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Via email: elizabeth.lanyon@justice.vic.gov.au

Dr Elizabeth Lanyon
Director, Policy and Corporate Services
Department of Justice
Level 17, 121 Exhibition Street
Melbourne Victoria 3000

Dear Dr Lanyon

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

The Victorian Automobile Chamber of Commerce (VACC) thanks Consumer Affairs Victoria (CAV) for the opportunity to comment on the Motor Car Traders Regulations 2008 that will expire on 1 December 2018.

VACC has reviewed the proposed Motor Car Traders (Fees) Regulations and does not have any objections to its content.

VACC has reviewed the associated Regulatory Impact Statement (RIS) and offers the following commentary

VACC supports the splitting of the Regulations into two new sets of regulation: general and fees, and agrees with the objectives as stated within the RIS.

It is, however disappointing to note that a VACC recommendation for a licence fee reduction for low volume traders has been rejected based on CAV's inability to determine risk in a fair and defensible way¹. It is surprising to VACC that CAV is not able to interrogate claims (admitted and dismissed) made to the Motor Car Traders Guarantee Fund (the Fund) that would show the type and size of LMCT that is subject to claims. Small business, particularly in rural Victoria, needs every assistance and encouragement to reduce costs. It is also of interest to VACC to see the opinion offered in Option 3² i.e. 'these traders still benefit from operating within the regulated environment'. VACC requests that CAV expand on this statement. Given the majority of used vehicles in Victoria are traded online by consumers, and without the encumbrance of regulatory oversight, it could be argued that regulations leave LMCTs at a disadvantage in the market.

VACC supports the context for the regulations.

VACC notes with interest commentary that the surplus of \$4 million of the Fund in 2015/16 and 2016/17³ is a result of a change in compliance and enforcement priorities and unusually low claims. VACC suggests that industry would consider the compliance and enforcement approach as frustrating and, at times, ill informed⁴.

¹ MCT Regulations 2018 Fees Regulations RIS pg.3

² MCT Regulations 2018 Fees Regulations RIS pg.17

³ MCT Regulations 2018 Fees Regulations RIS pg.8

⁴ Feedback from industry as a result of recent CAV C&E visits in regional Victoria



The low volume of claims on the Fund in those periods would be attributable to CAV and other consumer facing organisations encouraging consumers to seek remedies in the first instance for any claim, citing Australian Consumer Law provisions in VCAT or the Magistrates Court.

This approach would protect the fund from potential claims but makes the working environment for LMCTs even more difficult as they are forced to defend themselves in the unpredictable climate of VCAT, and be subject to vexatious claims from opportunistic consumers.

VACC also notes commentary regarding financial years 2008/09 and 2013/14 as resulting in the Fund requiring additional funding from other resources. While this sourcing of additional revenue may have been the case, it is remiss of CAV not to acknowledge that those claims that so decimated the Fund were preventable. Also noted that one significant failed entity that was responsible for decimating the Fund was not an LMCT. It was a clause contained within the MCTA S.74(3)(a) (*if the claimant reasonably believed the trader was a LMCT*)⁵ that allowed for consumers to make bulk claims upon the Fund, as was the case in that instance. It would seem a retrograde step to continue to increase fees associated with the MCTA and Regulations because of regulator inactivity.

VACC Recommendation 1

In a bid to assist CAV reduce its compliance and enforcement processes and associated costs, VACC can offer the service of its Area Managers, all of whom operate remotely from VACC Head Office, have a thorough understating of all facets of the MCTA and licensing regime, and have a visitation schedule that entails seeing each LMCT member twice every year. On these visits VACC Area Managers advise LMCTs of their prescribed obligations that are currently in place.

VACC Recommendation 2

VACC has considered the four proposed fee structures contained in Section 5 of the RIS.

- Option 1: Status quo, acceptable.
- Option 2: Not acceptable, too complex.
- Option 3: Acceptable and encouraged.
- Option 4: Acceptable.

VACC would support and offers to assist CAV in re-investigating the possibility of risk related licence charging.

VACC notes the reference to a special unlicensed trading hotline being created with some 318 reports made and followed up⁶. VACC and its members were at the forefront of the establishment of the hotline and spent considerable resource and finance in its promotion.

VACC Recommendation 3

That CAV provides data showing how the 318 reports were acted upon and the punitive measures applied to each report.

Motor Car Traders (General) Regulations 2018 Explanatory Statement

VACC has reviewed the proposed Motor Car Traders (General) Regulations and provides commentary to the following proposed changes.

Changes to Definitions are supported.

VACC Recommendation 4

Insert definition of 'demonstrator vehicle'. VACC would welcome an opportunity to assist with the making of this definition.

Changes to exemptions

Clarification of vehicles exempted from MCTA S.35(1) is supported.

⁵ MCT Act 1986 S.74(3)(a) pg. 103

⁶ MCT Regulations 2018 Fees Regulations pg.33

Prescribed changes in relation to licensee

VACC seeks clarity on proposed insertion 16(g) regarding a person to be or appointed as a manager of the motor car trading business and would seem to render Regulation 17⁷ of the proposed changes superfluous. This would seem a burdensome regulation to introduce. VACC seeks clarity on how any future appointment would be communicated to CAV.

Advertisements or statement in relation to motor car trading business

VACC notes there have been no substantive changes to this section. However, CAV Inspectors and industry require clear guidelines as to the interpretation of this section and its enforceability. To this end VACC makes the following recommendation:

VACC Recommendation 5

VACC recommends that proposed regulation 18 contain exemptions to having an LMCT number excluded from business cards and LMCT business promotional signage⁸.

Form 4 to Form 5, Form 8 to Form 5

VACC does not support this change at this stage. The changes will confuse industry who have been exposed to window display changes 3 times since 2008.

The changes required to franchise dealers 'Dealer Management Systems' (DMS) is immense, and any change to prescribed forms can lead to considerable administrative charges from providers.

VACC Recommendation 6

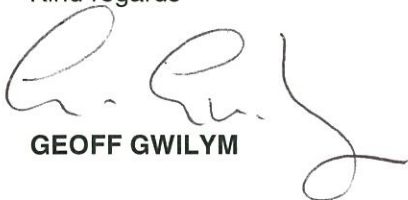
VACC recommends that the current prescribed Forms 5 and Form 9 are not renumbered and that any changes to the prescribed forms be considered at a mid-tenure Regulation review in 2023.

VACC will promote any changes in the retail industry and recommends a commencement date of 1 September 2018.

Please feel free to contact Michael McKenna about The VACC review and proposed changes to the regulations. Michael can be reached on 03 9829 1280 or mmckenna@vacc.com.au.

VACC welcomes an opportunity to comment on the review and proposed changes and remains open to a continued dialogue with the government on these matters.

Kind regards



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⁷ Motor Car Traders (General) Regulations 2018, Regulation 17

⁸ Advice from CAV states this is not required but C&E Inspectors constantly advise traders otherwise.