

STATUTORY RULES 2018

S.R. No. /2018

Motor Car Traders Act 1986

Motor Car Traders (General) Regulations 2018

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

MARLENE KAIROUZ

Minister for Consumer Affairs, Gaming and Liquor
Regulation

Clerk of the Executive Council

PART 1—PRELIMINARY

1 Objective

The objective of these Regulations is to prescribe exemptions, forms, prohibited conduct, agreements, matters relating to warranties and other matters under the **Motor Car Traders Act 1986**.

2 Authorising provision

These Regulations are made under section 90 of the **Motor Car Traders Act 1986**.

3 Commencement

These Regulations come into operation on 1 March 2018.

4 Revocation

The following regulations are **revoked**—

- (a) the Motor Car Traders Regulations 2008¹;

- (b) the Motor Car Traders Amendment Regulations 2010²;
- (c) the Motor Car Traders Amendment (Infringements) Regulations 2010;³
- (d) the Motor Car Traders Amendment (Red Tape Reduction) Regulations 2014;⁴
- (e) the Motor Car Traders Amendment Regulations 2017.⁵

5 Definitions

(1) In these Regulations—

associated business has the meaning given by regulation 6;

auction business, in relation to a used motor car, means a business selling, or offering to sell, the motor car by auction in the course of its business;

Australian Business Number has the same meaning as in the **A New Tax System (Australian Business Number) Act 1999** of the Commonwealth;

compliance date means the date stamped on a vehicle's compliance plate in accordance with the Motor Vehicle Standards Act 1989 of the Commonwealth;

LMCT means a licensed motor car trader;

police check means a certificate from the Chief Commissioner of Police that indicates that the person is not ineligible to be employed by a motor car trader in a customer service capacity under section 35A(1)(b) of the Act;

publish means to make generally known by any means, including by means of print, broadcast or electronic communication;

relevant financial interest, in relation to a business, means—

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business; or
- (c) any entitlement to receive any payment as a result of money advanced to the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated;

relevant power, in relation to a business, means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision in the business; or
- (b) to elect or appoint any person to any relevant position in the business;

the Act means the **Motor Car Traders Act 1986**;

trade auction means an auction at which only licensed motor car traders or persons acting on their behalf may bid;

truck has the same meaning as in the **Road Safety Act 1986**.

6 Meaning of associated business

For the purposes of these Regulations, businesses are associated businesses if—

- (a) they are carried on by the same person; or

- (b) one business is carried on by a person and the other business is carried on by a person who is—
 - (i) a spouse or domestic partner of that person; or
 - (ii) a business partner of that person; or
 - (iii) directly receiving any income derived from the business carried on by the other person; or
- (c) one business is carried on by a body corporate and the other business is carried on by a person who—
 - (i) is a director or secretary of the body corporate or a spouse or domestic partner of such a director or secretary; or
 - (ii) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in the business of the body corporate under which the person is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or
 - (iii) holds or will hold any relevant position (whether in the person's own right or on behalf of any other person) in the business of the body corporate; or
 - (iv) is a related body corporate within the meaning of section 9 of the Corporations Act or a director or secretary, or a spouse or domestic

partner of a director or secretary, of a related body corporate.

7 Exemptions

- (1) The following classes of sales are exempt from the operation of the Act—
 - (a) the sale at a public auction of a motor car owned or used by a council within the meaning of the **Local Government Act 1989**;
 - (b) the sale at a public auction of a motor car owned by the executor or administrator of the estate of a deceased person;
 - (c) the sale at a public auction of a motor car—
 - (i) that at the time of the auction is damaged, if the reasonable cost to repair the damage would be more than \$4800 or would exceed the value of the motor car; and
 - (ii) that is owned by a person who carries on the business of insuring motor cars if the motor car is sold in the course of that business.
- (2) Motor cars other than used motor cars are exempt from the operation of section 35(1) of the Act.
- (3) Sales at public auction of damaged motor cars, recovered stolen motor cars and trucks are exempt from the operation of section 50G(1)(b) of the Act.
- (4) Sales of damaged motor cars, recovered stolen motor cars and trucks are not exempt for the purposes of subregulation (3) if the car or truck is owned by the auction business or by an associated business.

(5) AKN Pty Ltd ACN 120 745 851 is exempt from the operation of the Act.

Part 2—Forms

8 Prescribed sign

For the purposes of section 34 of the Act—

- (a) the prescribed form is Form 1 set out in Schedule 1;
- (b) the prescribed particulars are set out in Form 1 in Schedule 1.

9 Dealings book

- (1) For the purposes of section 35(1) of the Act, the prescribed form of the dealings book is Form 2 set out in Schedule 1.
- (2) For the purposes of section 35(2)(a) of the Act—
 - (a) the prescribed matters required to be entered in the dealings book at the time of purchase or acquisition by way of exchange of a used motor car or at the time of receiving a used motor car into custody or possession for the purpose of sale or exchange are set out in Form 2 under the heading "ACQUISITION DETAILS";
 - (b) the prescribed matters required to be entered in the dealings book at the time of sale or disposal by way of exchange of a used motor car are set out in Form 2 under the heading "DISPOSAL DETAILS".
- (3) For the purposes of section 35(8)(a)(i) of the Act the prescribed manner is—
 - (a) in the case of a motor car acquired from a natural person, that the paper document contains the full name and residential address of that person;

- (b) in the case of a motor car acquired from a business, that the paper document contains the name, address of the principal place of business and the Australian Business Number of that business;
- (4) For the purposes of section 35(8)(a)(ii) of the Act, the prescribed manner is that the paper document contains—
 - (a) in the case of an auctioneer who is a natural person, the name and address of the auctioneer; or
 - (b) in the case of an auctioneer who is an auction business, the name, address of the principal place of business and the Australian Business Number of the auction business.
- (5) For the purposes of subregulation (3) and (4), a paper document must record in respect of the specified motor car—
 - (a) the registration number of the motor car; or
 - (b) the trader's stock number; or
 - (c) the vehicle identification number, engine number or the chassis number of the motor car.
- (6) For the purposes of section 35(8)(b), the prescribed manner is that the following information recorded in the paper document is recorded in the dealings book—
 - (a) the registration number of the motor car; or
 - (b) the trader's stock number; or
 - (c) the vehicle identification number, engine number or the chassis number of the motor car.

- (7) For the purposes of sections 35(8)(a) and 35(9)(b) of the Act, a paper document is signed as prescribed—
- (a) in the case of a motor car that is acquired from a natural person, if it is signed by that person;
 - (b) in the case of a motor car that is acquired from a business, if it is signed by a person authorised to sign on behalf of that business;
 - (c) in the case of a motor car that is acquired at auction, if it is signed by a person authorised to sign on behalf of the auction business.

10 Declaration of eligibility of potential employees

For the purposes of section 35A(3) of the Act, the prescribed form of the notice is Form 3 set out in Schedule 1.

11 Forms of notice to be displayed on used vehicle

- (1) For the purposes of section 52(1) and (2)(g) of the Act, the prescribed form of the notice and the prescribed particulars are in Part B of Form 4 set out in Schedule 1.
- (2) A notice referred to in subregulation (1) must—
 - (a) be printed, typed or written in a clear and legible manner; and
 - (b) if it contains an advertisement display the advertisement within a border under a printed or typed heading “ADVERTISEMENT” that is the most prominent text in the document; and
 - (c) not be attached to, or incorporated with, any other document.

12 Form and notice of absence of warranty

For the purpose of section 54(2C) of the Act, the required form of notice is Part A of Form 4 set out in Schedule 1.

13 Form of defect notice

For the purposes of section 55(1) of the Act, the prescribed form is Form 5 set out in Schedule 1.

14 Statement verifying document to inspector

For the purposes of section 82AA(1B) of the Act, the prescribed statement is Form 6 set out in Schedule 1.

15 Inspectors' powers forms

For the purposes of section 82AM(1) of the Act, the prescribed form is Form 7 set out in Schedule 1.

Part 3—Conduct by motor car traders

16 Prescribed changes in relation to licensee

For the purposes of section 20 of the Act, a prescribed change is if—

- (a) a licensee ceases to carry on business as a motor car trader under a name authorised under a licence; or
- (b) a licensee commences carrying on business as a motor car trader under a name or names in addition to or in substitution for the name of the licensee; or
- (c) a licensee changes the business address or telephone number of any premises from which a motor car trading business is conducted; or
- (d) a licensee changes the address of any Internet site maintained by the licensee for the purpose of the motor car trading business; or
- (e) there is a change in the majority shareholding of a body corporate that is a licensee; or
- (f) a person ceases to be or is appointed as a company secretary of a body corporate that is a licensee; or
- (g) a person ceases to be or is appointed as a manager of the motor car trading business.

17 Trader to supervise servants and agents

A motor car trader must supervise and control each servant and agent of the trader, to ensure that the provisions of the Act and these Regulations are complied with.

Penalty: 10 penalty units.

18 Advertisement or statement in relation to motor car trading business

A motor car trader, or a servant or agent of the trader, who publishes or causes to be published an advertisement or statement in relation to the trader's business of trading in motor cars must include in the advertisement or statement the letters "LMCT" followed by the licence number of the motor car trader.

Penalty: 10 penalty units.

19 Advertisement offering used motor car for sale

- (1) A motor car trader, or a servant or agent of the trader, who publishes or causes to be published an advertisement offering a used motor car for sale, must include the following information in the advertisement—
 - (a) the single price of the motor car, inclusive of all fees and duties;
 - (b) if the motor car is registered, the registration number;
 - (c) if the motor car is unregistered—
 - (i) the vehicle identification number; or
 - (ii) in the case that the vehicle identification number is not reasonably ascertainable, any other number by which the motor car may be identified.

Penalty: 10 penalty units.

- (2) Subregulation (1)(a) does not apply if the used motor car is being advertised for sale by public auction or at a trade auction.
- (3) Subregulations (1)(b) and (c) do not apply if—

- (a) the motor car trader, servant or agent publishes or causes to be published an advertisement on television, movie film, radio or in any other electronic and broadcast communication offering for sale a batch of six or more used motor cars of the same model; or
 - (b) the used motor car is being advertised for sale by public auction or at a trade auction and the information referred to in subregulation (1)(b) and (c) is provided in writing to a person attending the auction on request.
- (4) A used motor car referred to in subregulations (2) and (3)(b) does not include a motor car owned by the auction business or an associated business or a motor car that is available for purchase before the auction.

20 Advertisement – used motor car for sale by person other than motor car trader

- (1) A person, other than a motor car trader or a servant or an agent of a motor car trader, who publishes or causes to be published an advertisement offering a used motor car for sale in a newspaper generally circulating in the whole or any part of Victoria or in a motor car specialist magazine generally circulating in the whole of Victoria, must include the following information in the advertisement—
- (a) the single price of the motor car, inclusive of all fees and duties;
 - (b) if the motor car is registered, the registration number;
 - (c) if the motor car is unregistered—
 - (i) the vehicle identification number; or

- (ii) in the case that the vehicle identification number is not reasonably ascertainable, any other number by which the motor car may be identified.

Penalty: 10 penalty units.

- (2) Subregulation (1)(a) does not apply if the used motor car is being advertised for sale by public auction or at a trade auction.
- (3) Subregulation (1)(b) and (c) do not apply if the used motor car is being advertised for sale by public auction or at a trade auction and the information referred to in subregulation (1)(b) and (c) is provided in writing to a person attending the auction on request.
- (4) A used motor car referred to in subregulations (2) and (3) does not include a motor car owned by the auction business or an associated business or a motor car that is available for purchase before the auction.

21 Manner of advertisement or statement

A person who publishes or causes to be published an advertisement or statement referred to in regulation 18, 19 or 20 must ensure that any text included in the advertisement or statement is printed, typed or written in a clear and legible manner.

Penalty: 10 penalty units.

22 Deposit given before tests to be returned

- (1) If a person—
 - (a) deposits with a motor car trader money or something of value and takes possession of a motor car for the purpose of a driving trial or an examination or test; and

(b) subsequently returns the motor car and does not enter into an agreement to purchase it—

the motor car trader must refund or return the money or valuable thing to the person immediately on demand by that person.

Penalty: 10 penalty units.

(2) If a purchaser—

(a) enters into a conditional agreement with a motor car trader to purchase a motor car; and

(b) deposits with the motor car trader money or something of value prior to a driving trial or an examination or test; and

(c) subsequently does not continue with the agreement—

the motor car trader must refund or return the money or valuable thing to the purchaser immediately on demand by the purchaser.

Penalty: 10 penalty units.

Part 4—Agreements and warranties

23 Agreement for sale of used motor car

For the purposes of section 41(1)(a) of the Act, the prescribed particulars, terms and conditions are set out in Schedule 2.

24 Agreement for sale of new motor car

For the purposes of section 42(1) of the Act, the prescribed particulars, terms and conditions are set out in Schedule 3.

25 Terms relating to certain matters to be in sale agreement

If a motor car trader enters into an agreement for the sale of a used motor car and agrees as part of the agreement—

- (a) to have defects in the motor car repaired or made good; or
- (b) to supply and fit any part or accessory to the motor car; or
- (c) to register or re-register the motor car or in any other respect to pay an amount or make an arrangement regarding the registration, duty or insurance relating to the motor car—

the motor car trader must ensure that the terms of the agreement as to the matters referred to in paragraph (a), (b) or (c) are set out in writing in the agreement.

Penalty: 10 penalty units.

26 Warranties

For the purposes of section 54(4)(d) of the Act, the prescribed accessories are the following—

- (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 that 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 that are not standard to the motor car;
- (n) alarms that 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.

27 Display of information – agreements and warranties

A motor car trader who enters into an agreement for the sale of a used motor car under section 41 of the Act or the sale of a new motor car under section 42 of the Act must ensure that any text

included in the agreement is printed, typed or written in a clear and legible manner.

Penalty: 10 penalty units.

Part 5—Miscellaneous

28 Maximum payment on a claim

For the purposes of section 77(4) of the Act, the prescribed amount is \$40 000.

29 Documents, accounts and records to be kept

The following documents, accounts and records are to be kept by licensed motor car traders—

- (a) agreements for sale of a used motor car under section 41 of the Act;
- (b) agreements for sale of a new motor car under section 42 of the Act;
- (c) agreements for exchange of motor car;
- (d) extended warranty documents;
- (e) police checks given to the trader by persons employed in a customer service capacity;
- (f) any completed forms in the form of form 2, 3, 4 or 5 as set out in Schedule 1.

30 Motor car traders must supply copies of agreements etc

For the purposes of section 83C(1) of the Act, the following documents are listed—

- (a) agreements under section 41 of the Act;
- (b) agreements under section 42 of the Act;
- (c) agreements for exchange of motor car;
- (d) extended warranty documents;
- (e) police checks given to the motor car trader by a person employed in a customer service capacity;
- (f) any completed forms in the form of Form 3, 4 or 5 as set out in Schedule 1.

31 Infringement notices and infringement penalties

- (1) For the purposes of section 82D(1) of the Act, an offence specified in Column 2 of Schedule 4 is an offence in respect of which an infringement notice may be issued.
- (2) For the purposes of section 82D(3) of the Act, the prescribed infringement penalty for an infringement offence set out in Column 2 of Schedule 4 is the penalty set out in Column 3 of Schedule 4 in respect of the corresponding infringement offence.

Schedules

Schedule 1—Forms

FORM 1

Regulation 8

Motor Car Traders Act 1986

PRESCRIBED SIGN

LICENSED MOTOR CAR TRADER or (LMCT)

(insert licensee's licence number)

FORM 2

Regulation 9

Motor Car Traders Act 1986

DEALINGS BOOK

ACQUISITION DETAILS

Registration Number or, if unregistered, Trader's Stock Number

Make/model

Type of vehicle

Built date if it appears on the vehicle

Compliance date

Vehicle identification number (if the vehicle identification number is not available, any other number capable of identifying the vehicle)

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 acquired

*Signature of person authorised to sign on behalf of the auction business from which vehicle acquired or received

*(delete whichever is inapplicable)

DISPOSAL DETAILS

Sold to (name and address)

Date of delivery

Odometer reading

Certificate of roadworthiness (issued in accordance with the **Road Safety Act 1986**)

—Certificate number

—Certificate date

Date notice of acquisition sent to VicRoads

Date notice of disposal sent to VicRoads

Date registration cancelled and plates returned (if applicable)

FORM 3

Regulation 10

Motor Car Traders Act 1986

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

**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)

declare that I—

(*delete whichever is not applicable)

- (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)

(Print full name)

(Date)

Note: Under section 84A(1) 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(3) 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(4) of that Act, 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. The police check and the Form 3 must be retained for at least 6 years, in accordance with section 83A of the **Motor Car Traders Act 1986**.

FORM 4

Regulations 11 and 12

Motor Car Traders Act 1986

PART A — USED MOTOR CAR WARRANTY

Warranty Information

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

Yes

No

Please note

Motor cars that are less than 10 years old and that have been driven less than 160 000 km are automatically covered by a statutory warranty under section 54 of the **Motor Car Traders Act 1986** for the first 3 months or 5000 km after delivery, whichever occurs first.

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

PART B — USED MOTOR CAR NOTICE

- A. Name and business address of the current owner of the motor car.
- B. 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 sale (as the case may be).
- C. 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 fees or duty and a statement of whether the car is sold with registration or without registration.

- D. The single price of the motor car, inclusive of all fees and duties.
- E. Built date if it appears on the motor car.
- F. Compliance date.
- G. The model designation (if any) of the motor car.
- H. Registration number (if any) of the motor car.
- I. The vehicle identification number of the motor car.
- J. If the vehicle identification number is not available, another number capable of identifying the motor car.
- K. A statement as to whether the motor car is entered on the register of written-off vehicles or on an interstate written-off vehicles register within the meaning of the **Road Safety Act 1986**.

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 25 of the Motor Car Traders Regulations 2018).

FORM 5

Regulation 13

Section 55 of the Motor Car Traders Act 1986

**STATEMENT OF DEFECTS IN A USED MOTOR CAR
OFFERED FOR SALE**

Make and model of motor car:

Registration number (if applicable):

Vehicle identification number, or if vehicle identification number is not reasonably ascertainable, any other number by which the motor car may be identified:

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 a warranty under section 54(2C) of the **Motor Car Traders Act 1986**.

Signature of purchaser

Signature of motor car trader

Licence or LMCT No.:

Notes:

This notice will only have effect if—

- (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) on 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.

FORM 6

Regulation 14

Motor Car Traders Act 1986

STATEMENT OF VERIFICATION

To: Inspector (*specify Inspector's name*):

I, (*insert name*) in relation to (*insert name and address of principal place of business/former business*), (*insert licence number/former licence number*) verify that the document produced to you on (*insert date*) in accordance with section 82AA of the **Motor Car Traders Act 1986** is a true record of the dealings book as at the date of this statement.

FORM 7

Regulation 15

EMBARGO NOTICE

Motor Car Traders Act 1986

Section 82AM

1. The item described below has been embargoed under section 82AM of the **Motor Car Traders Act 1986**.
2. Section 82AM(2) provides that a person who knows that an embargo notice relates to a thing and who—
 - (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—
the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 50 penalty units.
3. Section 82AM(3) provides that it is a defence to a prosecution for such an offence to prove that the thing or part of the thing was moved for the purpose of protecting and preserving it.
4. Section 82AM(4) provides that despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of that section is void.

Description of embargoed item—

This notice has been—

- served on (*name*)
- affixed to the item described above

Signature of inspector:

Name of inspector:

Telephone number:

Date:

Time:

Schedule 2—Particulars, terms and conditions for sale of used motor car

Regulation 23

IMPORTANT INFORMATION—YOUR RIGHT TO COOL OFF

Motor Car Traders Act 1986—section 43

Under section 43 of the **Motor Car Traders Act 1986**, if none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract.

To end the contract within this time, you must give the motor car trader or the motor car trader's agent **written** notice that you are terminating the contract.

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

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

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

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

A. Particulars

- (1) The name of the motor car trader or, if an employee of the motor car trader negotiated the agreement on behalf of the motor car trader, the name of the employee.
- (2) A description of the motor car sufficient to identify it.
- (3) Whichever of the following is applicable—
 - (a) if the motor car is registered, the registration number; or

- (b) if the motor car is unregistered—
 - (i) the vehicle identification number; or
 - (ii) if the vehicle identification number is not reasonably ascertainable, any other number by which the motor car may be identified.
- (4) The price and any other charges to be paid and the time and manner in which the price and any other charges are to be paid and, where a motor car or other goods are to be accepted as part payment of the price or other charges, the amount agreed to be represented by the motor car or other goods.
- (5) The amounts to be paid by the motor car trader or the purchaser to VicRoads for transfer fees and duties, and if applicable an amount to be paid by the motor car trader or the purchaser to VicRoads for registration.
- (6) The distance travelled by the motor car as recorded on the instrument or device installed in the motor car for recording the distance travelled by the motor car either when the purchaser signs the agreement or at any earlier time at which the purchaser takes delivery of the motor car.
- (7) Whether or not the motor car trader believes the distance so recorded to be true.
- (8) The licence number of the motor car trader.
- (9) The serial number of the agreement.

B. Warranty Information

Warranty under section 54 of the Motor Car Traders Act 1986

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

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

Yes

No

If the motor car is covered by the warranty

The motor car trader warrants that if a defect appears in the motor car before the end of the warranty period, the motor car trader at the motor car trader's 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 by a qualified repairer, the defect, so as to place the car in a reasonable condition having regard to its age.

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

- (a) the period from when the car is delivered to the person buying it until it has been driven for a further 5000 kilometres; or
- (b) the period of 3 months from the day after the car is delivered to the person buying it.

The benefits to the consumer given by this warranty are in addition to other rights and remedies of the consumer under the *Australian Consumer Law*.

If the motor car is not covered by the warranty

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

Rights under the Australian Consumer Law

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

C. Terms and conditions

Subject to finance

1. (1) Where this agreement is subject to the purchaser obtaining finance, the agreement is conditional on the purchaser obtaining finance approval—
 - (a) within the time stated in this agreement;
 - (b) of the amount stated in this agreement;
 - (c) from the credit provider named in this agreement (or from a similar type of credit provider);
 - (d) for the type of finance stated in this agreement;

- (e) on reasonable terms and conditions in the circumstances.
- (2) The purchaser agrees to take all reasonable steps towards obtaining finance approval.
- (3) If the purchaser does not obtain finance approval then either the purchaser or the seller may terminate this agreement by giving notice to the other party.

Transfer to credit provider

- 2. Where requested by the purchaser the seller must transfer title to the purchase vehicle to the purchaser's credit provider on payment of the total purchase price to the seller.

Delays in delivery

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

Trade-in conditions

- 4. (1) Where the purchase involves a trade-in vehicle then the amount allowed for the trade-in (net trade-in allowance) must be deducted from the total purchase price. The net trade-in allowance will be the amount allowed on the trade-in vehicle less any amount to be paid by the seller to discharge the interest of any other person in the vehicle.
- (2) The trade-in vehicle must be delivered to the seller no later than the date of delivery of the purchase vehicle. If the trade-in vehicle is delivered after this date or is not in substantially the same condition as at the date of this agreement then the net trade-in allowance may be adjusted by an amount equal to the change in the fair market value of the trade-in vehicle between the date of this agreement and the date of delivery to the seller.
- (3) The purchaser's interest in the trade-in vehicle must pass to the seller—
 - (a) when the purchaser accepts delivery of the purchase vehicle; or
 - (b) when the purchaser has delivered the trade-in vehicle to the seller and the seller 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—

whichever first occurs.

- (4) The seller must not, without the prior written consent of the purchaser, sell or agree to sell the trade-in vehicle before delivery of the purchase vehicle to the purchaser.
- (5) Where the amount allowed on the trade-in vehicle has been reduced by an amount to be paid by the seller to discharge the interest of any other person in the vehicle, the seller will pay this amount to the other person within 28 days of delivery of the trade-in vehicle to the seller.

Termination

5. (1) Where this agreement is lawfully terminated by the seller due to a breach of this agreement by the purchaser then—
 - (a) the purchaser must forfeit the amount stated in this agreement to the seller provided that amount does not exceed 5 per cent of the total purchase price; and
 - (b) where an amount has been paid towards the purchase price and that amount exceeds the forfeitable amount then the seller must—
 - (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 seller with the forfeitable amount and a trade-in vehicle has been delivered to the seller then the trade-in vehicle may be forfeited to the seller and the purchaser credited with the net trade-in allowance. If this amount and any other amount paid by the purchaser exceeds the forfeitable amount then the excess must be refunded to the purchaser.
- (2) Where this agreement is lawfully terminated by the purchaser due to a breach of this agreement by the seller then the seller must—
 - (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 agreement is lawfully terminated by either the purchaser or the seller due to clause 1 or for any reason other than a breach of this agreement then the seller must—

- (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 agreement provides for the seller to return any trade-in vehicle to the purchaser but the seller has, with the prior written consent of the purchaser, sold or agreed to sell the trade-in vehicle then this agreement will be complied with if the seller pays to the purchaser—
 - (a) an amount equal to the net trade-in allowance; or
 - (b) where the purchaser and seller 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 seller.
- (5) Where the seller returns any trade-in vehicle to the purchaser and the seller has carried out repairs on the vehicle with the consent of the purchaser then the seller is entitled to an amount equal to the reasonable cost of those repairs.
- (6) Where either the purchaser or seller wishes to terminate this agreement in accordance with this clause they must give 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**.

Non exclusion of warranties and other rights

- 6. The benefits conferred by this agreement and by the seller's warranty, if any, are in addition to all other rights and remedies in respect of the purchase vehicle which the purchaser has under the *Australian Consumer Law (Victoria)* and any other Commonwealth, State and Territory laws.

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

Schedule 3—Particulars for sale of new motor car

Regulation 24

IMPORTANT INFORMATION—YOUR RIGHT TO COOL OFF

Motor Car Traders Act 1986—section 43

Under section 43 of the **Motor Car Traders Act 1986**, if none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract.

To end the contract within this time, you must give the motor car trader or the motor car trader's agent **written** notice that you are terminating the contract.

If you end the contract in this way, you are entitled to a refund of all the money you paid EXCEPT—

- \$400 or 2 per cent of the purchase price (whichever is greater) where this is not an off-trade premises sale; or
- \$100 or 1 per cent of the purchase price (whichever is greater) where this is an off-trade premises sale. 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.

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

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

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

Particulars

- (1) The name of the motor car trader or, if an employee of the motor car trader negotiated the agreement on behalf of the motor car trader, the name of the employee.
- (2) A description of the motor car sufficient to identify it.
- (3) The vehicle identification number; or if the vehicle identification number is not reasonably ascertainable, any other number by which the motor car may be identified.
- (4) The price and any other charges to be paid and the time and manner in which the price and any other charges are to be paid and, where a motor car or other goods are to be accepted as part payment of the price or other charges, the amount agreed to be represented by the motor car or other goods.
- (5) Where a motor car is to be accepted as part payment of the price or other charges and where the amount allowed on this 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 number of days after delivery of the trade-in vehicle to the trader within which the trader will pay this amount to the other person.
- (6) The licence number of the motor car trader.
- (7) The serial number of the agreement.

Schedule 4—Infringement offences and infringement penalties

Regulation 31

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> |
|-----------------|--|-----------------------------|
| <i>Item</i> | <i>Prescribed infringement offence</i> | <i>Infringement penalty</i> |
| 1 | section 14(2) | 10 penalty units |
| 2 | section 15(2) | 1 penalty unit |
| 3 | section 20(1) | 0.5 penalty units |
| 4 | section 25(2) | 1 penalty unit |
| 5 | section 27(3) | 1 penalty unit |
| 6 | section 31B(1) | 2.5 penalty units |
| 7 | section 34 | 1 penalty unit |
| 8 | section 35(1) | 5 penalty units |
| 9 | section 35(2) | 5 penalty units |
| 10 | section 35A(3) | 5 penalty units |
| 11 | section 41(2)(a) | 2 penalty units |
| 12 | section 41(2)(b) | 2 penalty units |
| 13 | section 42(2)(a) | 2 penalty units |
| 14 | section 42(2)(b) | 2 penalty units |
| 15 | section 42A(1) | 5 penalty units |
| 16 | section 43(3) | 5 penalty units |
| 17 | section 44 | 2 penalty units |
| 18 | section 50J(1) | 1 penalty unit |
| 19 | section 52(1) | 1 penalty unit |
| 20 | section 52(6) | 1 penalty unit |
| 21 | section 82A(1) | 5 penalty units |
| 22 | section 82A(2) | 5 penalty units |
| 23 | section 83A | 2 penalty units |
| 24 | regulation 18 | 1 penalty unit |

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> |
|-----------------|--|-----------------------------|
| <i>Item</i> | <i>Prescribed infringement offence</i> | <i>Infringement penalty</i> |
| 25 | regulation 19(1) | 1 penalty unit |
| 26 | regulation 21 | 1 penalty unit |
| 27 | regulation 22(1) | 1 penalty unit |
| 28 | regulation 22(2) | 1 penalty unit |
| 29 | regulation 27 | 1 penalty unit |

¹ Reg. 3: S.R. No. 144/2008. As amended by S.R. No. 40/2010; S.R. No. 101/2010; S.R. No. 120/2014; S.R. No. 8/2017.

² Reg 3: S.R. No. 40/2010.

³ Reg 3: S.R. No. 101/2010.

⁴ Reg 3: S.R. No. 120/2014.

⁵ Reg 4: S.R. No. 8/2017.