



# Department of Justice and Regulation

Regulation

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22 JUN 2018

Geoff Gwilym  
Executive Director, Victorian Automobile Chamber of Commerce  
VACC House  
464 St Kilda Road  
MELBOURNE VIC 3004

Dear Mr Gwilym

## **Proposed Motor Car Traders (Fees) Regulations and Motor Car Traders (General) Regulations**

Thank you for your submission in relation to the proposed Motor Car Traders (Fees) Regulations 2018 and Motor Car Traders (General) Regulations 2018. I appreciate your input into these regulations. I note that in accordance with drafting protocols, the Office of the Chief Parliamentary Counsel has re-named the Motor Car Traders (General) Regulations 2018 as the Motor Car Traders Regulations 2018.

I have provided below a response to the matters raised in your submission.

### *VACC Commentary on RIS*

I note your concern over Consumer Affairs Victoria's (CAV) rejection of licence fee reductions for low volume traders. As you note, this proposal was rejected on the basis that CAV would not be able to determine risk in a fair and defensible way. While past claims are partially predictive of future claims, the number of admitted claims is not large enough to provide a reliable risk profile. If factors other than admitted claims are considered, then natural justice considerations begin to arise. For more detail on this issue, I refer you to pages 16-17 of the Regulatory Impact Statement.

Traders benefit from operating within the regulated environment for reasons including that government (including CAV) supports the industry by encouraging the public to deal with licensed motor car traders, and therefore receive the benefit of statutory protections.

Our internal data and resources do not support the contention that low claims on the Motor Car Traders Guarantee Fund in recent years are attributable to any policy of encouraging consumers to seek remedies elsewhere.

However, the grounds on which a consumer can make a claim against the Fund are limited by statute. Since the *Motor Car Traders Act 1986* (the Act) does not prescribe all possible grounds for

a claim against a motor car trader, consumers who do not have a claim under the Act may still have a claim under the Australian Consumer Law, and as such, may be informed of their rights to pursue such a claim in Victorian Civil and Administrative Tribunal or the Magistrates Court.

I note also your concern as to the costs of claims under section 74(3)(a) of the Act. The impact of the incident you refer to was noted at the time, and enforcement strategies and responses in relation to this type of situation amended.

The net increase in fees is negligible (less than 1 per cent in total), and the annual fees have dropped significantly.

#### *VACC Recommendation 1*

I welcome the VACC's efforts to educate and encourage compliance among its members. However, it remains CAV's responsibility as a regulator to oversee the industry as a whole.

#### *VACC Recommendation 2*

I thank the VACC for promoting the hotline, and for the offer to assist CAV in relation to risk-based charging. However, as stated earlier, the issues relate to procedural fairness as much as to data analysis capabilities. In addition, as data improves in the future this may be reviewed. The VACC's acceptance of Option 4 is appreciated.

#### *VACC Recommendation 3*

Data showing how the reports were followed up was provided at the time via stakeholder engagement meetings. If you require some further information, CAV will be open to discuss this with you. Data as to the outcomes of prosecutions is available on the CAV website and in the annual reports, which I encourage you to access at <https://www.consumer.vic.gov.au/annual-report/previous-annual-reports>.

#### *VACC Recommendation 4*

A note explaining that a 'demonstrator vehicle' is considered a used vehicle has been inserted into the proposed Motor Car Trader Regulations 2018.

In relation to informing the Business Licensing Authority of the appointment of a manager of the motor car trading business, the change would be communicated in the same way as any other prescribed change. The requirement is needed to ensure that update requirements accord with the initial disclosure requirements a trader must make on an application to become licensed. Regulation 17 serves a separate purpose, which is to impose obligations on licensees to supervise all their servants (employees) and agents.

#### *VACC Recommendation 5*

I have been informed that there was a miscommunication between CAV and the VACC in relation to whether business cards were deemed to be advertising under the Act. The Act does not deem any material either to be advertising, or not to be advertising.

CAV's general position has been, and continues to be, that any material provided to the public which refers to a specific licensee is construed to be advertising, and should include an LMCT number. This includes both promotional signage and business cards. Signs which promote only a car brand, and do not refer to a licensee, will not fall within this requirement.



### *VACC Recommendation 6*

Your concerns have been noted, and I have liaised with the Office of the Chief Parliamentary Counsel in relation to this. Parliamentary Counsel have advised that, because there have not been substantial changes to the content of the forms, the updated forms will fall within sections 30 and 53 of the *Interpretation of Legislation Act 1984*.

Section 53 provides that strict compliance with a prescribed form is not required for it to be sufficient in law. Section 30 provides that where a subordinate instrument is repealed and re-made with modifications, anything done under the repealed subordinate instrument will be taken to be done under the re-made instrument.

Therefore, traders could continue using the current forms (and current numbering) to use up their current stock, until substantive changes are made to their content. However, traders should plan to use the new forms and numbering as soon as they are able.

The commencement date for both sets of regulations has now been settled. The regulations will commence on 1 September 2018.

### *Conclusion*

Thank you for your contribution to this process. If you have further questions or concerns, please contact Anna Chalton on [anna.chalton@justice.vic.gov.au](mailto:anna.chalton@justice.vic.gov.au) or 8684 7274.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line and a horizontal dash.

**Simon Cohen**  
Deputy Secretary, Regulation &  
Director, Consumer Affairs Victoria