

### **Farm and Industrial Machinery Dealers access to new VACC 'Farm/Industrial Machinery – Sales Contract'**

Members of the VACC Farm and Industrial Machinery Dealers Association (FIMDA) are advised that a revised version of the VACC supplied 'Farm /Industrial Machinery – Sales Contract' is now available for purchase from VACC [autoistore.com.au](http://autoistore.com.au)

#### **Why is there a new version of the VACC 'Farm /Industrial Machinery – Sales Contract'?**

The FIMDA Executive Committee Chair, Paul Bertoli issued an edict to VACC to have the 'Farm /Industrial Machinery – Sales Contract' tested by VACC legal representatives to ensure it provides adequate protections for FIMDA members and is also a fair standard for contract for customers of FIMDA members. The last review of the VACC 'Farm /Industrial Machinery – Sales Contract' was completed in 2014.

In that time changes to Australian Contract Law have ensued with the way in which Australian Courts interpret standard form contract terms and, more so, how Australian Courts and consumers will interpret what may be considered an unfair contract term.

In some instances, an unfair term will be declared as illegal and therefore unenforceable by the courts. In other instances, a court may determine that an unfair contract term is so unfair it may render the remainder of the contract as void.

A key part of the review has been to identify and revise the terms of those terms to ensure a bilateral contract fairness.

#### **Who has conducted the review of the VACC Farm /Industrial Machinery – Sales Contract'?**

The owners of the VACC 'Farm /Industrial Machinery – Sales Contract', the VACC Marketing Department, appointed prominent automotive industry sector specialist legal firm HWL Ebsworth Lawyers to complete a contract review.

FIMDA thanks HWLE partners Evan Stents and Teresa Torcasio for their work on the new, revised contract.

## **What has changed from the 2014 version to the revised 2022 version?**

The review has sought to provide as much consumer and FIMDA dealer protections under the auspices of the Australian Consumer Law (ACL) as practicable.

With the threshold the ACL threshold raised on July 1, 2021, for goods and services that are purchased for any purpose increases from \$40,000 to **\$100,000**, it is important that the contract provided protections for purchaser and dealer. To accommodate this, there are revised clauses that deal with information pertaining to consumer guarantees, express warranties, and warranty claims.

### **Other important revised clauses deal with:**

- Changes to the privacy statement to reflect how a purchaser's personal information will be stored and where that personal information would need to be disclosed by the FIMDA member.
- A reinforcement of the Personal Property Security Act provisions and how it relates to security interests.
- Heightened protections on Defective Goods and Limitation of Liability clauses and how those liability clauses correlate with the Australian Consumer Law.

### **How can FIMDA members order the new contracts of sale?**

FIMDA members can purchase pads of the new version contracts (version July 2022) by taking the link to [OurAuto istore](#).

If you use a Dealer Management system (DMS) you can access an electronic version of the VACC Farm/Industrial Machinery Sales contract by purchasing a licence from VACC Stationery. Please email me, Michael McKenna on [mmckenna@vacc.com.au](mailto:mmckenna@vacc.com.au) and I will assist in arranging this.

Please note the contracts of sale remain the Intellectual Property of VACC and any unauthorized or unlicensed use is a fringe of copyright as mandated by the *Copyright Act 1968* (Cth).

Please feel free to call me with any queries.

**Michael McKenna MBA MBLaw**  
Industry Policy Advisor