trader on the earlier of:
  - (a) the date on which the Purchaser accepts delivery of the Purchase Vehicle; and
  - (b) the date on which 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 total purchase price.
- (5) The Trader shall 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.

(6) The Purchaser warrants that, save for the encumbrances set out on the front of this Contract, the Trade In Vehicle including all extras and accessories now on or attached thereto are the Purchaser's sole and absolute property and are free from all or any other encumbrances whatsoever (including without limitation any registration on the Personal Property Securities Register or Sheriffs Sanctions under the Infringements Act 2006) and the amount set out as payment on the front of this Contract includes all monies owing or payable to any person firm, corporation or other entity in respect of the Trade In Vehicle and all extras and accessories.

- (7) If the amount required to pay out the encumbrances in respect of the Trade In Vehicle exceeds the amount provided on the front of this Contract, then the Trader may at its option pay such amount as may be necessary to obtain unencumbered title to the Trade In Vehicle which the Purchaser hereby authorises and the Purchaser shall immediately pay such amount to the Trader forthwith.

## 7. Delays in delivery

- (1) The Trader shall make every reasonable effort to make the Purchase Vehicle available for delivery on or before the delivery date stated in this Contract. Where delivery is delayed more than 14 days the Purchaser may terminate this Contract by notifying the Trader in writing, unless the delay is caused or contributed to by the Purchaser.
- (2) The Purchaser shall take delivery of the Purchase Vehicle within 7 days of being notified by the Trader that the Purchase Vehicle is ready for delivery.
- (3) If the Purchaser fails to take delivery within this time, the Trader may terminate the Contract by notice in writing.

## 8. Solvency of manufacturer

Subject to clause 12 of this Contract, the Trader is not liable or responsible for any manufacturer warranty provided in respect of any Purchase Vehicle if the manufacturer, distributor or importer as the source of original supply goes into Liquidation, Administration, a Receiver is appointed, or ceases to trade.

## 9. Subject to finance

- (1) Where this Contract is subject to the Purchaser obtaining finance, the Contract is conditional upon the Purchaser obtaining finance approval:
  - (a) within the time stated in this Contract;
  - (b) of the amount stated in this Contract;
  - (c) from the credit provider named in this Contract (or from a similar type of credit provider);
  - (d) for the type of finance stated in this Contract; and
  - (e) upon reasonable terms and conditions in the circumstances.
- (2) The Purchaser agrees to take all reasonable steps towards obtaining finance approval and notify the Trader on or before the Approval Date of the outcome of the Purchaser's finance application.
- (3) If the Purchaser does not obtain finance approval by the Approval Date then:
  - (a) the Purchaser may terminate this Contract by giving notice to the Trader in writing; or
  - (b) if the Purchaser cannot satisfy the Trader to the Trader's reasonable satisfaction that the Purchaser can finance the purchase by alternative means, the Trader may terminate this Contract by giving notice in writing to the Purchaser.

## 10. Transfer to credit provider

Where requested by the Purchaser, the Trader shall transfer title to the Purchase Vehicle to the Purchaser's credit provider upon payment of the total purchase price to the Trader.

## 11. Termination

- (1) Where this Contract is lawfully terminated by the Trader due to a breach of this Contract by the Purchaser, then:
  - (a) the Purchaser shall forfeit the Forfeitable Amount to the Trader provided that amount does not exceed 5 per cent of the total purchase price;
  - (b) where an amount has been paid towards the purchase price and that amount exceeds the Forfeitable Amount then the Trader shall:
    - (i) refund to the Purchaser so much of the amount paid that exceeds the Forfeitable Amount; and
    - (ii) return any Trade In Vehicle to the Purchaser; and
  - (c) where an amount has been paid towards the purchase price 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 (at the Trader's election) be forfeited to the Trader and the Purchaser credited with the difference between the Net Trade-In Allowance and the Forfeitable Amount.

(2) Where this Contract is lawfully terminated by the Purchaser due to a breach of this Contract by the Trader, then the Trader shall:

- (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and
- (b) return any Trade In Vehicle to the Purchaser.

- (3) Where this Contract is lawfully terminated by either the Purchaser or the Trader due to clauses 7 or 9 or for any reason other than a breach of this Contract, then the Trader shall:
- (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and
- (b) return any Trade In Vehicle to the Purchaser.

- (4) Where this Contract 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 Contract 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.

- (5) Where the Trader returns any Trade In Vehicle to the Purchaser and the Trader has carried out repairs on the Trade In Vehicle with the consent of the Purchaser, then the Trader shall be entitled to an amount equal to the reasonable cost of those repairs.
- (6) Where either the Purchaser or Trader wishes to terminate this Contract in accordance with this clause, they must give prior written notice to the other party of the decision to terminate.

- (7) Nothing in this clause affects the rights and duties conferred by section 43 of the Motor Car Traders Act 1986 or regulation 10 of the Motor Car Traders Regulations 2008.

## 12. Non exclusion of Consumer Guarantees and other rights

The Australian Consumer Law provides Consumers with a number of protections and Consumer Guarantees that cannot be excluded or limited. This Contract is therefore subject to, and will not apply to the extent that it limits or excludes such protections and Consumer Guarantees applicable to Consumers, or any other right or benefit conferred by any other Commonwealth, State or Territory Laws.

Note: The parties to this contract 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.

## 13. VACC not a contracting party

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

# CONTRACT FOR SALE OF USED MOTOR VEHICLE

750405

Salesperson's Name (Please Print)

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

LMCT Number

## PURCHASER'S DETAILS

Driver Licence Number      ACN (If purchased by company)

or

Surname or Name of Incorporated Body

First Name      Second Name      Date of Birth

Residential Address – please include postcode      Tel.: Private

Tel.: Business

Postal Address – if different from residential      Mobile:

Email

Nominated Registered Owner – if different from Purchaser

Residential Address – please include postcode

The Purchaser HEREBY AGREES to buy from the Trader  
and the Trader hereby agrees to sell to the Purchaser the  
undermentioned used motor vehicle including any extras  
and/or accessories as stated in this contract thereto, for  
the price payable in the manner and on the terms and  
conditions contained on the reverse.

## PRIVACY STATEMENT

**The Contract of Sale and Collection of personal information**  
This Contract of Sale and other transfer documentation that  
you sign when you purchase a vehicle contain personal  
information about you. Personal information is information  
about you from which your identity can be ascertained.

The Trader collects your 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. Where you do  
not wish to provide us with your personal information,  
we may not be able to sell the vehicle to you. Associated  
services will include the provision of warranty, insurance  
and registration.

### Disclosure of Personal Information

The Trader needs to 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.

## DESCRIPTION OF MOTOR VEHICLE

Make and Model      Body Type      Build Date(if app.)

Stock No.      Colour

Year of 1st Reg.      Registration Number      Reg. Expiry Date

Chassis/Vin/Frame Number

Engine Number      Reg. Serial Number

(Serial no. from windscreen label)

Does the vehicle appear on a written off vehicle register? Yes  No

Distance recorded on odometer at the time of signing  
the contract

\*Refer to clause 4 of terms and conditions

**PRICE OF THE MOTOR VEHICLE**      \$

Other charges as specified or shown on invoice

\$

\$

\$

\$

\$

\$

**Sub Total (includes GST)**      \$

PPSR Search Fee      \$

Stamp Duty      \$

Transfer Fee      \$

Registration Fee      \$

Fees to be remitted to VicRoads by the Trader:

MUST mark box  
with an 'X' if  
trade-in motor  
vehicle applicable

TOTAL PURCHASE PRICE \$

Delivery Date

With a current Roadworthiness Certificate (RWC)

With the Registration cancelled

Purchaser's Signature:

## TRADE-IN MOTOR VEHICLE PARTICULARS Refer to clause 8

Make and Model      Body Type      Build Date(if app.)

Year of 1st Reg.      Registration Number      Reg. Expiry Date

Chassis/Vin/Frame Number

Engine Number      Reg. Serial Number

(Serial no. from windscreen label)

Distance recorded on odometer  
at the time of signing the contract

Allowance for trade-in  
(including GST) \$

Does the trade-in vehicle appear  
on a written off vehicle register? Yes  No

Details of Registered Owner of motor vehicle being Traded

Signature of Person authorised to trade-in motor vehicle      Date of Trade-in

## 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 the amount allowed on the trade-in vehicle has  
been reduced by an amount to be paid by the trader to  
discharge the interest of any other person in the vehicle,  
the trader will pay this amount to the other person within  
28 days of delivery of the trade-in vehicle to the trader

COMPLETE THIS SECTION IF THIS CONTRACT 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  
Hire  
Lease Purchase Other

## ADDITIONAL CONDITIONS

The purchaser acknowledges that unless stated in this contract,  
no other additional conditions apply to this contract

Purchaser's Signature

The Purchaser acknowledges that he/she has read and  
understood the terms and conditions above and on the  
reverse side of the contract and agrees to be bound by them  
and also acknowledges having received a copy of the  
"Cooling off rights and waiving your cooling off rights"  
(Form 4).

## THIS IS A LEGALLY BINDING CONTRACT

Signature of Purchaser

Signature of Salesperson

Dated the

day of

20

## TERMS OF SETTLEMENT Subject to clause 3

Total Purchase Price \$

LESS — Deposit \$

Receipt No. \$

LESS — Net Trade-in Allowance \$

BALANCE of Total Purchase Price payable in cash, bank  
cheque or cleared Funds on delivery of motor vehicle

Refer to clause 7 \$

Receipt No. \$

If trade-in not to be part of terms of  
settlement refund cheque No. \$

# TERMS AND CONDITIONS FOR SALE OF USED MOTOR VEHICLE

## 1. Definitions

Unless the context otherwise requires:

"Approval Date" means the Approval Date (if any) listed on the front of this Contract.

"Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

"Consumer" has the meaning given to it in the Australian Consumer Law.

"Consumer Guarantees" means any statutory guarantee provided to Consumers under Division 1 of Part 3-2 of the Australian Consumer Law.

"Contract" means this Contract which is comprised of the front page hereof and these terms and conditions.

"Forfeitable Amount" means the amount described as the forfeitable amount in the front of this Contract.

"GST" means any goods and services tax and any replacement or similar law.

"GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Net Trade-In Allowance" means the amount allowed on the Trade In Vehicle on the front of this Contract less any amount to be paid by the Trader to discharge the interest of any other person in the Trade In Vehicle.

"Nominated Registered Owner" means the person described as the Nominated Registered Owner on the front of this Contract.

"Personal Property Securities Register" has the meaning given to that term in the Personal Property Securities Act 2009 (Cth).

"Purchaser" means the Purchaser described in the front of this Contract and shall include the heirs, executors and assignees of the Purchaser.

"Purchase Vehicle" means the Motor Vehicle described in the front of this Contract under the panel headed "Description of Motor Vehicle".

"The Trader" means the Trader described in the front of this Contract.

"Trade In Vehicle" means the Motor Vehicle (if any) described in the front of this Contract under the panel headed "Trade in Motor Vehicle Particulars".

## 2. Nominated Registered Owner

Where in this Contract a Nominated Registered Owner is designated, the Purchaser hereby authorizes 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.

## 3. Payment

(1) Where a receipt no. is not provided in the panel headed "Terms of Settlement" on the front of this Contract, this Contract shall be deemed to constitute a duly given receipt for the amount stated.

(2) If the Purchaser fails to make any payment as provided for in this Contract on the due date for such payment, then the Purchaser shall pay to the Trader interest on such amount until payment of such amount at a rate equal to the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 provided the total amount of such interest shall not exceed an amount equal to 5% of the purchase price of the Purchase Vehicle.

(3) Upon the Trader giving notice to the Purchaser that the Purchase Vehicle is available for delivery, the Purchaser shall:

- (a) immediately deliver the Trade In Vehicle (if any) to the Trader; and
- (b) pay the full outstanding balance of the purchase price of the Purchase Vehicle on or before taking delivery of the Purchase Vehicle.

(4) Title in the Purchase Vehicle will not pass to the Purchaser unless all amounts owing in respect of the Purchase Vehicle are paid to the Trader in full.

(5) Despite clauses 3(6) to 3(9), all references to the purchase price of the Purchase Vehicle and any other amounts and allowances in respect of the Purchase Vehicle set out in this Contract (including the front page of this Contract) are inclusive of GST. A separate tax invoice will be issued in accordance with the GST Law.

(6) Unless otherwise stated, any amount specified in this Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

(7) If a party makes a taxable supply under this Contract (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

(8) Notwithstanding the foregoing, the Recipient is not obliged under this Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

(9) If an adjustment event arises in relation to a taxable supply made by a Supplier under this Contract, the amount paid or payable by the Recipient pursuant to clause 3(7) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

## 4. Odometer Reading

The Purchaser acknowledges and understands that the Trader is unable to verify the accuracy of the odometer reading as being the distance travelled by the Purchase Vehicle. Subject to clause 12 of this Contract, the Trader provides no warranty or representation as to the accuracy of the odometer reading in respect of the Purchase Vehicle, and the Purchaser acknowledges and agrees that the Purchaser places no reliance on the odometer reading.

## 5. Delivery

The Purchaser shall accept delivery of the Purchase Vehicle at the address of the Trader set out on the front of this Contract and all risk in the Purchase Vehicle shall pass to the Purchaser upon delivery.

## 6. Trade In Conditions

(1) The Trader agrees to allow part of the total purchase price for the Purchase Vehicle to be discharged by the Purchaser delivering to the Trader the Trade In Vehicle including all extras and accessories now on or attached thereto, free of all encumbrances or as otherwise arranged, at the time and on the terms and conditions contained herein.

(2) Where the purchase involves a Trade In Vehicle, then the Net Trade-In Allowance shall be deducted from the total purchase price.

(3) 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 Contract, 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 Contract and the date of delivery of the Trade In Vehicle to the Trader.

(4) The Purchaser's title in and to the Trade In Vehicle shall pass to the Trader on the earlier of:

- (a) the date on which the Purchaser accepts delivery of the Purchase Vehicle; and
- (b) the date on which 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 total purchase price.

(5) The Trader shall 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.

(6) The Purchaser warrants that, save for the encumbrances set out on the front of this Contract, the Trade In Vehicle including all extras and accessories now on or attached thereto are the Purchaser's sole and absolute property and are free from all or any other encumbrances whatsoever (including without limitation any registration on the Personal Property Securities Register or Sheriffs Sanctions under the Infringements Act 2006) and the amount set out as payment on the front of this Contract includes all monies owing or payable to any person, firm, corporation or other entity in respect of the Trade In Vehicle and all extras and accessories.

(7) If the amount required to pay out the encumbrances in respect of the Trade In Vehicle exceeds the amount provided on the front of this Contract, then the Trader may at its option pay such amount as may be necessary to obtain unencumbered title to the Trade in Vehicle which the Purchaser hereby authorises and the Purchaser shall immediately pay such amount to the Trader forthwith.

## 7. Delays in delivery

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

(2) The Purchaser shall take delivery of the Purchase Vehicle within 7 days of being notified by the Trader that the Purchase Vehicle is ready for delivery.

(3) If the Purchaser fails to take delivery within this time, the Trader may terminate the Contract by notice in writing.

(4) The Purchaser acknowledges that the Purchase Vehicle is used and is sold on an "as is where is" basis. The Purchaser will be provided with an opportunity to inspect the Purchase Vehicle on delivery for any defects or other damage to the Purchase Vehicle.

## 8. Solvency of manufacturer

Subject to clause 12 of this Contract, the Trader is not liable or responsible for any manufacturer warranty provided in respect of any Purchase Vehicle if the manufacturer, distributor or importer as the source of original supply goes into Liquidation, Administration, a Receiver is appointed, or ceases to trade.

## 9. Subject to finance

(1) Where this Contract is subject to the Purchaser obtaining finance, the Contract is conditional upon the Purchaser obtaining finance approval:

- (a) within the time stated in this Contract;
- (b) of the amount stated in this Contract;
- (c) from the credit provider named in this Contract (or from a similar type of credit provider);
- (d) for the type of finance stated in this Contract; and
- (e) upon reasonable terms and conditions in the circumstances.

(2) The Purchaser agrees to take all reasonable steps towards obtaining finance approval and notify the Trader on or before the Approval Date of the outcome of the Purchaser's finance application.

(3) If the Purchaser does not obtain finance approval by the Approval Date then:

- (a) the Purchaser may terminate this Contract by giving notice to the Trader in writing; or
- (b) if the Purchaser cannot satisfy the Trader to the Trader's reasonable satisfaction that the Purchaser can finance the purchase by alternative means, the Trader may terminate this Contract by giving notice in writing to the Purchaser.

## 10. Transfer to credit provider

Where requested by the Purchaser, the Trader shall transfer title to the Purchase Vehicle to the Purchaser's credit provider upon payment of the total purchase price to the Trader.

## 11. Termination

(1) Where this Contract is lawfully terminated by the Trader due to a breach of this Contract by the Purchaser, then:

- (a) the Purchaser shall forfeit the Forfeitable Amount to the Trader provided that amount does not exceed 5 per cent of the total purchase price;

- (b) where an amount has been paid towards the purchase price and that amount exceeds the Forfeitable Amount then the Trader shall:

- (i) refund to the Purchaser so much of the amount paid that exceeds the Forfeitable Amount; and

- (ii) return any Trade In Vehicle to the Purchaser; and

- (c) where an amount has been paid towards the purchase price 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 (at the Trader's election) be forfeited to the Trader and the Purchaser credited with the difference between the Net Trade-In Allowance and the Forfeitable Amount.

(2) Where this Contract is lawfully terminated by the Purchaser due to a breach of this contract by the Trader, then the Trader shall:

- (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and
  - (b) return any Trade In Vehicle to the Purchaser.

(3) Where this Contract is lawfully terminated by either the Purchaser or the Trader due to clauses 7 or 9 or for any reason other than a breach of this Contract, then the Trader shall:

- (a) refund to the Purchaser all money paid by or on behalf of the Purchaser; and

- (b) return any Trade In Vehicle to the Purchaser.

(4) Where this Contract 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 Contract 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.

(5) Where the Trader returns any Trade In Vehicle to the Purchaser and the Trader has carried out repairs on the Trade In Vehicle with the consent of the Purchaser, then the Trader shall be entitled to an amount equal to the reasonable cost of those repairs.

(6) Where either the Purchaser or Trader wishes to terminate this Contract in accordance with this clause, they must give prior written notice to the other party of the decision to terminate.

(7) Nothing in this clause affects the rights and duties conferred by section 43 of the Motor Car Traders Act 1986 or regulation 10 of the Motor Car Traders Regulations 2008.

## 12. Non exclusion of Consumer Guarantees and other rights

The Australian Consumer Law provides Consumers with a number of protections and Consumer Guarantees that cannot be excluded or limited. This Contract is therefore subject to, and will not apply to the extent that it limits or excludes such protections and Consumer Guarantees applicable to Consumers, or any other right or benefit conferred by any other Commonwealth, State or Territory Laws.

Note: The parties to this contract 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.

## 13. VACC not a contracting party

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

# DEALINGS BOOK

ACQUISITION DETAILS							
Registration Number or, if unregistered, Trader's Stock Number							
Make/Model							
Type of vehicle							
Year first registered							
Built date if it appears on the vehicle							
Compliance date							
Vehicle identification / engine no. on Registration Label or chassis number							
Date of acquisition							
Odometer reading							
*Name and address of person from whom vehicle acquired							
*Name and address of auction business from which vehicle acquired or received							
Security interest (if any) held by							
Security interest (if any) amount paid out in discharge							
Date security interest paid (if any)							
*Signature of person from whom vehicle was received							
*Signature of person authorised to sign on *(delete whichever is inapplicable)							

## DISPOSAL DETAILS

Sold to (name and address)							
Date of delivery							
Odometer Reading							
Roadworthiness certificate - Certificate number							
- Certificate date							
Date notice of acquisition sent to Roads Corporation							
Date notice of disposal sent to Roads Corporation							
Date registration cancelled and plates returned (if applicable)							

Form 3, Regulation 9

**NOTICE TO MOTOR CAR TRADER BY PROSPECTIVE PERSON EMPLOYED  
IN A CUSTOMER SERVICE CAPACITY**

*Motor Car Traders Act 1986*

**Declaration of eligibility to be employed in a customer service capacity**

I (insert name of person to be employed)

of (insert residential address of person to be employed)

Postcode

declare that I

(\*delete whichever is inapplicable)

- (a) \*have/\*have not had a claim admitted against the Motor Car Traders' Guarantee Fund (note: see paragraph (c) below); and
- (b) \*am/\*am not or \*was/\*was not a partner or director of, or person concerned in the management of, a partnership or body corporate that has had a claim admitted against the Motor Car Traders' Guarantee Fund in relation to an act or omission that occurred at a time I was a partner or director of, or a person involved in the management of, the partnership or body corporate (note: see paragraph (c) below); and
- (c) \*have/\*have not obtained permission under section 29A of the *Motor Car Traders Act 1986* in relation to a claim or claims referred to in paragraphs (a) and (b) above; and

(Please specify further details of permission obtained)

- 
- (d) \*have/\*have not, within the last 10 years, been found guilty or convicted of a disqualifying or serious offence involving fraud, dishonesty, drug trafficking or violence (whether or not a conviction was recorded) (note: see paragraph (e) below); and
  - (e) \*have/\*have not obtained permission under section 29B of the *Motor Car Traders Act 1986* in relation to an offence involving fraud, dishonesty, drug trafficking or violence referred to in paragraph (d) above; and

(Please specify further details of permission obtained)

- 
- (f) \*am/\*am not for the time being disqualified from holding a motor car trader's licence; and
  - (g) \*am/\*am not for the time being disqualified from being employed in any capacity in connection with the business of a motor car trader (regardless of whether or not motor car traders are referred to by that name in the relevant jurisdiction).

Signature of proposed employee making the declaration

X

Print full name

Date

/ /

**Note:** Under section 84A of the *Motor Car Traders Act 1986* it is an offence punishable by a fine of 50 penalty units to make a false or misleading statement or omission in this declaration. Under section 35A of the *Motor Car Traders Act 1986*, a motor car trader must receive a completed declaration from a person before that person is employed in a customer service capacity by the trader. Also, under section 35A, a person is disqualified from being employed in a customer service capacity by a motor car trader unless the person gives the trader a police check of one of the two kinds specified in section 35A. The police check and the Form 3 must be retained for at least 7 years, as they are prescribed documents under regulation 26.



## Business Licensing Authority

# MOTOR CAR TRADING IN VICTORIA

## Information for traders and people applying to work in customer service

*Motor Car Traders Act 1986*

The law prevents a licensed motor car trader from employing certain people in a 'customer service capacity', unless the Business Licensing Authority (BLA) gives permission.

You are not allowed to work in customer service if you:

- have had a claim admitted against you by the Motor Car Traders Guarantee Fund
- within the last 10 years, have been found guilty or convicted of an offence involving fraud, dishonesty, drug trafficking or violence, for which a court could sentence you to up to three months imprisonment or more (even if you were not actually sentenced to imprisonment)
- are disqualified from holding a motor car trader's licence, or from being employed by a motor car trading business.

This applies to any job that requires the employee to deal with members of the public who are buying, selling or exchanging motor cars or seeking to buy, sell or exchange motor cars.

Traders and employees who breach these restrictions may face fines up to 100 penalty units (more than \$11,000). An ineligible person can apply to the BLA for permission to work in a customer service capacity. Permission must be obtained before commencing employment. An employer can ask the BLA if a prospective employee has permission.

### Applicants

You must give your prospective employer a completed Form 3, *Notice to Motor Car Trader by Prospective Employee* (see overleaf), before you start work. You can find information to help you complete this form below.

You must also:

- give your motor car trader employer a copy of a police records check that is not more than six months old, or
- get a police records check (see below) and give it to your employer within six weeks of the date that you start work.

If you do not provide these documents, you cannot work in a customer service capacity in motor car trading.

### How to complete Form 3

This form asks you to make a declaration. By signing, you certify that the information is true and correct. The motor car trader is entitled to verify the information you provide. You may be fined up to 50 penalty units (more than \$5,000) for a false or misleading declaration.

- Write your full name and residential address in the spaces provided at the top of the form.
- Strike out the inapplicable alternative in each of the seven statements (a-g). Note that:
  - in Statement (d), a 'serious offence' means any offence involving fraud, dishonesty, violence or drug trafficking, punishable by imprisonment for three months or more (whether or not any penalty of imprisonment was imposed). It includes an offence in Australia or elsewhere
  - in Statement (f), 'disqualified from holding a licence' means:
    - the Victorian Civil and Administrative Tribunal (or the former Motor Car Traders Disciplinary and Licensing Appeals Tribunal) declared you ineligible, either temporarily or permanently, to hold a motor car trader's licence or to be employed by a licensed motor car trader in any capacity, or
    - a regulatory body outside of Victoria disqualified you from being employed in any capacity in connection with the business of a motor car trader (or an equivalent occupation under the jurisdiction of the regulatory body).
- Sign and date the declaration in the space provided.

### How to get a police records check

You can get a 'national names' check from Victoria Police by completing their application form and paying an application fee.

The application form is available at [www.police.vic.gov.au](http://www.police.vic.gov.au) or by calling 1300 881 596. Application fees for national names checks change on 1 July every year. From 1 July 2008, the fee is \$30.70. Applications by mail must include a cheque or money order for this amount. You should allow at least 10 working days for your application to be processed.

### Motor car traders (employer)

When recruiting to a customer service position:

- carefully examine the completed Form 3 before employing or transferring the person
- review the police records check prior to employment or within six weeks of when they start work.

If you employ the applicant, keep a copy of the completed Form 3 for seven years from the date they signed the declaration. Do not send a copy to the Business Licensing Authority (BLA).

You face a fine of 50 penalty units (more than \$5000) for employing a person in a customer service capacity without a completed Form 3.

Existing employees do not have to provide a Form 3 or a police check until they change roles or employers. For example, an existing employee changing from an administrative job to a sales role after 1 December 2008 must complete Form 3 and get a police check.

For more information, contact the BLA on 1300 135 452 or visit [www.bla.vic.gov.au](http://www.bla.vic.gov.au)

## COOLING-OFF RIGHTS AND WAIVING YOUR COOLING-OFF RIGHTS

# SUMMARY YOUR RIGHT TO COOL OFF

There is a cooling-off period for all car sales (including motorcycle sales), except for commercial vehicles, vehicles sold to a motor car trader and any vehicle sold to a body corporate.

The cooling-off period will terminate three clear days after the purchaser signs the agreement for the sale of a motor car or immediately if the purchaser during the cooling-off period and immediately before delivery signs a waiver. Clear days do not include weekends or public holidays.

If you cool off and terminate the agreement for the sale of the car, there is a penalty. That is, the motor car trader will keep some of your money. The amount that the trader will keep depends on the type of sale. (Trader to tick relevant box based on type of sale)

- The penalty for terminating a **new car** sale is \$400 or 2 per cent of the purchase price (whichever is greater) where this is not an off-trade premises sale.
- The penalty for terminating an "**off-trade-premises**" sale of a new car is \$100 or 1 per cent of the purchase price (whichever is greater). An "off-trade-premises" sale is one in which you agree to purchase the car while you are at home or at your workplace and you did not ask for the agreement to be signed at your home or workplace.
- The penalty for terminating a **used car** sale is \$100 or 1 per cent of the purchase price (whichever is greater).

## DETAILS OF CAR

Make and model of motor car:.....

Registration No:.....

If unregistered—engine number or chassis number or vehicle identification number or registration number (if any) last assigned to the vehicle or, if none of those numbers are reasonably ascertainable, any other number by which the vehicle may be identified.  

Selling trader:.....

## PENALTY IF YOU ELECT TO COOL OFF ON THIS CAR PURCHASE

The penalty that would apply if you cool off on this car sale would be \$..... (Trader to enter relevant amount based on purchase price and type of sale)

NOTE: A copy of this form is to be given to the customer whether the customer signs it or not, and the trader will retain a copy of the form if the customer signs the waiver.

## WAIVING YOUR COOLING-OFF RIGHTS

1. I have agreed to buy this vehicle.
2. I know that the **Motor Car Traders Act 1986** gives me the right to decide within 3 days not to go ahead with the purchase and to cancel the sale agreement. This reference to 3 days means 3 clear days not including Saturdays, Sundays or days that are wholly or partly observed as Victorian public holidays.
3. I know that if I sign this form immediately before accepting delivery of the vehicle, I WILL LOSE MY RIGHT TO CANCEL THE SALE AGREEMENT.

Purchaser's Signature: .....

Date:.....

# WITH STATUTORY WARRANTY

## UNDER SECTION 54 OF THE MOTOR CAR TRADERS ACT 1986

Particulars of a Used Motor Car offered for Sale, required in accordance with section  
52(1) of the Motor Car Traders Act 1986

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

.....  
.....  
.....

B. If the owner of the motor car is a motor car trader or special trader –

- (i) if the last owner of the motor car was neither a motor car trader nor a special trader, the words "name and address is available upon request";  
and  
(ii) if the last owner of the motor car was a motor car trader or a special trader, the name and business address of the motor car trader or special trader:

.....  
.....  
.....

C. If the motor car is equipped with an odometer, the distance travelled by the motor car entered by the motor car trader in the dealings book when the trader acquired the motor car or received custody or possession of the motor car for the purpose of the sale (as the case may be):

.....  
.....  
.....

D. Except in the case of a motor car offered or displayed for sale at a public auction, the cash price of the motor car, a statement that the cash price does not include transfer fee or stamp duty and a statement of whether the car is sold with registration or without registration:

\$  
INCLUDING GST

The price shown includes:

Transfer Fee  Yes  No      Stamp Duty  Yes  No      Registration  Yes  No

E. Built date if it appears on the motor car:

.....  
.....  
.....

Compliance date:

.....  
.....  
.....

Year first registered:

.....  
.....  
.....

F. The model designation (if any) of the motor car:

.....  
.....  
.....

G. Registration number (if any) of the motor car:

.....  
.....  
.....

H. Engine number or the serial number on the

Registration Label of the motor car:

.....

I. Does the vehicle appear on a written-off vehicle register?  Yes  No

Signature of motor car trader:..... LMCT No:

Signature of Purchaser:.....

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 Regulation 28 of the Motor Car Traders Regulations 2008).

White – Trader to keep    Pink – Purchaser to keep

### 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.

### IMPORTANT INFORMATION

Buying a used car from a licensed trader

1. This car is NOT MORE THAN 10 years old AND has been driven LESS THAN 160 000 km, so it is automatically covered by statutory warranty under section 54 of the Motor Car Traders Act 1986 for the first 3 months or 5000 km after delivery, whichever occurs first.

2. For most used cars, there is a 3 day cooling off period commencing the day after signing the sale agreement. This reference to 3 days means 3 clear days not including Saturdays, Sundays or days that are wholly or partly observed as Victorian public holidays. If a purchaser decides to cancel the sale agreement, the purchaser must notify the licensed trader in writing, before the close of business on the third day. The licensed trader can withhold 1% of the purchase price or \$100, whichever is greater. The cooling off period applies to all used cars except commercial vehicles, used cars bought at public auction and vehicles sold to a body corporate.

*Motor Car Traders Act 1986*

# NOT COVERED BY STATUTORY WARRANTY

## UNDER SECTION 54 OF THE MOTOR CAR TRADERS ACT 1986

**Particulars of a Used Motor Car offered for Sale, required in accordance with  
Section 52(1) of the Motor Car Traders Act 1986**

A. Name and business address of the owner of the motor car:

.....  
.....  
.....

B. If the owner of the motor car is a motor car trader or special trader:

(I) if the last owner of the motor car was neither a motor car trader nor a special trader, the words "name and address is available upon request;  
and

(ii) if the last owner of the motor car was a motor car trader or a special trader, the name and business address of the motor car trader or special trader:

.....  
.....  
.....

C. If the motor car is equipped with an odometer, the distance travelled by the motor car entered by the motor car trader in the dealings book when the trader acquired the motor car or received custody or possession of the motor car for the purpose of the sale (as the case may be):

.....  
.....  
.....

D. Except in the case of a motor car offered or displayed for sale at a public auction, the cash price of the motor car, a statement that the cash price does not include transfer fee or stamp duty and a statement of whether the car is sold with registration or without registration:

\$

INCLUDING GST

The price shown includes:

Transfer fee  Yes  No      Stamp Duty  Yes  No      Registration  Yes  No

E. Built date if it appears on the motor car:

Compliance date: .....

.....  
.....  
.....

Year first registered: .....

.....  
.....  
.....

F. The model designation (if any) of the motor car: .....

.....  
.....

G. Registration number (if any) of the motor car: .....

.....  
.....

H. Engine number or the serial number on the  
Registration label of the motor car: .....

.....  
.....

I. Does the vehicle appear on a written-off vehicle register?  Yes  No

Signature of Motor Car Trader: .....

LMCT No: .....

Signature of Purchaser: .....

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 Regulation 28 of the Motor Car Traders Regulations 2008).

### IMPORTANT INFORMATION

Buying a used car from a licensed trader

1. This car is **NOT** covered by a Statutory Warranty under section 54 of the **Motor Car Traders Act 1986**. The trader has no duty under the **Motor Car Traders Act 1986** to repair or make good any defects after delivery. The trader may have obligations under other legislation.

2. **Vehicles NOT covered by the Statutory Warranty** under section 54 of the **Motor Car Traders Act 1986**:

- used cars which are **MORE THAN 10 years old OR which have been driven 160,000 km OR MORE**;
- motorcycles;
- commercial vehicles;
- cars bought at public auction.

3. Licensed traders may offer a warranty on vehicles which are not covered by the Statutory Warranty under section 54 of the **Motor Car Traders Act 1986**.

4. For most used cars, there is a **3 day cooling off period** commencing the day after signing the sale agreement. This reference to 3 days means 3 clear days not including Saturdays, Sundays or days that are wholly or partly observed as Victorian public holidays. If a purchaser decides to cancel the sale agreement, the purchaser must notify the licensed trader in writing, before the close of business on the third day. The licensed trader can withhold 1% of the purchase price or \$100, whichever is greater. The cooling off period applies to all used cars except commercial vehicles, used cars bought at public auction, and vehicles sold to a body corporate.

**NOT COVERED  
BY STATUTORY WARRANTY  
UNDER SECTION 54 OF THE MOTOR CAR TRADERS ACT 1986**

**Particulars of a Used Motor Cycle offered for Sale, required in accordance with  
section 52(1) of the Motor Car Traders Act 1986**

A. Name and business address of the current owner of the motor cycle:

.....  
.....  
.....

B. If the owner of the motor cycle is a motor car trader or special trader –

(i) if the last owner of the motor cycle was neither a motor car trader nor a special trader, the words "name and address is available upon request";  
and

(ii) if the last owner of the motor cycle was a motor car trader or a special trader, the name and business address of the motor car trader or special trader:

.....  
.....  
.....

C. If the motor cycle is equipped with an odometer, the distance travelled by the motor cycle entered by the motor car trader in the dealings book when the trader acquired the motor cycle or received custody or possession of the motor cycle for the purpose of the sale (as the case may be):

D. Except in the case of a motor cycle offered or displayed for sale at a public auction, the cash price of the motor cycle, a statement that the cash price does not include transfer fee or stamp duty and a statement of whether the motor cycle is sold with registration or without registration:

The price shown includes:

Transfer Fee  Yes  No Stamp Duty  Yes  No Registration  Yes  No

**INCLUDING GST**

E. Built date if it appears on the motor cycle:

Compliance date:

Year first registered:

F. The model designation (if any) of the motor cycle:

G. Registration number (if any) of the motor cycle:

H. Vehicle frame number:

I. Engine number or the serial number on the Registration Label of the motor cycle:

J. Does the vehicle appear on a written-off vehicle register?  Yes  No

Signature of motor car trader: ..... LMCT No: .....

Signature of Purchaser: .....

AFFIX TO HANDLE BARS

(NOTE: On the sale of the motor cycle 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 Regulation 28 of the Motor Car Traders Regulations 2008).

White – Trader to keep Pink – Purchaser to keep

Rev Oct 10

# NOT COVERED

## BY STATUTORY WARRANTY

UNDER SECTION 54 OF THE MOTOR CAR TRADERS ACT 1986

**Particulars of a Used Motor Cycles Offered for Sale, Individually or in Accordance With  
Section 55(1) of the Motor Car Traders Act 1986**

A. Name and address of the current owner of the motor cycle:

B. If the owner of the motor cycle is a motor car trader or special trader:

(i) if the last owner of the motor cycle was a special trader, the name and address of the previous owner of the motor cycle or the business address of the special trader:

## IMPORTANT INFORMATION

Buying a used motor cycle from a licensed trader

(ii) if the last owner of the motor cycle was a motor car trader, the name and address of the previous owner of the motor cycle or the business address of the motor car trader:

- This motorcycle is **NOT** covered by a Statutory Warranty under section 54 of the **Motor Car Traders Act 1986**. The trader has no duty under the **Motor Car Traders Act 1986** to repair or make good any defects after delivery. The trader may have obligations under other legislation.

C. Vehicles **NOT** covered by the Statutory Warranty under section 54 of the **Motor Car Traders Act 1986**:

- used cars which are **MORE THAN 10 years old OR** which have been driven **160 000 km OR MORE**;
- motorcycles;
- commercial vehicles;
- cars bought at public auction.

D. Except in the case of a motor cycle offered or displayed for sale or a public auction, the cash price of the motor cycle, a statement that the cash price does not include the issue fee for the registration of the motor cycle is sold **AS IS**.

E. For most motor cycles there is a **3 day cooling off period** commencing the day after signing the sale agreement. This reference to 3 days means 3 clear days not including Saturdays, Sundays or days that are wholly or partly observed as Victorian public holidays. If a purchaser decides to cancel the sale agreement, the purchaser must notify the licensed trader in writing before the close of business on the third day. The licensed trader can withhold 1% of the purchase price or \$100, whichever is greater. The cooling off period does not apply to motor cycles bought at public auctions.

F. The price shown on the bill of sale or the cash price of the motor cycle includes the issue fee for the registration of the motor cycle.

G. The model description (if any) of the motor cycle:

H. Vehicle frame number:

I. Engine number of the serial number on the registration paper of the motor cycle:

J. Does the vehicle appear on a written-off vehicle register?  Yes  No

K. Signature of motor car trader:

NOTE: On the side of the bill of sale motor cycles must also be given a copy of this form under sections 55(6) and 88C(1) of the **Motor Car Traders Act 1986** and Regulation 28 of the **Motor Car Traders Regulations 2008**.

AFFIX TO HANDLE SARS

## *Motor Car Traders Act 1986*

**STATEMENT OF DEFECTS PURSUANT TO SECTION 55 OF  
THE MOTOR CAR TRADERS ACT 1986 IN A USED  
MOTOR CAR OFFERED FOR SALE.**

**Make and model of motor car:** \_\_\_\_\_

Registration number (if applicable): .....

Engine number or  
Serial number on Certificate of Registration:

Trading name and LMCT No.: .....

DESCRIPTION OF DEFECT	*ESTIMATE OF FAIR COST OF REPAIRING OR MAKING GOOD

\* any items listed on this notice are NOT subject to Statutory Warranty under section 54 of the **Motor Car Traders Act 1986**

**Signature of Purchaser**

### Signature of Motor Car Trader

## Notes

This notice will only have effect if

LMCT No:.....

- (a) at all material times it has been attached to the motor car; and
  - (b) at or before the time of sale a copy of the notice has been signed by the purchaser; and
  - (c) upon the sale a true copy of the notice as so signed has been delivered to the purchaser for retention by that purchaser; and
  - (d) the estimate by the motor car trader of the fair cost of repairing or making good the defect is reasonable).

