PREPARATION PACK · VICTORIA

The dealer says the car was sold 'as is'. Was it?

PREPARED	JURISDICTION	REFERENCE	CITATIONS CHECKED
4 November 2026	Victoria	ATU-2026-000218	16 of 16

WHAT YOU ASKED

On 9 September 2026 I bought a 2017 Mazda CX-5 with 128,000 km on it from a licensed motor car trader in Dandenong, Victoria, for $18,000, which I financed through my bank. The contract of sale has a ticked box saying 'sold with no statutory warranty' and the salesman wrote 'as is' next to it; he also told me the car had been 'fully checked by our workshop'. Six weeks and about 1,400 km later the transmission began slipping between gears. My own mechanic inspected it on 20 October 2026 and his written report says the transmission needs to be replaced at an estimated cost of $6,800, and that the fault 'would in all likelihood have been developing before the date of sale'. When I went back, the dealer said there is no warranty because I signed 'as is' and that any repair is at my cost. I have paid $18,000 for a car I cannot safely drive. I want to know whether the 'as is' sale means what he says it means, whether I am entitled to a repair, a replacement or my money back, and what to write to the dealer.

ROLE
the buyer (a private individual, not a business)

GOAL
a repair or a refund without a court fight; a letter I can send to the dealer

DATES
purchase 9 September 2026; fault noticed around 18 October 2026; mechanic's report 20 October 2026; dealer refused 22 October 2026

THE CLOCK: TIME LIMITS FOR THIS KIND OF MATTER

- **Check this now:** a limit of this kind may be close on the dates you gave. Check it with a lawyer, a free legal service or the tribunal now. The Motor Car Traders Act 1986 allows a purchaser to apply for rescission of a sale agreement not later than 3 months after the agreement is entered into, on the grounds specified in s 45 (false odometer representation; agreement lacking prescribed particulars; car substantially different from the notice required by s 52(1)) [3]. For VCAT, this applies to an agreement at a cash price not exceeding $40,000 [3]. If your dates are right, 3 months from 9 September 2026 would be around 9 December 2026.
- If the trader was notified of a complaint of the kind in s 45(1) within 3 months of the agreement, an application may be made not later than 1 month after that notification [3]. How this interacts with any notification you gave is a question for a lawyer.
- The Motor Car Traders Act statutory warranty period runs from delivery and is the shorter of: a further 5,000 km driven after delivery, or 3 months from the day after delivery (s 54(2B)) [6]. For this calculation, no regard is paid to any period during which the trader has the car in possession for the

purpose or purported purpose of carrying out its obligations under that section (s 54(3)) [6]. The delivery date and the odometer at delivery would fix this period and were not supplied.

- Rejection of goods under the Australian Consumer Law is limited to the rejection period: the period from supply within which it would be reasonable to expect the relevant failure to become apparent, having regard to the type of goods, the use a consumer is likely to put them to, the length of time it is reasonable to use them, and the amount of use before the failure becomes apparent (s 262(2)) [2]. This is not a fixed date. For latent defects, the reasoning discussed in the Vautin decision bears on when a failure becomes apparent [28].
- The retrieved sources do not state a general civil limitation period for a damages or compensation action under the Australian Consumer Law. Where that would be found is a question for a lawyer or free service.

01 Your situation

This pack organises your used-car purchase matter so you can take it to a lawyer or a free legal service faster. This pack does not predict how the matter will turn out, and setting out what to do is a question for a lawyer or a free legal service. It does not give an opinion or advice, and it is not a substitute for a lawyer or a free legal service.

On 9 September 2026 you, a private individual, bought a 2017 Mazda CX-5 showing 128,000 km from a licensed motor car trader in Dandenong, Victoria, for $18,000, financed through your bank. The contract of sale has a ticked box saying "sold with no statutory warranty" and the salesman wrote "as is" next to it. You say the salesman also told you the car had been "fully checked by our workshop". About six weeks and roughly 1,400 km later, the transmission began slipping between gears. Your mechanic inspected it on 20 October 2026 and his written report says the transmission needs replacing at an estimated $6,800, and that the fault "would in all likelihood have been developing before the date of sale". When you returned to the dealer, you say the dealer said there is no warranty because you signed "as is" and that any repair is at your cost. You want to know whether the "as is" wording means what the dealer says, whether a repair, replacement or refund is available, and what to write to the dealer.

This pack does not draft communications of any kind, so it does not provide a letter to the dealer. What such a letter would need to address is turned into questions in the questions section below. The matter does not appear to be before a court or tribunal yet.

Timeline

- 9 September 2026: purchase of the car for $18,000, contract signed with "no statutory warranty" box ticked and "as is" noted (from what you told us)
- around 18 October 2026: transmission noticed slipping between gears (from what you told us)
- 20 October 2026: mechanic's written report, estimating transmission replacement at $6,800 (from what you told us)
- 22 October 2026: dealer refused any remedy (from what you told us)

02 The law for situations like yours

THE "AS IS" WORDING AND WHETHER THE GUARANTEES STILL APPLY

Under the Australian Consumer Law, s 54 provides that where a person supplies goods to a consumer in trade or commerce, otherwise than by sale by auction, there is a guarantee that the goods are of acceptable quality [12]. Acceptable quality is judged by what a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to the matters in s 54(3) [12]. Section 54(2) lists fitness for common purposes, appearance and finish, freedom from defects, safety and durability [12]. Sections 54(4) and (5) address defects specifically drawn to the consumer's attention before agreement, including by a transparent written notice displayed with the goods [12]. The retrieved sources do not include any provision that states whether contract wording such as "as is" can exclude these guarantees; that is a gap for a lawyer.

THE MOTOR CAR TRADERS ACT STATUTORY WARRANTY

The Motor Car Traders Act 1986 s 54 applies where a licensed motor car trader sells a used motor car manufactured not more than 10 years before the sale and driven for less than 160,000 km (s 54(1)) [6]. Where it applies, the trader warrants that if a defect appears before the end of the warranty period, the trader will at its own expense arrange repair and repair or make good the defect so as to place the car in a reasonable condition having regard to its age (s 54(2A)) [6]. Section 54(4) excludes defects excluded by s 55, defects from accidental damage after delivery, defects from misuse or negligence after delivery, and defects in tyres, battery or prescribed accessories [6]. Section 54(10) defines when a car "has a defect" [6]. The retrieved sources do not include any provision that states whether this warranty can be contracted out of; that is a gap for a lawyer.

ACCEPTABLE QUALITY AND A LATENT FAULT

The acceptable quality standard measures the state and condition of the goods at the time of supply, including hidden defects, judged by the reasonable consumer test, with price and any representations about the goods among the listed matters (s 54(3)) [12]. The Vautin decision observed that, for non-compliance with s 54, the issue concerns the state of the goods at the time of supply, not the state at some later time when a defect manifests; where a latent defect later produces a deficiency, one element of the guarantee breach becoming apparent is knowledge that the latent defect, present at supply, caused the later deficiency [28]. Vautin is a single-judge Federal Court decision that is not citator-checked; it must be verified as not appealed, overturned or distinguished before being relied on [28].

REMEDIES: MAJOR FAILURE, REPAIR, REJECTION

Section 259 sets out consumer action against suppliers of goods. If a failure can be remedied and is not major, the consumer may require the supplier to remedy it within a reasonable time, and if the supplier refuses or fails, the consumer may have it remedied and recover costs, or (subject to s 262) reject the goods (s 259(2)) [17]. If the failure cannot be remedied or is major, the consumer may (subject to s 262) reject the goods, or recover compensation for reduction in value (s 259(3)); damages for reasonably foreseeable loss are available under s 259(4), subject to s 259(5) [17]. Section 260 defines when a failure is major, including where a reasonable consumer fully acquainted with the failure would not have acquired the goods, or where goods are substantially unfit for a common purpose and cannot easily and within a reasonable time be remedied (s 260(1)) [1]. Section 261 lists how a supplier may remedy a required failure: repair, replacement with identical goods, or refund [5].

CONSEQUENCES OF REJECTING GOODS

Section 263 governs what follows a valid rejection. The consumer must return the goods, unless already returned or unable to be returned without significant cost in the circumstances described, in which case the supplier must collect them at its own expense (s 263(2), (3)) [18]. The supplier must, at the consumer's election, refund money

paid (and the value of other consideration) or replace with goods of the same type and similar value if reasonably available (s 263(4)) [18]. The supplier cannot satisfy the refund requirement merely by permitting the consumer to acquire goods from the supplier, that is, by store credit (s 263(5)) [18]. If property in the rejected goods had passed to the consumer before rejection was notified, it revests in the supplier on notification (s 263(6)) [18].

REJECTION PERIOD AND LATENT DEFECTS

Section 262(1) provides that a consumer is not entitled to reject goods if the rejection period has ended, or if the goods have been lost, destroyed or disposed of, or damaged after delivery for reasons unrelated to their state at supply, or attached to property and not detachable without damage [2]. Section 262(2) defines the rejection period by reference to the type of goods, the use a consumer is likely to put them to, how long it is reasonable to use them, and the amount of use before the failure becomes apparent [2]. The Vautin decision discusses how, for latent defects, the reasonable time may include time for the consumer to become aware of the nature, extent and cost of the defect, and cites the Nesbit v Porter reasoning about aging vehicles, uncertain history and freeing a dealer from accepting rejection after a certain period [28].

RESCISSION UNDER THE MOTOR CAR TRADERS ACT

Section 45 allows a purchaser to apply to the Magistrates' Court (s 45(1)) or, for a cash price not exceeding $40,000, to VCAT (s 45(2)), not later than 3 months after the agreement, for rescission on specified grounds: a false odometer representation, an agreement lacking the prescribed particulars, or a car substantially different from the notice required by s 52(1) [3]. If the purchaser notifies the trader of such a complaint within 3 months, the purchaser may apply within 1 month after that notification (s 45(3)) [3]. These provisions are additional to any right in law to rescind (s 45(4)) [3]. A s 76 claim for related loss is barred until a rescission application is heard and determined (s 45(5)) [3].

THE EXCEPTIONS AND THE DEALER'S DOCUMENTARY OBLIGATIONS

The statutory warranty does not apply to the sales listed in s 54(5), and does not apply to a car sold by auction at a public auction by a person acting on behalf of the owner (s 54(7)) [6]. The acceptable quality guarantee in s 54 of the Australian Consumer Law likewise does not arise where the supply occurs by way of sale by auction (s 54(1)(b)) [12]. Section 41 requires a used-car sale agreement by a trader to contain the prescribed particulars, terms and conditions, and makes non-compliance an offence (s 41(2)) [15]. Section 52 requires a prescribed-form notice with required particulars, prohibits false or misleading statements in it (s 52(4)), and requires the purchaser to sign a copy (s 52(6)) [7]. Section 42A requires a registered car to be sold with a current certificate of roadworthiness, "current" meaning issued within the last 30 days (s 42A(4)) [8]. Section 38 concerns odometer tampering and false representation of odometer accuracy (s 38(4)) [9]. Section 82A requires a trader to keep business documents for the previous 3 years available for inspection [13].

03 What gets looked at

- **Acceptable quality matters (s 54(3))** [12]: the nature of the goods, the price (if relevant), statements on any label, any representation made about the goods by the supplier or manufacturer, and any other relevant circumstances relating to the supply.
- **Reasonable consumer test (s 54(2))** [12]: whether a reasonable consumer fully acquainted with the state and condition, including hidden defects, would regard the goods as acceptable for fitness, appearance, freedom from defects, safety and durability.
- **Defect drawn to attention or disclosed (s 54(4), (5))** [12]: whether a reason the goods are not of acceptable quality was specifically drawn to the consumer's attention before agreement, including by a transparent

displayed written notice.

- **Consumer conduct and examination (s 54(6), (7))** [12]: whether the consumer caused the unacceptability or damaged the goods by abnormal use, and whether an examination before agreeing ought reasonably to have revealed the defect.
- **State at the time of supply (Vautin)** [28]: the decision treats non-compliance with s 54 as concerning the state of the goods at supply, including a latent defect that later produces a deficiency.
- **Major failure limbs (s 260)** [1]: whether a reasonable consumer fully acquainted with the failure would not have acquired the goods, whether the goods are substantially unfit and cannot easily and within a reasonable time be remedied, and whether they are unsafe.
- **Rejection period factors (s 262(2))** [2]: the type of goods, the likely use, how long it is reasonable to use them, and the amount of use before the failure becomes apparent.
- **Latent defect timing (Vautin, citing Nesbit v Porter)** [28]: for latent defects, the time to become aware of the nature, extent and cost of the defect, and considerations for aging vehicles.
- **Statutory warranty thresholds (MCTA s 54(1), (2B), (10))** [6]: age under 10 years, under 160,000 km, whether a defect as defined appeared before the end of the warranty period, and the warranty period calculation, which pauses for any time the trader holds the car to carry out its obligations (s 54(3)) [6].
- **Statutory warranty exclusions (MCTA s 54(4), (5), (7))** [6]: accidental damage, misuse or negligence after delivery, tyres, battery or prescribed accessories, the listed sales, and sales by public auction on behalf of the owner.
- **Rescission requirements (MCTA s 45)** [3]: whether a specified ground exists, whether the application is within time, and (for VCAT) whether the cash price does not exceed $40,000.

04 What the other side may say

ARGUMENTS COMMONLY RAISED IN MATTERS LIKE THIS

- The defect was specifically drawn to the consumer's attention before supply, or the consumer examined the goods and an examination ought reasonably to have revealed it, so the goods are taken to be of acceptable quality (s 54(4), (7)) [12]. Question for a lawyer: what counts as a defect being specifically drawn to attention, and what an examination ought reasonably to reveal?
- The rejection period has ended because, for an aging vehicle, it is reasonable to expect latent defects to become apparent relatively soon after supply (s 262) [2], as discussed in the Vautin and Nesbit v Porter reasoning [28]. Question for a lawyer: how is the rejection period assessed for a latent fault in a vehicle of this age and history?
- The failure is not a major failure because it can easily and within a reasonable time be remedied to make the car fit for purpose (s 260(1)(c)) [1]. Question for a lawyer: what distinguishes a major from a non-major failure here?
- The defect is excluded from the Motor Car Traders Act warranty because it arose from accidental damage, misuse or negligence after delivery, or relates to the battery or tyres (s 54(4)) [6]. Question for a lawyer: what evidence bears on when and how the defect arose?

> - The "as is" and "no statutory warranty" wording excludes any obligation. Whether such wording can lawfully exclude the guarantees or the statutory warranty is not addressed in the retrieved sources. Question for a lawyer: can these regimes be contracted out of, and does the wording used do so?

05 Documents that usually matter

- The date the car was delivered and the odometer at delivery: fixes the Motor Car Traders Act warranty period (s 54(2B)) [6].
- The exact kilometres driven since delivery, relative to the 5,000 km limb [6].
- The date of manufacture as determined under s 54(8), to confirm the "not more than 10 years" criterion [6].
- Whether the sale occurred by public auction or was otherwise within the s 54(5) or s 54(7) exclusions, or the s 54(1)(b) auction exception to the acceptable quality guarantee [6,12].
- The signed sale agreement and whether it contains the prescribed particulars under s 41 [15].
- The prescribed-form notice under s 52 and the certificate of roadworthiness under s 42A [7,8].
- The full terms of the salesman's "fully checked by our workshop" statement and any written record of it: bears on representations made about the goods (s 54(3)(d)) [12].
- The mechanic's report and any further diagnostic material on the cause and timing of the transmission fault.
- Whether any complaint was notified to the trader within 3 months of the agreement, and when: bears on s 45(3) timing [3].
- Whether the car has been in the trader's possession at any point for the purpose of its obligations, which pauses the warranty period calculation (s 54(3)) [6].

06 The routes

- **Direct negotiation with the dealer:** raising the matter with the dealer and seeking a repair, replacement or refund without a formal process.
- **Consumer Affairs Victoria:** a state consumer body that handles consumer complaints and conciliation between consumers and traders; check with it what it can do in a matter of this kind and any time limits.
- **VCAT (the Victorian Civil and Administrative Tribunal):** named as the Tribunal for the Motor Car Traders Act (s 3) [11] and included within "court" for relevant parts of the Australian Consumer Law and Fair Trading Act 2012 (s 3) [4]. It can hear a s 45 rescission application for a cash price not exceeding $40,000 (s 45(2)) [3]. Check the current application fee with VCAT.
- **Magistrates' Court of Victoria:** can hear a s 45 rescission application (s 45(1)) [3] and civil claims; check the current fee with the Court.
- **Rescission under the Motor Car Traders Act (s 45):** a specific statutory pathway with its own grounds and strict timing, to the Magistrates' Court or VCAT [3]. Note that a s 76 claim for related loss is barred until a rescission application is heard and determined (s 45(5)) [3].

These routes are listed without ranking and without recommendation.

07 Questions to ask a lawyer or free service

1. Can the "as is" wording and the ticked "no statutory warranty" box lawfully exclude the Australian Consumer Law acceptable quality guarantee, and does the wording used have that effect? (This is not addressed in the sources supplied.)
2. Can the Motor Car Traders Act statutory warranty be contracted out of, and what is the effect of the s 54(2C) notice requirement where a car is sold without that obligation? (Contracting out is not addressed in the sources supplied.)
3. On the delivery date and the kilometres driven, was the Motor Car Traders Act warranty period (the shorter of a further 5,000 km or 3 months from the day after delivery) still running when the transmission slipped, allowing for any pause under s 54(3)? [6]
4. Does the transmission fault fall within the s 54(4) exclusions (accidental damage, misuse or negligence after delivery, tyres or battery), and what evidence bears on that? [6]
5. How is the Australian Consumer Law rejection period assessed for a latent transmission fault in a vehicle of this age and mileage, given s 262(2) and the Vautin and Nesbit v Porter reasoning? [2,28]
6. On the limbs in s 260, what distinguishes a major failure from a non-major failure, and how does that affect whether rejection and refund, or repair, is in issue? [1]
7. If goods are rejected, what do s 263(4) to (6) require of the supplier regarding refund, replacement, store credit and revesting of property, and how is an election made? [18]
8. Is there a ground for rescission under s 45 (false odometer representation, agreement lacking prescribed particulars, or the car being substantially different from the s 52(1) notice), and is an application within time, including the s 45(3) variation? [3]
9. What effect does the salesman's "fully checked by our workshop" statement have as a representation about the goods under s 54(3)(d), and how could it be evidenced? [12]
10. What would a communication to the dealer need to address (the remedy sought, the facts relied on, any election, and any time limits), and what general civil limitation period applies to a damages or compensation claim?

08 Free help

- Consumer Affairs Victoria (consumer complaints and conciliation, and the regulator under the relevant consumer laws).
- Victoria Legal Aid (the state legal aid commission).
- Community legal centres in Victoria.
- The Victorian Civil and Administrative Tribunal (VCAT), named as the Tribunal for the Motor Car Traders Act [11].
- The Magistrates' Court of Victoria.

09 Your documents

No documents were supplied.

The two or three documents that would most help:

- The signed contract of sale, including the ticked "no statutory warranty" box, the "as is" notation, and any delivery date and odometer reading.
- The mechanic's written report dated 20 October 2026 on the transmission fault, its cause and timing, and the replacement estimate.
- Any prescribed-form notice (s 52) and certificate of roadworthiness (s 42A) given at or before the sale, and any written record of the "fully checked by our workshop" statement.

10 The law relied on

CITATION CHECK
16 of 16 citations were matched to the source text.

1	**Competition and Consumer Act 2010 s 260** When a failure to comply with a guarantee is a major failure	Compilation 2026-09-16 (C2026C00405)
2	**Competition and Consumer Act 2010 s 262** When consumers are not entitled to reject goods	Compilation 2026-09-16 (C2026C00405)
3	**Motor Car Traders Act 1986 s 45** Rescission	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
4	**Australian Consumer Law and Fair Trading Act 2012 s 3** Definitions	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
5	**Competition and Consumer Act 2010 s 261** How suppliers may remedy a failure to comply with a guarantee	Compilation 2026-09-16 (C2026C00405)
6	**Motor Car Traders Act 1986 s 54** Obligations of motor car trader	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
7	**Motor Car Traders Act 1986 s 52** Particulars to be displayed	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
8	**Motor Car Traders Act 1986 s 42A** All registered cars must be sold with a roadworthy	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
9	**Motor Car Traders Act 1986 s 38** Odometer tampering	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
11	**Motor Car Traders Act 1986 s 3** Definitions	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
12	**Competition and Consumer Act 2010 s 54** Guarantee as to acceptable quality	Compilation 2026-09-16 (C2026C00405)
13	**Motor Car Traders Act 1986 s 82A** Documents available for inspection	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying

15	**Motor Car Traders Act 1986 s 41** Agreements for sale of used motor car	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
17	**Competition and Consumer Act 2010 s 259** Action against suppliers of goods	Compilation 2026-09-16 (C2026C00405)
18	**Competition and Consumer Act 2010 s 263** Consequences of rejecting goods	Compilation 2026-09-16 (C2026C00405)
28	**Vautin v BY Winddown, Inc. (formerly Bertram Yachts) (No 4) [2018] FCA 426** Vautin v BY Winddown, Inc. (formerly Bertram Yachts) (No 4) [2018] FCA 426	judgment Vautin v BY Winddown, Inc. (formerly Bertram Yachts) (No 4) [2018] FCA 426 (2018-04-10). case law, NOT citator-checked; verify it has not been appealed, overturned or distinguished before relying

Atuny is a service of Echelon One Pty Ltd (ABN 78 618 159 354). It is not a law firm and nothing in this pack is legal advice: it is legal information and your material organised, built from the statutory text and the facts supplied, to be handed to a lawyer or a free legal service. It does not say whether you will succeed or what you should do. Check every date against your own records. **atuny.com**