

Motor Car Traders Regulations 2018

**Fees Regulations
Regulatory Impact
Statement**

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1 What is being proposed and why?

The Motor Car Traders Regulations 2008 (the current Regulations) prescribe exemptions, forms, fees, prohibited conduct, agreements, matters relating to warranties and other matters to support the operation of the *Motor Car Traders Act 1986* (the Act). They are due to sunset on 1 December 2018.

It is proposed to substantially remake the current Regulations before they sunset, but split them into two new sets of regulations: general, and fees.

This Regulatory Impact Statement (RIS) sets out options for remaking fees prescribed by the current Regulations.

The fees would be prescribed in the proposed Motor Car Traders (Fees) Regulations 2018 (the proposed Regulations).

The options set out in this RIS were assessed against the following objectives:

- ensuring that the fees charged will meet the efficient costs of administering the Act, including paying out compensation claims from the Motor Car Traders Guarantee Fund (the Fund)
- ensuring that there are sufficient cash reserves in the Fund to pay out the average amount of claims each year over a period of ten years; as well as sufficient funds to meet the costs of any future increase in enforcement activity
- ensuring that the fees charged will not create incentives for traders to act in a manner inconsistent with the aims of the Act or the protection of consumers, and
- ensuring that the fees charged will be fair and reasonable.

The proposed Regulations meet the objectives above. Other options, involving a fee reduction for low-risk and low-volume traders, were considered but rejected due to the difficulty in establishing a scheme that determined risk in a fair and defensible way, and because they would be unlikely to achieve the objectives above. The key difference between the current fees and the proposed fees is that a new fee will be charged for certain types of applications to remove conditions on a licence. Other fees will be adjusted to account for the new fee and to ensure that they continue to reflect the efficient costs incurred each activity for which a fee is charged. Broadly, initial and permission application fees will rise, while annual licence fees will fall slightly.

2 How can stakeholders make submissions on this proposal?

The consultation period for the Motor Car Traders (Fees) Regulations 2018 is from Monday 9 April 2018 to 5pm on Friday 11 May 2018.

Written submissions can be emailed to cav.consultations@justice.vic.gov.au or posted to:

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3 What is the context for these regulations?

3.1 What does the motor car trading industry look like?

The motor car trading industry is diverse. Traders range from small-scale rural operators who primarily sell tractors and farm bikes for off-road use as well as a few motorbikes or cars each year, to home-based traders, scooter and motorbike retailers, unfranchised car yards, and large corporate operators and franchises. Some traders sell online as well as in person.

These traders operate on different scales, and with varying business models. This diversity can have significant effects on their businesses' operating costs, and on their potential profits.

At the bottom end of the scale, some traders sell only a few motor cars each year. Ordinarily, a person or company who sells fewer than four motor cars each year is exempt from requiring a licence under the Act. However, if a person or company sells a car in the course of a business, this exemption does not apply and they must pay the full licence fee.

At the top end of the scale, some traders own multiple premises. Because the licence attaches to the licensee, not to the premises, only a single licence is required. For franchises, the number of licences required can depend more on the franchise model than on the size or number of premises of the business.

Other types of traders include those who operate on a home occupancy basis only (via the Internet), and those who operate as wholesalers, dealing only with other motor car traders.

3.2 How is the motor car trading industry regulated?

The motor car trading industry is regulated by the Act. The Act establishes a licensing scheme for motor car traders, imposes specific business conduct requirements for licensees, regulates contractual arrangements between motor car traders and consumers, and establishes the Motor Car Traders Guarantee Fund (the Fund), which recovers the costs of administering the Act and compensates consumer losses arising from certain conduct by motor car traders.

The Act requires a business trading in motor cars to be licensed by the Business Licensing Authority (BLA). A trader must be licensed if the trader buys, sells or exchanges or offers to buy, sell or exchange four or more motor cars in any 12 month period, or if the trader buys, sells or exchanges vehicles commercially. Where traders are affected by potentially disqualifying factors, such as having criminal convictions, having an associate with serious criminal convictions, or being involved in the management of a licensed body corporate or partnership which becomes insolvent, that trader must pay an additional fee to apply for permission to act as a motor car trader, and if that application is successful, it is often granted subject to certain conditions.

For well over a decade, the number of licensed motor car traders in Victoria has remained relatively stable at slightly over 2,000 traders. As at 30 June 2017 the aggregate number of motor car trader licensees was 2,056. In the financial year 2015/16, 158 new applications to become a licensed motor car trader were lodged with the BLA.

3.2.1 Current fees

The current Regulations prescribe fees that the Act requires or allows to be prescribed.

Charges of around \$1,000 are payable for applications to be licensed as a motor car trader and for permission applications. The most substantial fees are for the first annual and subsequent annual licences: those fees are on the order of \$1,600 each. A full table of fees is set out in **Part 6** of this Regulatory Impact Statement.

Currently, no fee is charged for an application for extension of time, or for a duplicate licence (that is, the fee for these items is set to zero). No provision is made for a fee to be charged for an application to vary or remove conditions on a conditional licence. There are minimal charges for inspection of the register, and for late payment or lodgement of documents.

Licensing staff based at CAV in the Regulatory Transactions Centre support the BLA decision-makers in administering the licensing scheme. They undertake most of the technical and administrative work involved in processing applications and facilitating decision-making. The BLA is the ultimate decision-maker and has the final signoff.

Licensing Staff operating on behalf of the BLA maintain policies for the treatment of various different types of traders. A tier system for applications distinguishes between large corporates (Tier 1) who are considered low risk and low effort, and whose applications can usually be processed efficiently and quickly; ordinary traders (Tier 2); and those who have been subject to permission applications in the past (Tier 3). Tier 3 traders are considered to be higher risk and their licence applications may be subject to particularly stringent review. At present, no distinction is made between the tiers for the purposes of fee setting, only for administrative efficiency in handling the applications.

Compliance and enforcement teams do not distinguish between categories of traders, as the compliance checks to be conducted on retailers do not vary, and enforcement action is taken in response to breaches, rather than based on the characteristics of a given trader.

3.3 Why do the current Regulations need to be remade?

When regulations are due to sunset, and it is intended that they be remade, regulatory practice is that the need for the regulations is re-examined. This process is aimed at ensuring that anything in the regulations (such as fees and forms) is still required, and that any necessary revisions or additions are identified.

The current Regulations set the fees to be charged for certain applications made under the Act. These fees are calibrated to meet the costs of administration of the Act.

If the current Regulations sunset without being remade in some form, the general taxpayer would bear the costs of Government regulating the motor car traders industry, rather than the industry itself. As well as being inconsistent with general cost recovery principles, this may result in reduced regulatory services in other areas.

3.4 Why is this Regulatory Impact Statement required?

Under the *Subordinate Legislation Act 1994*, a regulatory impact statement is required where proposed regulations (including existing regulations that are proposed to be remade) will impose a significant economic or social burden. The *Subordinate Legislation Act Guidelines 2016* define a significant impact as being a gross economic or social burden that is likely to be greater than \$2 million per year.

The current Regulations currently prescribe fees for licence applications, annual licence maintenance, permission applications and annual statements. In the financial year 2016/17, approximately \$3.5 million in fees was collected. Therefore, if the fees are remade at or near the current level, the proposed Regulations will meet the threshold for preparation of a RIS.

4 How do the fees work?

4.1 What are the general rules about setting fees?

Both regulatory fees and user charges are prescribed by regulations.

The more significant category is that of regulatory fees.

Regulatory fees involve the granting of an access right to engage in a desired activity, for example in the form of a licence enabling Government to regulate activity as an instrument of government policy. Motor car trader licence fees fall into this category.

User charges (or fees for service) are a separate category of fees, charged on the basis of a service for which a price may be paid, such as the fee for copying the register.

As stated in the Department of Treasury and Finance’s Cost Recovery Guidelines 2013, “general government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost represents the value of the resources used or consumed in the provision of an output or activity”.

This policy means that charges achieving full cost recovery should be considered for application to all products and services provided by budget-dependent agencies such as Consumer Affairs Victoria, except where there is a good reason that such charges should not be applied; for example, if government policy dictated otherwise, or where such charges would be impractical or inefficient.

The fees prescribed by the current Regulations recover almost the full costs of administering the Act. The charges imposed currently are not impractical or inefficient, and there are no significant perverse incentives or issues of access or equity involved in charging licensing and registration fees. Therefore, there is no real case for partial rather than full cost recovery.

4.2 What fees are charged under the current Regulations?

The current Regulations prescribe the following fees to support the operation of the Act:

- Application fee – 83.84 fee units, \$907.80
- First annual licence fee – 114.03 fee units, \$1,621.50
- Subsequent annual licence fee – 115.19 fee units, \$1,638.00
- Permission application – 79.85 fee units, \$1,135.50
- Inspection or copying of the register (per page) – 0.52 fee units, \$7.40
- Late fee on application for extension of time – nil
- Late payment or lodgement fee – 1.18 fee units, \$16.80
- Duplicate licence fee – nil.

These fees are charged in recognition of the time and resources required to process these applications, as well as the ongoing costs to the scheme.

The fees payable under the current Regulations are based on an allocation of the variable direct costs of each application (that is, the cost of licensing staff’s time in processing an application) to that application type. Because initial applications for licences are very labour intensive, they involve a high cost in terms of licensing staff time. Other licensing functions, such as processing annual fees and renewals, are much less labour intensive.

All licensees (including new applicants whose initial application is successful) also pay an annual licensing fee, which covers other costs associated with administering the Act and its licensing scheme.

4.2.1 Cost recovery under the current fees

In terms of the total revenue raised, the current fees appear to be set at a level which is generally sufficient to fund the costs of the efficient administration of the Act, and the payment of claims on the Fund, without unduly hindering the ability of traders to conduct their business in a sustainable manner, and without setting the initial application fee at a level which makes the entry of new operators into the industry unrealistic.

Over the last ten years, the fees have significantly under-recovered at times, and over-recovered at other times, particularly in the last two years. However, it is not currently proposed to lower the fees to a level where they would exactly match the lowered expenses of recent years, because the intensiveness of enforcement and compliance goes through cycles. From a planning perspective for CAV, and to avoid unpredictable spikes in fees for traders, it is seen as preferable to continue to marginally over-recover, rather than to raise fees significantly and unexpectedly should the enforcement approach change. Over the life of the regulations, the fees have closely matched the actual costs of the scheme, although because of significant under-recovery in some years, it has been necessary to cross-subsidise the scheme from other funding sources.

4.2.2 Issues with the current fees

As part of the process of remaking the current fees, CAV has considered whether potential adjustments may be required within a total cost recovery framework, in terms of the apportionment of cost between different licensees, and adjustments to the level of fees to ensure that costs continue to be met. In particular, the Fund sometimes experiences spikes in claims, which can affect its financial health, as well as changes to the long-term viability of the scheme, and this may require recalibration of the amount recovered.

Additionally, there have been suggestions that the annual fees are inequitable. That is because the fee is a flat fee, charged without regard to the number of cars a trader sells, the trader's turnover, or the trader's claims history or risk of future claims on the Fund. An administrative tiered system already exists which partially distinguishes between traders considered to pose different levels of risk. An option for an adjustment to the proportion of fees paid by low-risk applicants compared to higher-risk applicants is discussed below (**Option 2**).

Some very low-volume dealers, such as those who primarily trade in dirt bikes and all-terrain vehicles for use on private property such as farms, but who sell a small number of road-registered motorcycles or cars each year, contend that the cost of licensing is disproportionate compared to the income they receive from motor car trading. Based on this feedback, an option for an adjustment to the proportion of fees paid by these low-volume dealers is discussed below (**Option 3**).

Finally, depending on changes to the relative cost of different licensing activities, it may be that an adjustment is required to ensure that the fees for each activity continues to accurately reflect the costs of that activity. There are also regulatory activities for which no fee is currently charged, for example applications to vary or remove the conditions on a licence (see **Option 4**). Where these activities consume significant resources, it would be consistent with the total cost recovery framework to charge a fee in order to offset that use of resources. It may be that a fee should be charged for some activities that currently do not attract a charge, in order to ensure that traders receiving the benefit of those activities, or whose involvement in those activities requires CAV to incur costs in relation to the administration of the Act, meet the costs they are responsible for.

4.3 How do the current fees affect the Fund?

The Fund collects all the fees paid under the Act, and meets all the costs of administering the Act. The costs of administration include the costs of processing licensing and other applications, and costs associated with compliance and enforcement activities. The Fund also pays out compensation claims to consumers who suffer losses after buying a car from a licensed motor car trader.

Therefore, the money coming into the Fund through fees must be at least as much as the money going out, in the form of administrative, compliance and enforcement costs, and compensation claims. In any given year, administrative costs can be expected to be proportional to licence applications, which enables budgeting on the basis that the licence fees taken in over the year will pay for the administrative costs over that year. There is some relationship between compliance and enforcement costs, and the number of licensees, but compliance and enforcement costs also depend on enforcement priorities. As a result, the annual fee will not recover exactly the correct amount in each year, but will recover the median amount around which the costs fluctuate.

There should also be sufficient reserves in the Fund to ensure that all compensation claims can be paid out as necessary. Because claims are not predictable, it is not always possible to budget on the basis that the claims in any given year will be paid out of the money coming in that year through fees. The Fund is required to be sufficiently healthy to deal with unexpected spikes in claims.

The Fund does have income other than licence fees, but those amounts are comparatively very small.

The financial state of the Motor Car Traders Guarantee Fund over the life of the 2008 Regulations is set out below in **Table 1**.

The table shows that the current balance of the Fund is \$4,041,964.

This balance comprises revenue from fees, and transfers made from general CAV funds in order to top up the Fund. Between financial years 2009/2010 and 2015/2016, \$3,900,000 was transferred into the Fund. Without these transfers, the Fund would have been in deficit in five of the eight years that the current fees were in force (2009/2010 to 2013/14).

Since financial year 2014/15, the fees have met the costs of administering the Act, so that the Fund has been in surplus. In 2015/16 and 2016/17, that surplus has been significant, and the current balance slightly exceeds \$4 million. However, this balance is the result of a change in compliance and enforcement priorities, and unusually low claims. The level of claims is unpredictable, and enforcement priorities change on a cyclical basis. These surpluses are unlikely to continue long-term. In order to provide certainty and predictability for traders, and to ensure that the scheme continues to meet its own costs (i.e. further transfers are not required to keep the Fund solvent), the preferred way of dealing with these cycles has been to flatten the peaks and troughs by setting the fees so that they meet the long-term average costs of the scheme.

As noted previously, the Fund needs significant reserves so that it can meet spikes in compensation claims, as well as the ordinary costs of administering the Act. The balance of the fund could be made to dwindle. However, as noted above, most of this reserve is composed of past transfers into the fund, rather than fee revenue.

Table 1: Motor Car Traders Guarantee Fund Balance Sheet

	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Fees	\$2,543,016	\$2,857,112	\$3,156,358	\$3,122,910	\$3,454,396	\$3,437,392	\$3,465,946	\$3,630,115	\$3,529,348	\$3,540,183
Fines	\$38,624	\$105,773	\$53,843	\$37,119	\$85,561	\$42,922	\$106,605	\$47,594	\$19,327	\$37,233
Investment income	\$97,466	\$53,728	\$14,615	\$10,317	\$12,883	\$12,325	\$12,382	\$22,128	\$41,219	\$51,310
Other*	\$2,660	\$6,090	\$8,429	\$3,005	\$56,047	\$7,918	\$8,369	\$15,361	\$12,186	\$5,512
Transfers between funds**	\$-	\$-	\$200,000	\$600,000	\$900,000	\$900,000	\$600,000	\$600,000	\$100,000	\$-
Total Revenue	\$2,681,766	\$3,022,703	\$3,433,245	\$3,773,351	\$4,508,887	\$4,400,557	\$4,193,302	\$4,315,198	\$3,702,080	\$3,634,238
Other expenditure***	\$1,863,082	\$2,300,770	\$2,347,636	\$2,547,893	2,666,844	2,615,397	2,356,599	2,430,899	1,495,859	1,681,975
Claims	\$152,445	\$791,538	\$403,348	\$529,781	\$716,154	\$706,560	\$675,707	\$381,343	\$408,917	\$255,280
Total expenditure	\$2,481,343	\$3,725,958	\$3,397,541	\$3,912,484	\$4,190,583	\$4,348,991	\$3,779,414	\$3,531,614	\$2,535,210	\$2,522,014
Surplus/Deficit	\$200,423	-\$703,255	\$35,704	-\$139,133	\$318,304	\$51,566	\$413,888	\$783,584	\$1,166,870	\$1,112,224
Surplus/Deficit excl transfers	\$200,423	-\$703,255	-\$164,296	-\$739,133	-\$581,696	-\$848,434	-\$186,112	\$183,584	\$1,066,870	\$1,112,224
Balance of MCT at end of June	\$1,002,210	\$298,957	\$334,661	\$195,528	\$513,832	\$565,398	\$979,286	\$1,762,870	\$2,929,740	\$4,041,964
Accumulated transfers	\$-	\$-	\$200,000	\$800,000	\$1,700,000	\$2,600,000	\$3,200,000	\$3,800,000	\$3,900,000	\$3,900,000
Notional balance excl accumulated transfers	\$1,002,210	\$298,957	\$134,661	-\$604,472	-\$1,186,168	-\$2,034,602	-\$2,220,714	-\$2,037,130	-\$970,260	\$141,964

*Primarily composed of court costs | ** From appropriations | ***Primarily composed of employee costs, e.g. salary, super, desk space, computers, facilities.

4.4 Have the current fees previously recovered enough money to administer the Act?

Currently, the Fund is healthy enough to cope with some spikes in admitted claims or requirements for increased compliance and enforcement activity. However, that fact is largely attributable to the transfers the Fund has received from other funding sources: in financial years 2008/09 to 2013/14, revenue from fees would not have covered the costs of administration of the Act.

Without transfers from other Consumer Affairs Victoria funds, the Fund would now be in a significantly worse position than ten years ago, and would have run a deficit in six of the last ten years. This would have meant that there was insufficient money in the Fund to pay out claims, and in some cases the other costs of administering the Act, in six of the last ten years. Transfers were therefore made, because in those years, the fees were not recovering enough to fund the administration of the Act in terms of licensing, enforcement and claims.

The Fund should be prepared for the possibility that motor car traders may once again become a key focus for compliance and enforcement, and have adequate reserves to deal with admitted claims and compliance and enforcement costs should a major issue arise in the industry. This is because increases in claims are not always predictable from year to year, and because cyclical change in expenses is part of the nature of this industry. It would, in theory, be possible to increase fees on an ad hoc basis when costs increased, but this would involve imposing significant fee increases on traders on unpredictable timeframes. This would create difficulties for traders in planning their affairs, and in some cases, could create financial issues for traders. Given that the cyclical nature of costs is relatively predictable, it is considered to be preferable to calculate the average expected costs over the nature of the regulations, and set fees according to that average, rather than making significant adjustments on an irregular timeframe.

The surpluses achieved in financial years 2015/16 and 2016/17 are attributable to comparatively low expenditure and admitted claims. Between Financial years 2010/11 to 2014/15, there was a particular focus on proactive compliance activities, such as inspections, which involved more staff time and therefore additional cost. In financial year 2016/17, a targeted compliance approach was taken. This reduced the amount of time and resources allocated to monitoring and enforcing compliance with the Act.

Broadly speaking, the majority of variation in costs for the Motor Car Traders licensing scheme can be attributed to compliance, enforcement, and Fund claims, although there is a relatively small degree of fluctuation in licensing costs from year to year. Tables showing the variations in the different cost categories are included at **Appendix 2**.

The calculations below include all the full years for which the current fee levels were charged. Since the Regulations came into force halfway through financial year 2008/09, on 1 December 2008, an 8-year average covering the financial years 2008/09 to 2016/17 is provided.

Table 2 compares the average level of expenditure with the average level of fees collected for each full year since the Regulations came into force on 1 December 2008.

Table 2: income against expenditure, excluding transfers between funds

Item	8-year average
Expenditure excluding claims	\$2,414,076
Claims	\$407,709
Total expenditure	\$2,821,785
Fees	\$2,733,665

Fines	\$43,020
Investment income	\$17,718
Other	\$11,683
Total revenue (excluding transfers)	\$2,806,086
Shortfall between revenue and expenditure	-\$15,699
Percentage of expenditure attributable to claims	14%

The data suggest that the level of recovery has improved since the Regulations came into force; if financial years 2007/08 and 2008/09 were included, years in which the current fees were charged for at least part of the year, the average shortfall figures would be significantly worse.

However, there is still a slight shortfall between the income received and ongoing expenditure, calculated over the life of the current Regulations. This suggests that fees should be adjusted slightly to redress the shortfall. The 8-year average shortfall equates to approximately 0.6% of the current fees charged.

The impact of an adjustment of this scale on any given trader is expected to be minimal. Assuming that the makeup of the fees stayed the same, and in fee units for the financial year 2017/18, licence application fees would increase from 63.84 to 64.22 fee units (from \$907.80 to \$913.25); first annual licence fees would increase from 114.03 fee units to 114.71 fee units (from \$1,621.51 to \$1,631.24; and subsequent licence fees would increase from 115.19 fee units to 115.88 fee units (from \$1,638.00 to \$1,647.83).

4.5 How have costs changed since the current Regulations were made?

4.5.1 Compliance and enforcement

Compliance and enforcement costs for the motor car traders industry are semi-cyclical, varying depending on the level of oversight of the market deemed to be necessary by CAV based on the overall quality of voluntary compliance and on the CAV's compliance priorities in a given year.

For example, in financial year 2012/13, costs were high, and the Fund experienced a significant shortfall. The majority of this shortfall can be attributed to higher compliance and enforcement costs, and increased Fund claims, even though those areas usually represent a relatively small proportion of the overall costs of administering the scheme. **Appendix 2** provides an overview of the costs of the different branches from year to year, starting in 2012/13.

In 2012/13, the employee costs for the Enforcement and Legal Services branch were \$367,348, plus \$52,536 spent on professional services contractors. This reflects the increased personnel time required to undertake the level of compliance occurring in that financial year. The total costs for the branch were \$431,592 in 2012/13. In the Trader Compliance Services, employee costs were \$326,404, and total costs were \$328,444.

In contrast, in 2015/16, employee costs for Enforcement and Legal Services were \$94,160, with no money spent on professional services contractors. Total costs were \$96,275, more than \$335,000 less than in 2012/13. Similarly, in Trader Compliance Services, employee costs were \$148,960, and total costs were \$151,025, over \$177,000 less than in 2012/13.

The differences in these costs (almost \$500,000) along with claims (approximately \$300,000), explain the majority of the difference in expenditure (almost \$1,000,000) between the two financial years. The remainder of the difference can be attributed to costs associated with the Regulatory Transactions Centre and corporate costs such as policy assistance. In 2012/13, online annual statements were launched for various industries including motor car traders. It is believed that the work associated this may have caused a slight increase in employee costs. Because compliance

and enforcement staff operate across a number of different areas, it is possible to direct their activity in a responsive and adaptable way; a change of focus for CAV does not require new staff to be hired, only an operational decision to schedule additional or more comprehensive inspections, investigations, or other actions in a particular area. In financial years 2015/16 and 2016/17, compliance and enforcement in the motor car space was not a key focus for additional proactive compliance and enforcement, but enforcement focuses change periodically.

Examples of special compliance and enforcement action taken in 2012/13 include: the establishment of a hotline for reporting unlicensed trading, with 318 reports made and followed up; work on special educational campaigns; a special cross-border event in Albury-Wodonga conducted in cooperation with New South Wales state authorities; 411 compliance inspections; 61 civil actions, 33 prosecutions, and enforceable undertakings signed by 30 parties. A more complete list of actions is at **Appendix 3**.

By way of comparison, in 2015/16 the primary focus for this sector was on reducing regulatory burden, and therefore the overall costs of administering the scheme were lower.

In the compliance and enforcement space, compliance and enforcement tasks relating to the Motor Car Traders regime have changed very little over the past ten years, and are not expected to change significantly in future. Changes in expenditure on compliance and enforcement are attributable to changes in focus by CAV, and the outcomes of investigations, rather than any substantial change in the duties undertaken by those personnel. The checks carried out by CAV inspectors are based on the requirements of the Act, which have not changed; inspections require personal attendance; investigations involve interviewing witnesses and examining records; and follow-up action involves correspondence and legal proceedings. These processes cannot be made substantially more efficient through the use of technology, and the costs associated with these activities have not decreased.

4.5.2 Claims

The level of claims made on the Fund varies from year to year, and has recently been lower than the average. In financial year 2016/17, there were \$255,280 of claims, compared to the average of \$407,709. However, a single major event giving rise to significant claims, such as a business failure, can have a significant effect on claims expenses. For example, in financial year 2011/12 a single trader's conduct led to \$360,544.86 in claims, while in financial year 2014/15 a different trader's conduct led to \$264,238.46 in claims.

These differences can result in significant shortfalls and variations from year to year. For example, in financial year 2012/13, the total claims were \$705,560. This was one of the factors that led to the significant operating deficit in that year. The 2016/17 total of \$255,280 in claims is an outlier because it is unusually low.

Therefore, it is not safe to set fees based on an assumption that claims will continue at the current lower level.

4.5.3 Licensing

In the licensing space, the introduction of a new computer system for processing licensing applications was introduced in 2010. The expected cost savings of this upgrade, approximately \$70,000 per year, occurred early in the life of the current Regulations. These savings have been built into the calculations of the cost of the scheme; the figures used to calculate the costs of each application were recorded after the system was introduced. Improvements to the licensing system are still being implemented. These include scanning documents to create a paperless office. This takes up staff time, and therefore increases expenditure on staffing, but is eventually expected to reduce costs, for example in relation to file storage.

The bulk of possible future savings are related to the further upgrades to information technology systems, including the potential automation of more licensing tasks, particularly the reduction of costs associated with following up incomplete applications when new digitised application forms are developed. An upgrade to the licensing software is planned, but those plans are not currently developed in a sufficiently high level of detail to allow for detailed calculations of each fee. The Regulatory Transactions Centre, which handles licence applications on behalf of the BLA, is

currently working on the design of new online application forms. These new forms will be integrated with the Global Entity Model, a computer system to be used across the licensing schemes administered by the BLA and Consumer Affairs Victoria in the coming years. It is expected that these improvements will decrease the amount of time spent following up on incomplete applications.

Although the technology upgrade is under way in other areas, its budget, timeframe and expected savings are not sufficiently certain to be built into the costs of administering the licensing scheme at this stage, especially considering the need to maintain a significant buffer in the Fund in case of major issues. Counterbalancing that is the fact that it is expected that the project will be funded either from general Consumer Affairs Victoria funds, or (if applicable) perhaps using the transfers from general funds that have previously been applied to the Motor Car Traders Guarantee Fund.

The costs of administering the Act are considered to be efficient. A number of the processes used are set by the Act, and cannot be rendered more efficient. In relation to compliance practices, in the financial year 2016/17, each inspection took an average of 55 minutes with an average of 57 checks being completed in this time. Monitoring sessions are also completed; these involve web based searching and surveillance, and take on average 15 minutes. The average duration of a compliance check across Consumer Affairs Victoria is 36 minutes. The longer duration of motor car traders checks reflects the number of checks that must be completed; many of the inspections conducted by Consumer Affairs Victoria are relatively short, for example inspections of retail premises. The checks to be conducted are defined by the Act and cannot be reduced. Although it is more time consuming than other inspections conducted by Consumer Affairs Victoria, the inspection process for motor car traders is less time consuming than for other complex areas.

Other jurisdictions' licensing scheme costs are unlikely to be comparable to the Victorian scheme, as there are substantial differences in the administration of those schemes. For example, the South Australia, Western Australia and New South Wales licensing schemes operate on a per-place-of-business basis, each with different ways of dividing the different fees payable. Queensland has a scheme in which motor dealer licences are partially integrated with real estate and auctioneering licences.

5 Would the current fees recover the costs of administering the Act?

Currently, the reserves in the Fund are sufficient to deal with multiple years of unusual demand on the Fund.

The costs of administering the Act include:

- a) Costs incurred in administering the licensing and registration scheme (by the Regulatory Transactions Centre on behalf of the BLA, with BLA involvement)
- b) Costs incurred in assessing and paying out claims on the Motor Car Traders Guarantee Fund
- c) Costs incurred in compliance, including education and inspections
- d) Costs incurred in enforcement and legal proceedings, ranging from informal requests to correct issues to legal proceedings.

The possibility of allowing the reserves in the Fund to dwindle, either by maintaining fees at their current level or reducing them slightly, was considered. However, it was decided that in accordance with the general position that regulatory and user fees should achieve total cost recovery, it is necessary to ensure that the level of prescribed fees provides sufficient income to cover the ordinary level of expenditure on the administration of the Act, over the life of the regulations, even though at the current level of expenditure this will involve over-recovering.

The Fund only has a healthy balance presently because of transfers received from other Consumer Affairs Victoria accounts. It would be inconsistent with the total cost recovery approach to allow traders to benefit from amounts in the Fund to which they did not contribute. Additionally, if the reserves were allowed to dwindle, eventually fees would have to be raised in order to shore up the Fund once again.

As the transfers were raised from general funds, rather than motor car trader licensing fees, and were aimed at meeting claims, it is not considered appropriate to use them to meet day-to-day administration costs. Rather, they are to be earmarked either for the purpose for which they were transferred, that is, paying claims; or, if the level of claims does not necessitate the use of those funds, they may be used to fund extraordinary capital expenses.

Therefore, in order to ensure long-term sustainability and fairness, it remains important for fees to cover all expenses incurred in the administration of the Motor Car Traders Act, including claims on the Fund.

Four options for achieving cost recovery have been considered.

5.1 What are the options for fees?

There are four proposed fee structures:

1. Full cost recovery, equal licence fees charged for each licensee
2. Full cost recovery, with proportional reduction in licence fees for low-risk licensees,
3. Full cost recovery, with proportional reduction in licence fees for low-volume licensees, and
4. Full cost recovery, incorporating a new fee for applications to remove certain conditions on a licence.

Each of these options are compared against the “base case”, in which no fees would be charged. This is a standard comparison in regulatory impact statements and legislative impact assessments. The comparison of suggested fees against what would happen if no fees were set allows for a clear explanation of the advantages and disadvantages of each scheme.

In each case, the focus of analysis is on the licence application, annual, and permission application fees, as these represent the bulk of the cost for applicants. The other fees, for late payment and lodgement and inspections of the register, are addressed on a cost recovery basis.

5.1.1 Base case

In the base case, no fees would be charged. Under this option, none of the costs of administering the scheme would be recovered, leaving a shortfall of \$2,749,364 (eight-year average). The shortfall would have to be funded by Consumer Affairs Victoria out of general revenue. This option is inconsistent with the scheme and purpose of the Act and with Government cost recovery policy.

5.2 Would the options achieve what we need them to?

5.2.1 Option 1 (current structure): flat fee structure, full cost recovery

Option 1 is the current fee structure, indexed to ensure full cost recovery. Under this option, costs would be fully recovered. There would be no adjustment of fees either in relation to traders' ability to pay or to the risk a trader posed to the Fund. Because the fee structure is not adjusted, it may have disproportionate impacts on low-volume traders, for whom the cost of licensing will be proportionally greater compared to their ability to pay.

Under the current model, cost recovery is achieved across the whole scheme. The licensing costs associated with certain traders may not be fully recovered from the fees charged to those traders, while the fees charged to other classes of traders may over-recover slightly.

For example, for licence applications, traders are divided into three tiers, with Tier 1 being the least costly and Tier 3 the most. Tier 1 traders are usually large corporates, with established and digitised processes that ensure the correct documentation is provided initially, reducing the amount of staff time, and therefore cost, spent ensuring compliance. Such traders are often larger, with complex corporate structures and more directors and managers, which increases the number of external checks that must be conducted. This can result in increased time and costs that may, to some degree, offset the savings attributable to these traders' processes. For example, a company with five directors (who each has a spouse) will require at least 10 criminal history checks at a cost of approximately \$40 each.

Provided that, in each category, either full cost recovery is achieved or there is a good reason for not achieving full cost recovery, the fact that some traders' applications are more costly than others is not seen as problematic. Rather, they are a natural consequence of a regulatory fee structure in which fees are charged in advance for certain types of registrations, as opposed to a user-charges structure.

The discrepancies between different tiers of traders are not sufficient to justify a complete overhaul of the licensing fee structure, which appears broadly to be functioning as intended. The effort and cost involved in establishing finely differentiated fee categories in which any given application completely paid for its own costs without any cross-subsidisation would be prohibitive, would result in a variable cost structure which might have significant perverse impacts, and would undermine the existing regulatory fee approach.

However, there may be scope to adjust fees in marginal cases, namely for substantively different categories of lower-risk trader, and in order to provide for activities which impose a significant cost, but which are not currently subject to a fee, particularly applications to remove certain licence conditions.

5.2.2 Option 2: risk-adjusted fee structure, full cost recovery

Option 2 would obtain full cost recovery, while adjusting fees in relation to a trader's assessed risk, building on the existing administrative tiers to create more finely graded risk profiles for traders. Fees would then be calibrated to these fine grades, so that lower-risk licensees would pay less in fees. The rationale for this option is that low-risk traders will require less money to be disbursed from the Fund, and so should pay less, whereas high-risk traders should pay more.

Over the life of the 2008 Regulations, claims have made up 14% of expenditure on average. Therefore, if fees are to be adjusted on the basis of risk, the discount for traders with a low risk of claims should be no more than approximately 14% (subject to adjustments for anticipated future costs).

In creating such tiers, the ideal would be to track risk based on a number of factors, in order to create finely graded risk profiles. This is a complicated process, and currently the information required to inform it is not always available. The clearest risk factor, and the easiest to track, is a trader's history of admitted claims against the Fund.

A risk-adjusted fee structure based on admitted Fund claims would build on existing structures under the Act which restrict trading or enable bank guarantees to be obtained where traders present a particular risk to consumers, and therefore to the Fund.

Under section 29A of the Act, where a claim has been admitted against a person (or a partnership or body corporate where the person was involved in management, or a partner or director), that person must apply to the Authority for permission to be involved in a motor car trading business. Sections 29B and 29C provide for similar processes where the licensee has been convicted of a serious criminal offence within the last 10 years, and where the licensee is a body corporate or a partnership and a partner or director of the licensee is convicted or found guilty of a serious offence.

However, although this is the clearest risk factor, in practice, increasing the fee for these traders to compensate for that risk would not be the most effective way of dealing with the risk. This is because:

1. In the case of admitted claims, permission applications already address the issue. There is a significant fee associated with the permission application. The Authority may conduct a broad range of inquiries, and the assessment is designed to protect the public interest. Additionally, in each case the Authority may impose conditions on the licence of the licensee. Often, this involves the payment of a bank guarantee which can be used to pay out any future claims. The Act therefore has an inbuilt structure which addresses the risk posed by licensees with admitted claims.
2. Enforcement practices have evolved to reinforce this approach. Previously licence holders were given two weeks' grace to pay amounts ordered by the Committee; this policy has now been ended in consultation with the Business Licensing Authority because it was failing to protect the public. The result is that more licensees are required to make permission applications, and the Business Licensing Authority has greater visibility over those licensees' history, meaning that repeat offenders are less likely to be successful in their applications for licences.
3. Most Fund claims that are upheld relate to insolvent licensees. These licensees usually do not apply for permission or for any further licences. As a result, increasing fees for this group would have little effect.

The next major risk factor is the financial situation of the licensee, because most successful Fund claims relate to insolvent licensees. Currently, the BLA has the power to demand a bank guarantee from a licensee that it considers poses a risk of claims against the Fund, including those in tenuous financial situations. As a matter of policy, the Authority has been increasing the frequency with which it seeks these guarantees. However, to impose additional non-recoverable costs on licensees with tenuous finances would increase the risk that those licensees would become insolvent, and therefore could actually increase pressure on the Fund due to the claims that might result from an insolvency. Therefore, this option would likely be counterproductive.

Other risk factors include complaints history and enforcement action. However, the complaints resolution and enforcement systems are not set up to provide reliable assessments of fault and severity. The complaint resolution system does not reliably provide for adverse findings which could fairly and consistently be held against licensees; rather, it records information in a qualitative and ad hoc basis, and conclusive findings may not always be made as to whether any given complaint is justified. Enforcement actions by Consumer Affairs Victoria are focused on resolution rather than fault-finding. No data is available which would indicate how reliably complaints and enforcement actions predict future claims, and setting up a system capable of tracking these risks would involve significant expense, because the computer system used to handle licensing would require a major redesign in order to link licensing functions to complaints tracking.

Because any adjustment to the fees scheme on the basis of risk will involve a reduction of no more than approximately 14% (see **Table 2** above), the benefit provided to low-risk traders is likely to be relatively small, under \$200 per licence application at most. The cost of claims per licensee, based on the current number of licensees and the average size of claims since the current fees were introduced, is under \$170 per licensee (see **Table 4 in Appendix 1** below).

Given:

1. the most reliable predictors (a history of insolvency or admitted claims) will usually disqualify traders rather than returning significant extra revenue;
2. there would be a further risk of destabilising licensees if risk is assessed according to upheld claims; and
3. the risk that use of complaints or enforcement actions might result in unfair outcomes,

the permission application and bank guarantee measures are considered to be more satisfactory than a risk-adjusted fee structure as a means of dealing with risk to the Fund.

Therefore, this option is not preferred.

5.2.3 Option 3: volume-adjusted fee structure, full cost recovery

Option 3 would achieve full cost recovery while adjusting fees to account for the volume of trades a trader might be involved in, measured in turnover from motor cars as defined in the Act.

The rationale for this option is that traders with high turnover have greater means to pay those claims, owing simply to the level of relevant business they engage in. Additionally, there is a natural ceiling on the liability that low-volume, low-value traders can pose to the Fund, because the value of any claim is limited to the value of the sale.

A particular concern raised with Consumer Affairs Victoria related to small, rural licensees who deal primarily in off-road bikes and all-terrain vehicles, which are not classed as motor cars for the purposes of the Act. A small number of such traders also sell small quantities of motorcycles registered for on-road use. These motorcycles are classed as motor cars for the purposes of the Act, and dealers selling them commercially must therefore be licensed. In a case study presented to Consumer Affairs Victoria, one such dealer sold approximately 10 motorcycles per year. It was contended that these types of dealers are very low-risk, and do not receive the same financial advantages from their trade as a larger, urban, or car-focused dealer. The submission indicated that there were approximately twelve such dealers operating in Victoria.

For the purposes of exploring this option, turnover attributable to motor cars, rather than the number of motor cars sold, was isolated as an appropriate metric. This was considered the most effective way of targeting any potential reduction at low-volume, low-priced licensees, as intended. A metric of number of motor cars sold was considered, but rejected, because it might also exempt low-volume dealers of super-premium cars. Given that the option is intended to assist licensees with low profit margins, who both need the assistance and whose low turnover represents a natural ceiling on liability, a categorisation of this type would not be appropriate.

However, further investigation revealed that these traders do not stand out as a low-cost category. The compliance checks carried out on these types of businesses are the same as those carried out for any other. Compliance checks are the same irrespective of the size of the trader. Volume might offset the difficulty of carrying out some checks, such as those relating to the display of forms or the inspection of dealings books, but these efficiencies are often offset by other factors such as travel time. They are also highly dependent on the record-keeping practices of each trader. Additionally, small traders tend to cause claims on the Fund more often than larger traders do, because their businesses can be less stable, increasing the chance of insolvency-related claims.

In relation to licensing, the largest component of the cost and therefore fee structure, licensing applications from these traders fall within Tier 2. As a whole, applications in this category do not take an inordinate amount of time, but nor are they particularly efficient. Furthermore, the allocation of costs under this system would require significant changes to licensing systems and software, further increasing costs in the medium term.

There is insufficient data available at this point to determine whether the rural farm traders identified as a particular focus can be meaningfully differentiated from other traders in Tier 2, but the indications that are available do not support a finding that their applications are unusually easy to deal with.

Even assuming that these traders could be meaningfully distinguished from others on the basis of their likelihood of requiring compliance and enforcement action or demands on the Fund, the saving would be minimal. Expenditure on Fund claims and enforcement and legal action, combined, currently make up no more than approximately 25% of the costs of the motor car traders licensing scheme. Applying a discount of that size to the current fee for a trader, and the net benefit to any given licensee would be approximately \$400 per year gross. This sum, while not insignificant, should not make a substantial difference to the financial viability of a healthy licensee. Further, such traders still impose compliance and enforcement costs in relation to the scheme, and which should be recovered. While it is possible that they might be more compliant, overall, than other traders, they are still subject to some compliance and enforcement initiatives such as

education and routine checks. Any realistic discount, therefore, would be significantly less than this \$400 maximum.

Finally, the licensing system is not a user fee system in which a fee is charged for services, but one in which the fee covers access to a regulated environment. Were the scheme to be conducted on a user pays basis, large corporate licensees might pay less than smaller, less sophisticated licensees: on average they require less intervention from staff during the licensing process, and staff costs make up the bulk of the expenses associated with the licensing scheme, which is why they fall within Tier 1. However, the nature of a licensing scheme is that participants pay to enable their participation in a regulated industry, recognising that there are intangible costs and benefits associated with participation in such a scheme, and that the cost is not a fee for service but a fixed cost of doing business. There are cases in which a departure from the general principle of equal cost sharing may be justified within a licensing scheme, but a convincing justification for such a departure must be shown. Additionally, all these traders still benefit from operating within a regulated environment.

Given the administrative difficulty of effecting a volume-adjusted fee scheme, and the fact that the advantages to low-volume traders are likely to be minimal given the small size of the discount compared to the fee, this option is not preferred.

5.2.4 Option 4: new fee for applications to remove conditions, full cost recovery

Option 4 would achieve full cost recovery without increasing licence fees. Certain costs which are not currently recovered would begin to be recovered by a new fee for applications to remove conditions on a licence. This fee has a relationship to risk, but the primary basis on which it is charged is to recover the costs of the application.

The applications to be targeted are those where an applicant initially restricted to operating a home occupancy business applies to operate from a car yard, and where an applicant initially restricted to operating a wholesale business applies to operate a retail business. Currently, there are approximately 30 such applications per year. The size of this category means that the new fee would offset the slight under-recovery currently achieved by existing fees.

Ordinarily, when an applicant applies for a licence, the licence is either granted without restrictions, or is declined. However, restrictive conditions can be imposed on licences in borderline cases where the grant of an unrestricted licence might pose an undue risk to the public, but the risk is not sufficient to justify declining an application entirely. In these cases, conditions may be used as a risk mitigation measure. Occasionally, once a licence has been granted subject to conditions, the licensee will apply to have those conditions removed, relying on their newly-established trading history as evidence that removal of conditions is appropriate from a consumer protection perspective.

This application is comparable to an initial application in a number of respects, most importantly the amount of work involved for the Regulatory Transactions Centre, and the fact that it is a one-time assessment of suitability: if successful in such an application, the applicant will be able to renew the licence by paying the second or subsequent licence fee, without another condition removal application. The work involved with these applications is estimated to equate to 70% of the work that goes into an average initial licence application. The process can be a complex one, as it involves a re-evaluation of material including credit checks, financial records, and business plans. This evaluation, when conducted at the initial application stage, generally represents the more difficult part of the application, as it involves weighing a number of competing factors to assess the applicant's viability and/or risk. In a condition removal application, this process is repeated, except that the applicant's actual history as a licensee must also be considered.

The new fee would apply to conditions which impose restrictions on a trader's business model, rather than administrative restrictions which are sometimes used to facilitate changes such as the sale of a franchise or the addition of a director. It is set on the basis of the efficient cost of handling the application to remove conditions.

Most commonly, conditions issued in order to reduce the risk posed by a new motor car trader will restrict a motor car trading business to home occupancy. This has the effect of limiting the volume of cars being traded, reducing the overheads of the business, and allowing the trader to operate the business part-time.

Often, traders in this situation will maintain other employment in addition to their motor car trading business. As a result, the risk of business failure is reduced, as is the absolute value of compensation potentially required in the case of a failure. In other cases, a condition may imposed restricting a trader to wholesale activity. That is, the condition allows the trader to sell only to other motor car traders, not to the public, thereby reducing the potential risk to the public.

Concerns have been raised that this may be becoming more common. As a general rule, it is not seen as a desirable way to enter the industry. The initial application process is designed to enable a thorough assessment of the applicant's suitability and business plan. Home occupancy and wholesale condition removal applications are distinguishable from routine or administrative applications to remove conditions, which are considered to form part of the general maintenance of the system that is legitimately funded by annual licence fees. In a home occupancy or wholesale condition removal, the trader's documents and business plans are reassessed by licensing staff. This can be a time-intensive assessment. While some documents will already have been received by the BLA, the basis of the business plans must be re-interrogated to a similar extent to that required on an initial application.

It is preferable that applicants supply well thought out business plans from the outset, because subsequent revisions can create difficulties for licensing staff in fully considering applications. A carefully and disinterestedly considered application and business plan is an important element of the consumer protection provided by the licensing scheme.

Additionally, the fact that no fee is currently charged for these applications means that they are not separately tracked, but rather bundled with routine or administrative condition removal applications, such as those to change directors, or those relating to conditions that may be imposed where a new site is purchased, to ensure that a trader only operates from that site once the sale has settled. Therefore, it can be difficult to obtain hard data on the time taken to complete such applications. However, according to data drawn from the software used to track and grant licensing applications, and considered according to current and past experience of licensing staff, these applications take on average 70% of the work involved in a fresh motor car trader application. They also require a range of documents to be supplied to effectively assess and evaluate the proposed change. Like fresh applications, they are also considered to be complex, and therefore require significant involvement from senior licensing staff.

If the application is successful and the condition is removed, additional compliance resources must be allocated: the trader is now treated as a trader operating from a car yard. Car yards form part of the general inspection programme, while home-based traders do not. Therefore, there is a compliance cost associated with these applications, as well as a licensing cost.

Traders applying for removal of conditions remain, from a licensing perspective, a riskier class than those granted unrestricted licences from the outset, and in some cases declining an application may increase the risk of insolvency, which can tip the balance in favour of accepting an application to remove conditions.

Because home occupancy and wholesale condition removals are not currently separately tracked, enforcement costs associated with these applications are currently categorised as general, rather than being tied to a fee. With the rise of online trading, it may become easier and therefore more common to make this transition. The imposition of a fee for removal of conditions relating to a trader's business model is therefore expected to increase the ability to track issues relating to these traders in order to identify potential trends and risks; and to reduce pressure to reallocate staff to other tasks.

This option would achieve cost recovery more directly for each application type, in that those applying for the removal of home occupancy or wholesale conditions would be charged for that

application, rather than spreading the cost among all licensees. This is considered to be a fairer cost recovery regime than that achieved under the current scheme. It would also operate to achieve some measure of risk allocation, and improve visibility as to potential future issues.

No major changes to the licensing system would be required to implement this additional fee, only a business policy to allow fees to be charged. Therefore, the fee could be expected to recover significantly more funds than the implementation would take.

It is possible that the introduction of this fee may impact the behaviour of licence-holders, in that some who would have used a licence with conditions. This is seen as a positive consequence, in that the use of these conditions is not desirable, and it is important to ensure that their use does not become widespread. It is possible that, if the fee has a very large effect, it may affect whether the fees recover the full cost of administering the scheme. The magnitude of this effect is difficult to predict, and could be addressed when the fees are next remade.

Given its greater level of cost recovery, the fact that charging this fee will incentivise responsible behaviour in licence applicants, and the fact that the fee may result in a drop in fees for other licensees, this option is **preferred**.

6 What fees will be charged?

The proposed fees are as follows:

1. For the purposes of section 8(3) of the Act, the prescribed fee that must accompany an application for a licence to be a motor car trader is 68.6 fee units.
2. For the purposes of section 8(3) of the Act, the first annual fee is 103.1 fee units.
3. For the purposes of section 23(1) of the Act, the subsequent annual licence fee is 103.1 fee units.
4. For the purposes of section 29A, 29B & 29C of the Act, the prescribed fee that must accompany a permission application as a motor car trader is 119.4 fee units.
5. For the purposes of section 24A (1) of the Act, the prescribed fee for the late payment or lodgement of the annual licence/statement is 1.7 fee units.
6. For the purposes of section 22(3) of the Act, the prescribed fee for a copy or extract of the register is 5.00 fee units per page of the register.
7. For the purposes of section 14(1)(c) of the Act, the prescribed fee for an application by a licensee to remove a condition restricting it to trading from a residential address or as a wholesaler is 48.0 fee units.

Table 3 provides a summary of the existing fee unit levels in the current Regulations compared with the proposed fee unit levels, outlining the expected annual revenue for each fee under the proposed Regulations.

Table 3: Proposed fees

Item	Existing fee unit level	Dollar cost	Proposed fee unit level	Dollar cost*	Expected revenue*
Application fee	63.84	\$907.80	68.6	\$975.00	\$156,000
First annual fee	114.03	\$1,621.50	103.1	\$1466.00	\$234,560

Item	Existing fee unit level	Dollar cost	Proposed fee unit level	Dollar cost*	Expected revenue*
Subsequent annual licence fee	115.19	\$1,638.00	103.1	\$1466.00	\$1,378,040
Permission application	79.85	\$1,135.50	119.4	\$1699.00	\$32,281
Inspection/copying of the register (per page)	0.52	\$7.40	0.35	\$5.00	NA**
Late fee on application for extension of time	0	\$-	0	\$-	NA
Late payment or lodgement fee	1.18	\$16.80	1.7	\$24.00	\$8,184
Duplicate licence fee	0	\$-	0	\$-	NA
Application to remove home occupancy or wholesale condition	NA	\$-	48.0	\$683.00	\$20,490

* Calculated using the value of a fee unit for 2017/2018.

**Handled on an informal basis, and uncommon; in any given year, there may be no such applications

7 How will we know whether the fees are working?

7.1 Cost recovery

The first key aim of the fees is to maintain an equilibrium between inflows and outflows of Fund money. If fees collected match expenditure, on average, then the goal is being achieved. If there is an increasing surplus, then the fees are over-recovering. If there is a consistent deficit, and particularly if transfers from other Consumer Affairs Victoria funds are required to maintain the health of the Fund, then the fees are under-recovering and may require further adjustment.

Because Consumer Affairs Victoria is investigating the possibility of either transferring out the previous transfers, or earmarking them for major projects in the future, it should not be assumed that the reserves in the Fund can be depleted in order to make up any deficit.

At present, the proposed fees are set at a level based on an eight-year average. This level of fees will result in over-recovery in some years, and under-recovery in others, depending on the level of claims and enforcement costs in any given year. However, this approach will also create predictability for traders, whereas if fees had to be adjusted whenever enforcement approaches changed, that could create significant fee increases for traders on an unpredictable timeframe. There can be significant variation in these costs, depending on enforcement priorities and whether there have been any significant business failures in any given market. For example, in the financial year 2011/12 a single trader, Karland Pty Ltd (trading as WeBuyAnyCar.com.au) attracted \$360,544.86 in admitted claims, relating to 55 cases. The same trader attracted an additional \$53,235 in further admitted claims in subsequent years as further issues were worked through. The trader had been operating in New South Wales and Queensland before applying for a licence to operate as a motor car trader in Victoria, and the application was in order. The business collapsed and one of its directors left Australia for the United Kingdom. It entered liquidation in July 2012. Across Australia, over 1000 car owners were affected. Insolvency proceedings were taken, but very little was recovered; the former director has since been convicted and imprisoned in the United Kingdom on five counts of fraudulent trading relating to his conduct as a motor car trader since leaving Australia. With only approximately 6% of the cases occurring in Victoria, the cost to the Fund could have been much more significant had circumstances been slightly different.

The proposed fees would over-recover in years such as 2016 and 2017. However, because of the variable nature of the costs to the Fund, if fees were set at such a level, it might well endanger the long-term health of the Fund. It is likely that, as compliance focuses change, enforcement and claims costs will rise once again, and that the eight-year average costs better reflect the ordinary costs of administering the scheme than the costs of 2016 and 2017, which were comparatively low.

In terms of recovering the cost of claims, granular cost recovery would mean that a differentiated claims fee would be charged to licensees in relation to their risk profile. However, this approach is not practical for a number of reasons. Although it is clear that some categories of trader pose a lower risk of claims than others, the exact degree to which that is the case is not known, because costs, complaints and other risk factors are not tracked sufficiently to make the differences easily quantifiable. In order to encourage market competitiveness, and to support small business, it is considered desirable to continue cross-subsidising traders in relation to the small proportion of costs that relate to Fund claims.

A similar rationale applies in relation to the cost of licensing activities. While Tier 1 licensing activities take less time and consume fewer resources than Tier 2 and 3 licensing activities, Tier 1 traders are also the most able to pay those costs. Tier 2 and 3 licensees are often less able to pay, and Tier 3 traders have already met the burden of paying for the permission application, and have had those applications approved. Tier 2 is a wide category with a broad range of trader types, abilities to pay, and demands on time and resources. The limited degree of cross-subsidy that applies to licence applications allows for increased market competitiveness and supports small business. In particular, there are viable motor car trading businesses in regional Victoria, in areas

where large franchises may not penetrate, which are valuable to local communities. Additionally, the presence of a variety of players in the market encourages innovation and competition, and increases choice for consumers, allowing them to get better deals.

It is noted that the new condition application removal fee will reduce the degree of cross-subsidy occurring at the licensing stage, because traders who voluntarily create an additional time and resource burden on the Regulatory Transaction Centre by undertaking these applications will now pay the cost of those applications. The majority, if not all, of traders undertaking these applications fall into Tiers 2 and 3.

It is anticipated that, as parts of the licensing process are digitised, more granular information regarding the exact costs incurred in different activities conducted by licensing staff will be available. As this occurs, the fees may be able to be refined. It is also possible that, as licensing activities are automated, the costs involved may reduce. However, at this stage there is insufficient information as to the extent to which such changes will reduce the costs of administering the act to alter the fees on that basis. Depending on the progress of these reforms to the licensing process, it may be appropriate to conduct a thorough recalibration of licensing fees at the next remake of the Regulations.

The level of recovery will be evaluated when the regulations have been in force for five years, although the regulations will have a life of ten years.

7.2 Effect on the industry

The second key aim of the fees is to promote the effective functioning of the industry, in the sense that fees should not unduly impede responsible traders from carrying out their business, and should not create perverse incentives.

One important criterion in measuring whether the fees are having the desired effect on the industry is whether they allow responsible operators to continue trading in an appropriate manner. In order to achieve this goal, fees should be set at a level which is not prohibitive to responsible operators. This goal is balanced against the requirement for the Fund to be self-sustaining, recovering the costs of administering the Act. Because the annual licence fees will fall, and there will only be a small increase in the fee for a standard application, the impact on small business is expected to be positive. A greater share of the burden will be carried by those applying for permission or for changes, that is, acting outside the ordinary scope of the system.

Another key criterion is whether the fees provide the correct incentives. As discussed above, it is important that the fees are not charged in a manner which makes unstable traders more likely to experience insolvency, as that would result in additional claims on the Fund. It is also important that traders are not incentivised to act in a manner which might pose an additional risk to the Fund. Currently, the metrics available by which to measure these outcomes are limited, and the risk posed by traders is, to some degree, a matter of impression. However, if a spike or fall in the number or amount of claims on the Fund is experienced, particularly over multiple years, then that may indicate that a review of the effects of the fees is necessary. However, this information may be confounded by other variables which might have more significant effects, such as changes in the underlying economic environment, or in enforcement and licensing priorities and staffing.

The additional fee for removal of licence conditions may have an effect on the number of traders transitioning from licences with home occupancy or wholesale restrictions to unrestricted licences. This change may be measurable as an individual variable. The expectation is that a reduction in the number of traders making these transitions will reduce the overall risk of claims on the Fund, because the traders who transition tend to pose a greater risk to consumers. This may be mitigated by the requirement that they have sufficient cash flow comfortably to pay the fee; traders whose financial position is less certain may be deterred. However, the relationship between condition removals and claims should be carefully tracked in order to ensure that the correlation is indeed as expected. If the fee appears to correlate with an increase in claims on the Fund, or (assuming that

such data can be dealt with) with an increase in complaints or disciplinary outcomes, that result should be carefully examined to ascertain whether the fee is having the desired effect.

Bearing in mind the above, the objectives of the evaluation are:

- to ascertain whether the fees are set at a level where they recover the costs of administering the Act, including claims, and
- to ascertain whether the fees are appropriate in terms of the incentives they create, and
- to ensure that the costs of administering the scheme remain efficient.

The evaluation will include quantitative data: the number of each type of application filed each year, total income and expenditure, and expenditure split by branch. This information is already collected by the internal licensing software administered by the Regulatory Transactions Centre at Consumer Affairs Victoria, and by finance at Consumer Affairs Victoria. This will allow for tracking of the costs of administering the Act, and whether those costs match the income collected from fees and other sources. The proportion of costs considered to be variable direct costs (i.e. licensing costs), versus fixed direct or indirect costs, can also be checked, in order to ascertain whether the split of costs between the different fees is correct.

Additionally, qualitative data will be collected, particularly in relation to compliance and enforcement activities such as education campaigns and legal action. This information is reported annually in the Consumer Affairs Victoria annual reports. It will help ascertain whether the costs of these branches are efficient, and whether the fees for these activities are appropriate, by allowing for comparison with activities undertaken under the previous regulations. The level of compliance and enforcement activities undertaken in relation to the Act is expected to vary over the life of the fees, but if it becomes clear that there is a long-term upward or downward trend, that may justify a change in the level of fees.

Additional information will also be collected. In particular, the establishment of a fee for non-administrative changes in conditions will create a category in the licensing software that allows these applications to be tracked in detail, in the same way as initial applications and annual fees. This will allow for analysis of the time taken to perform these applications (and therefore evaluation of whether the fee is set at the appropriate level), as well as insight into the rates of such applications, and any upward or downward trend in those rates. The upward or downward trend will give an insight into whether the new fee is discouraging such applications.

Because the financial impact of the fees scheme is relatively small, it is not necessary to conduct a highly detailed evaluation on a regular basis. A preliminary evaluation will be conducted by Consumer Affairs Victoria Policy and Legislation after five years, based on data collected internally, to check that the fees are broadly recovering appropriately.

At the end of the life of the fees, a more thorough evaluation will be conducted. It is anticipated that more detailed information in relation to risk will be available, following software upgrades, but it is not known exactly what that information will be. An evaluation of the cost recovery, incentives, and efficiency of the fees will be conducted before new fees regulations are created, and reported in a similar manner to this Regulatory Impact Statement. As more data is collected on compliance and enforcement outcomes, and perhaps linked to data collected on licensing activities, it may be possible to gain a clearer picture of the risk factors for claims, and/or for other outcomes such as complaints or disciplinary action. If this data can be tracked in a fair and reliable way, it may become appropriate to re-investigate the possibility of risk-related licence charging at the next remake of the Regulations. In any case, the effect of these fees, and options for new fees, will be released in a Regulatory Impact Statement for internal and public consultation, at that point.

Appendix 1: Costing methodology

1. General methodology

The Department of Treasury and Finance's Cost Recovery Guidelines 2013 outline two broad methodologies for determining the appropriate cost base: the 'fully distributed cost' method and the 'incremental cost' method.

The fully distributed cost method attempts to determine all the costs attributable to a given activity. It is described as "the most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency's activities".

The incremental cost method recognises that it may be inappropriate to attempt to recover overhead and capital costs where those costs would be incurred regardless of whether a given activity were undertaken, for example where the activity represents a minor "add on" to a core activity. As such, it is used to calculate the additional cost incurred because an activity is undertaken, while ignoring those costs that would be incurred regardless.

The Guidelines outline that the fully distributed cost methodology should be used where cost-recovery activities account for a large proportion of an agency's activities. The operation of business licensing schemes is not incidental to Consumer Affairs Victoria's activities. Rather, it is a core consumer protection function. On this basis, the fully distributed cost method was adopted for this Regulatory Impact Statement.

2. Cost Types

According to the Guidelines, direct costs are those "that can be readily and unequivocally traced to a product or activity because they are incurred exclusively for that particular product/service", for example the salaries of dedicated personnel, materials used by a department, dedicated office equipment, and so on. In contrast, indirect costs are not incurred exclusively for a particular product or activity, and can be accurately described as overheads.

Direct costs may be fixed or variable. Fixed costs are unaffected by product or service delivery levels (in this case, the number of licences applied for and granted). Variable costs are directly related to the levels of production and service delivery, so they will vary depending on the number of licence applications received.

For the purpose of determining the full costs incurred by Consumer Affairs Victoria in administering the motor car traders' regulatory scheme, Consumer Affairs Victoria's costs were categorised as follows:

- Variable Direct Costs – These costs represent the salary costs (including on-costs) directly associated with processing a particular type of application. Each application type takes a certain amount of time to process, so the total staff resources dedicated to applications, and therefore the cost associated with them, changes depending on the number of applications received.

These figures were derived from an analysis of the various tasks conducted by the Regulatory Transaction Centre in relation to each application type.

- Fixed Direct Costs (Salary & Operating) and Indirect Costs– Fixed direct costs represent the ongoing costs of the different branches of Consumer Affairs Victoria in administering the motor car traders' regulatory scheme, separate from the direct costs of processing applications. Fixed direct costs include compliance and enforcement costs and policy costs, as well as the staff costs of licensing staff undertaking activities that support the licensing scheme generally, but cannot be linked directly to a particular application type.

Indirect costs represent the general costs of keeping the scheme running, such as corporate costs.

These figures were derived from the employee costs and claims costs of each division of Consumer Affairs Victoria. For the Regulatory Transactions Centre, activities not directly linked to any given licence application type were considered to represent fixed direct costs.

Fixed direct costs are not split from indirect costs because the Consumer Affairs Victoria annual reports do not split the two cost types, and the two cost types are applicable to the same fees in the same proportions.

In the motor car traders licensing scheme, the application types are split into elements which place demands on the Regulatory Transaction Centre, and those which place demands on other staff. Variable direct costs and fixed direct costs were allocated according to this classification.

The initial application cost represents a large burden on licensing staff time, and therefore a high variable direct cost. However, every trader who is successful in such an application (and will therefore require compliance and enforcement resources allocated to them, ongoing interaction with licensing staff, and be subject to policy changes in the motor car traders area) must also pay an annual licence fee. Therefore, the costs not directly associated with the actual application can be attributed to the annual licence fee rather than to the initial application fee.

For this reason, the annual licence fee recovers the variable direct costs associated with processing renewals, which are very low, and the fixed direct costs associated with ongoing membership of the scheme. Other application types do not entail ongoing costs to staff other than licensing staff, so the fee for those application types includes variable direct costs but not fixed direct costs.

Indirect costs are also allocated to the annual fees. This is to ensure that the initial application fee remains at a level which does not exclude traders from the industry, and does not represent a change from the pre-existing fee structure.

The following hourly rates were used to calculate salary costs:

VPS Grade 2 - \$34.73

VPS Grade 3 - \$44.18

VPS Grade 4 – \$52.73

The hourly rates were calculated by using the midpoint of the VPS salary grade range effective 1 January 2018 plus 20 per cent on-costs, divided by the number of weeks in the year (52) and the number of working hours in a week (38).

To determine the variable direct costs for each application type for which a fee is charged, a step-by-step identification of the tasks undertaken by Consumer Affairs Victoria to process an application is required. Each task is assigned a time in minutes, a VPS salary grade of the person(s) undertaking the task and the resulting cost of each task. These costs are totalled in order to give the overall variable direct cost of processing a single application of a given type.

The number of applicants per year is calculated using data since 2012, as that is what is readily accessible from the licensing software. Feedback from the Regulatory Transaction Centre indicates that the industry is relatively static, and these numbers are considered sufficiently reliable; it is enforcement, compliance and claims costs, rather than the number of industry participants, which has changed over recent years.

Application type	Variable direct cost	Fixed direct & indirect cost	Total cost per application	Rounded fee
Initial application	\$975.14	\$0	\$975.14	\$975
First annual fee	\$17.34	\$1,458.33	\$1465.67	\$1466
Subsequent annual licence fee	\$17.34	\$1,458.33	\$1465.67	\$1466
Permission application	\$1698.50	\$0	\$1698.50	\$1699
Inspect/copy the register (per page)	\$5	\$0	\$5	\$5
Late fee on application for extension of time	-	-	-	-
Late payment or lodgement fee	\$24.44	\$0	\$24.44	\$24
Duplicate licence fee	-	-	-	-
Application to revoke home occupancy or wholesale condition	\$682.60	\$0	\$682.60	\$683

Finally, fees were rounded to the nearest one-tenth of a fee unit (except in the case of the fee for inspection and copying of the register, where this would have had a disproportionate effect), and then to the nearest dollar.

3. Detailed explanation of fees

Records are available which show the number of hours taken for each licensing task, and the total costs of administering the Motor Car Traders Scheme by division.

The time-based records show the number of hours spent by regulatory officers and senior regulatory officers on each task, each month. These totals were multiplied by the mid-point of the appropriate salary band, including on-costs, to obtain the variable direct cost of each type of application.

Fixed direct costs and indirect costs were then derived from the annual accounts and allocated as set out at Part 2 of the Appendix, above.

(a) Application fee

The initial application is by far the largest component of the direct licensing cost. At present, processes associated with the initial application are estimated to take 311 hours per month of time in the Residential Transaction Centre, or 1.9 FTE. Of this total, 77 hours are spent by a VPS 2 Regulatory Officer, and 234 by a VPS 3 Senior Regulatory Officer.

There are approximately 160 new traders per year or 13 per month, so this equates to approximately 23 hours per application. The process includes receiving a number of documents including leases, business plans and financials; conducting checks including credit and background checks; conducting interviews to ensure prospective licensees understand their legal obligations; following up with any missing or unclear paperwork; and issuing the licence. The process is relatively complex and can involve balancing of a

number of factors. As a result, the variable direct cost of the initial licence application is relatively high.

The fee has increased slightly from when it was last set, to \$975.00. The processes have not changed significantly; this increase can be attributed to tasks which might previously not have been accurately tracked, which can now be tagged to the application process.

Mitigating the high initial cost is the fact that any trader whose application fee is successful will also pay a first annual licence fee. The indirect costs associated with that trader's membership of the scheme are allocated to that fee. This avoids double recovery from such traders.

(b) First annual licence fee and subsequent annual licence fee

At present, processes associated with the first annual licence and second or subsequent annual licence are estimated to take 85 hours per month, or 0.5 FTE. Of this total, 75 hours are spent by a VPS 2 Regulatory Officer, and 9 by a VPS 3 Senior Regulatory Officer.

This equates to approximately 0.5 hours per application. The renewal process involves receiving forms and payment. Also included in the renewal charge are ongoing licensing tasks, such as updating applicants' details as necessary, and processing any surrenders from applicants who opt not to renew their registration.

The data that was available supported the conclusion that the cost of an annual fee was identical whether it was a first annual fee or a subsequent annual fee. Any costs specific to an initial application have been included in the application fee rather than the annual fee. Both types of annual fees have dropped since they were last set, to \$1466.00.

(c) Permission application

Currently, a permission application fee costs 79.85 fee units, or \$1,135.47.

At present, processes associated with permission applications are estimated to take 66 hours per month, or 0.4 FTE. Of this total, 23 hours are spent by a VPS 2 Regulatory Officer and 43 hours by a VPS 3 Senior Regulatory Officer.

This equates to approximately 42 hours per application. Because relatively few permission applications are received, this represents a high cost per application. The process involves running a number of checks, including credit and criminal background checks, and interrogating the issue which made the permission application necessary. Depending on the case, that could be an admitted claim on the Fund, or a criminal record. Reference checks are also made. The process can involve a relatively complex balancing exercise.

This process, although complex, is necessary to safeguard consumers. Traders applying for permission represent a comparatively high risk to consumers and to the Fund.

Like the initial application fee, the fee has increased slightly from when it was last set, to \$1699.00. The processes have not changed significantly; this increase can be attributed to tasks which might previously not have been accurately tracked, which can now be tagged to the application process.

(d) Inspection/copying of the register

Currently, inspection or copying of the register costs 0.52 fee units or \$7.40 per page. However, the fee usually quoted in practice is \$5.00 per page of the register. This is considered to be an appropriate fee and the legislated fee has been updated to reflect this.

This fee is rarely charged in practice, because the register is available on the Consumer Affairs Victoria website. The inspection/copying fee is charged where a commercial party

requests bulk public register information, and is intended to cover the time taken to obtain this information. A request for bulk public register information involves submitting a request to the Registrar setting out the intended use of the information, and also involves staff time in providing the information. Although time has been recorded in relation to requests to copy or inspect the register, that time relates to requests for bulk data, which are rare and usually declined as they tend to be for commercial use, for example to obtain names and addresses in order to create a database for promotional material.

There is insufficient information to determine the actual cost of such requests, because once the per-page fee is quoted, the bulk nature of the request usually means that the cost is prohibitive, and the requestor does not proceed.

(e) Late fee on application for extension of time

Currently, there is no late fee on an application for extension of time. These applications involve minimal staff time or resources. As there is a fee on late payments or lodgements, the lack of a late fee on an application for extension of time is seen to encourage compliance.

(f) Late payment or lodgement fee

Currently, the late payment or lodgement fee is 1.18 fee units, or \$16.80. This fee is minimal, and is aimed at defraying the cost in staff time caused by delays in payment and lodgement, and so to encourage prompt filing.

The processing of late payments and lodgements is estimated to take 13.8 hours per month. This total comes from a total of 16.5 hours spent on late payments, of which 8 hours is performed by a VPS 2 Regulatory Officer, 4 hours by a VPS 3 Senior Regulatory Officer, and 5 hours by team leaders. However, to avoid double cost recovery, where these costs are identifiable as coming from a specific activity, they have been allocated to that activity for the purposes of fee setting, leaving a total of 13.8 hours unallocated.

There are roughly 340 applications per year, although the number varies considerably from year to year. This fee will increase slightly, to \$24.00.

(g) Duplicate licence fee

Currently, there is no fee for the issue of a duplicate licence. Licences are stored on the register database, and can be easily reprinted. The time and cost involved are minimal, only that associated with printing a single duplicate licence and posting it to the trader. Any further licence copies required are made by the licensee. Because licensees are required to display their licences, it is desirable to encourage compliance. Given the low effort involved, it is not desirable to charge a fee for this activity.

(h) Application to remove conditions on licence

Currently, there is no fee for an application to remove conditions on a licence which restrict licensees to operating a home occupancy or wholesale business. There are approximately 30 such applications per year.

Taking into account the relative numbers of each application, the work involved with these applications is estimated to equate to 70% of the work that goes into an average initial licence application, or approximately 33 hours per application. Work includes re-evaluation of material including credit checks, financial records, and business plans. This evaluation, is complex: it involves weighing a number of competing factors to assess the applicant's viability and/or risk. In a condition removal application, this process is repeated, except that the applicant's actual history as a licensee must also be considered. Because of the complexity of the work, it is usually conducted by senior licensing staff.

The introduction of the fee will allow for these types of applications to be separately tracked, so that a more precise process can be used to calibrate the fee when the regulations are next remade.

The fees, and their effects on the balance of the Motor Car Traders Guarantee Fund, are set out in more detail below in **Table 4**. Table 4 is formatted slightly differently from Table 3; while Table 3 incorporates claim costs into indirect costs, in Table 4 they are set out separately to facilitate consideration of risk issues. Final fee amounts are italicised.

Table 4: projection of costs and effect on Motor Car Traders Guarantee Fund

New traders (per year)	160
<i>Cost of single new trader application</i>	<i>\$975.14</i>
Total traders	2100
Cost of single annual licence (less Fund contribution)	\$1,310.48
Traders requiring permission	19
<i>Cost of single permission application</i>	<i>\$1698.50</i>
Traders requiring removal of conditions	30
<i>Cost of single condition removal</i>	<i>\$682.60</i>
Late fee applications	341
<i>Cost of single late fee</i>	<i>\$24.44</i>
Total initial application costs	\$156,022.40
Total licence fee costs	\$2,752,002.64
Total permission fee costs	\$32,271.50
Total condition removal costs	\$20,477.94
Total licensing costs	\$2,960,774.48
Claims allowance	\$346,904.36
Claims fee attributable to each licence	\$165.19
<i>Total annual licence fee</i>	<i>\$1,475.67</i>
Application fee revenue	\$156,022.40
Licence fee revenue	\$3,098,907.00
Permission fee revenue	\$32,271.50
Condition fee revenue	\$20,477.94
Total fee revenue	\$3,307,678.84
Interest (0.44%)	\$17,784.64
Fines	\$43,020.00
Total inflows	\$3,368,483.48
Licensing costs	\$2,960,774.48
Funds available for claims:	\$4,449,673.00
Average actual claim	\$407,709.00
Balance of fund (assuming no transfers)	\$4,041,964.00

Appendix 2: Variation in expenditure across branches

Due to changes in reporting, full financial information split by branch is only available from financial year 2012/13 onwards (that is, for five of the eight years for which the current fees were in effect).

Note that the below figures exclude some general costs, such as the cost of policy advice, which apply to all three branches.

Additionally, claims on the Guarantee Fund are attributed to the Regulatory Transaction Centre for accounting purposes; in years with high claims, costs may be incurred in dealing with them. The below table refers to totals with claims excluded, but other related costs fall into a broader “employee costs” category and therefore cannot be extracted.

Overall expenditure in financial years 2009/10, 2010/11, and 2011/12 was broadly similar to financial year 2012/13: see **Table 1** in **Section 4.3** above.

Branch	2012/13	2013/14	2014/15	2015/16	2016/17
Enforcement and Legal Services	\$431,592	\$323,252	\$360,897	\$96,275	\$153,861
Trader Compliance Services	\$328,444	\$304,162	\$213,999	\$151,025	\$171,952
Regulatory Transaction Centre	\$765,103	\$619,427	\$577,504	\$530,420	\$567,434

Appendix 3: Compliance and enforcement in FY 2012/13

Compliance assistance and education

- New site visit packs were developed and trialled for motor car traders. These were used when conducting compliance assistance visits. They contain information to leave with the trader and a checklist for staff to use during visits, in order to ensure consistency.
- A quarterly e-newsletter called *Dealer Delivery* was launched to engage with licensed motor car traders. The first edition answered frequently asked questions by traders, provided an update on CAV's unlicensed motor car trader activities, and clarified rules around component pricing.
- As part of a national project, and in consultation with industry and other jurisdictions, a guide was developed giving specific advice on how the Australian Consumer Law applies to cars.
- A self-assessment checklist was developed for licensed motor car traders, to be placed on the website to help traders check their compliance and prepare for inspections.
- Guidelines were published on the website to help motor car auction houses understand their obligations and what they needed to do to separate retail sales from auction sales.

Compliance and inspections

- There was a particular emphasis on compliance assistance visits to businesses across the state.
- A special cross-border event was conducted in Albury/Wodonga, for purposes of knowledge and skills sharing with the equivalent New South Wales state authorities. In a two day period, 23 licensed motor car traders and 19 non-licensed entities were visited.
- 411 inspections of licensed motor car traders were conducted, to check compliance with issues such as dealings book entries.

Enforcement

- Unlicensed motor car trading was policed with electronic tracking software designed to scan online car ads.
- In April, 15 auctions were attended based on operational intelligence, to check that auction rules were being observed. A similar exercise was also taken in December.
- 318 reports of potential unlicensed trading were made to a hotline established for reporting such conduct. All reports were followed up.
- An increased emphasis was put on social media enquiries and responses.

Legal action

- 33 prosecutions were finalised
- 61 civil actions were finalised
- 30 parties signed enforceable undertakings.

Claims

- There were 274 claims against the Motor Car Traders Guarantee Fund and a total of \$706,560 was paid out.