



7th October 2015

SUBMISSION

for the

Legal Affairs and Community Safety Committee

Queensland Parliament House
George Street
Brisbane Qld 4000

'LEMON' LAWS

**An inquiry into
consumer protections and
remedies for buyers of
new motor vehicles**



Introduction

Lemon Laws 4 Aus (LL4A) is a lobby group founded by Connie Cicchini. The lobby group was established because of Ms Cicchini's and many other car owners' frustrations trying to get a remedy of repair, replacement or refund for a new motor vehicle with major problems.

Even though products sold within Australia are required to be of 'merchantable quality' or 'acceptable quality' these terms and definitions within the previous *Trade Practices Act* (TPA) and current *Australian Consumer Laws* (ACL) are regularly disputed between the supplier and the customer. Because of the lack of clear definitions for these terms related to 'quality', it is either difficult or impossible for many consumers who acquired a problematic new motor vehicle to get a refund or a replacement.

What is a 'lemon'?

The definition of a '*lemon*' is a car (often new) that is found to be defective only after its purchase. Any motor vehicle with numerous, severe defects that reoccur after multiple repair attempts is such and the term 'lemon' can also extend to any product with flaws too great or severe to serve its purpose.

Consumer experiences

Ms Cicchini purchased a brand new Alfa Romeo 147 in 2009. During the three year manufacturer's warranty period the vehicle had been back to the dealership approximately twenty times and had spent over 160 days in the workshop.

Ms Cicchini had made numerous calls and had sent hundreds of emails to the dealership. She had even sent emails to the importer, manufacturer in Italy and the International CEO of Fiat Chrysler Automobiles in attempts to get a satisfactory resolution.

After receiving an extended one year manufacturer's warranty, it was apparent that the Alfa Romeo 147 could not be repaired as some issues present during the original warranty period were still present when the extended manufacturer's warranty had expired.

As the Dealership would not refund or replace the vehicle, Ms Cicchini had no option but take the matter further. She was not in a financial position to take up a costly legal battle through the Queensland Courts so instead lodged a complaint against the Dealership with the Queensland Civil and Administrative Tribunal (QCAT) in May 2013.

The associated costs to purchase the vehicle was approximately \$40,000 and Ms Cicchini had to reduce her claim to \$25,000 so the matter could be heard within the jurisdiction of the Tribunal. The matter had been going backwards and forwards at QCAT for over two years and had continued to burden Ms Cicchini both financially and emotionally especially when she had to also appeal a decision. The appeal process found the Adjudicator had erred in referring to the *ACL* rather than the *TPA*. The vehicle was purchased in 2009 so the *Trade Practices Act* was the relevant applicable legislation for this particular dispute.

In the outcome of recent investigations by the Australian Competition and Consumer Commission (ACCC) into consumer guarantee complaints, vehicle faults and the inadequate handling of customer complaints by Fiat Chrysler Automobiles (FCA) and its dealerships (**Ref: Attachment 1**) it is apparent that there is a necessity for laws to better protect the Australian Consumer.

Volkswagen Group (VWG) is currently under investigation by the ACCC for the potential consumer and competition detriment from their alleged conduct for possible use of 'defeat devices' in Australia (**Ref: Attachment 2**).

It is important to note that Consumer Guarantee concerns are not limited only to vehicles supplied by FCA and VWG. Lemon Laws 4 Aus has received numerous complaints and comments via their social media page from disgruntled consumers who have purchased other makes of vehicles that have turned out to be problematic and who have not received a satisfactory resolution.

There are also a number of other social media pages dedicated to consumer concerns such as Destroy My Jeep, Lemon Vehicles in Aus, Fix our Ford Focus & Fiestas!!, VW Issues Australia, My Holden Captiva is Crap, My Audi is a Lemon and John Cadogan (Auto Expert) which report and/or comment on their experiences with the motor industry and faulty new cars.

Impacts on the consumer

It is important to consider the impacts emotional and financial stress has on the consumer and the flow on effects to their families, friends, community, to the health and legal systems when a consumer is not able to achieve a quick and efficient remedy from the supplier. In some instances the additional stress of trying to get a car fixed, repaired or replaced can greatly impact on a consumer's well-being and state of mind. This was the case when Jamie Peter Ripley tried to have his new motor vehicle repaired under warranty and the dealership refused. Mr Ripley was so disgruntled that he planted pipe bombs at the Gold Coast dealership. Mr Ripley was then sentenced to three years jail in March 2015 (*Ref: Attachment 3*).

When a consumer decides not to burden themselves with unnecessary stress and chooses to instead sell or trade out of an unsafe, unreliable lemon vehicle, in many instances it is the consumer, not the supplier, who will incur a financial loss from this exchange.

Unfortunately when lemon vehicles are then presented into the second hand market this can then create a 'domino' effect. If these lemon vehicles are never successfully repaired during the manufacturer's warranty period then these lemon vehicles will become an emotional and financial burden on the next unsuspecting purchaser. This vehicle will then be on sold or traded in again to the next unsuspecting consumer.

This raises more serious concerns over safety and who is ultimately liable should that lemon vehicle fault and cause serious injury or death.

Available remedies

A motor vehicle in many instances will be the second most expensive purchase a consumer will make after a home. As a vehicle is a major and necessary purchase for many consumers and it is important that should a supplier not provide the necessary Consumer Guarantee that a consumer can then access affordable justice.

It is beyond the means of many consumers to have the time and money available to take on legal representation against a well-funded supplier in the Queensland Courts. An affordable option is to contact the Office of Fair Trading (OFT) so they can attempt to mediate with the supplier. If mediation through the OFT is unsuccessful then a complaint can be lodged with the Queensland Civil and Administrative Tribunal (QCAT) and has a claim limit of \$25,000 for minor civil disputes. The purchase price of a new car in many instances is more than \$25,000 thus pursuing many lemon car matters through QCAT is not a solution for many consumers.

Improving consumer protections

Legislation or a contract/purchase agreement should be protect both the supplier and the consumer.

Fair terms ought to be mandated to provide a level of protection to the consumer beyond the basic warranty rights that exist. In many circumstances this offers little comfort when vehicles present themselves with latent defects.

Legislative protections and remedies could be improved by:

1. Introducing 'Lemon Laws' which clearly define the term 'acceptable quality', enhance the Consumer Guarantees and provide mandatory time and repair limits eg:

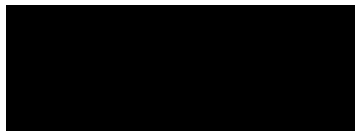
The acquired new vehicle will be deemed to be of acceptable quality if the motor vehicle has not been presented by the Consumer to the Supplier within the first twenty-four (24) months from date of purchase for the following:

- a) Two (2) events for safety related non-scheduled repair issues, or
- b) A total of four (4) accumulated events for non-scheduled repair issues, or
- c) Has spent a total of twenty (20) accrued days for repair

(For additional suggestions for defining 'acceptable quality' and enhancing consumer guarantees ref: Attachment 4)

2. Alternatively a new car purchase agreements/contracts could be mandated to include additional comfort for the consumer. The attached *Defined Acceptable Quality and Enhanced Consumer Guarantee Clauses Annexure (Ref: Attachment 4)* could be made available by government so as to provide additional protection for the consumer when purchasing a new motor vehicle in Australia. The clauses from this Annexure could also be included into the Australian Consumer Laws to further their enhancement.

3. Provide increased protection for dealerships, by including the same definitions to 'acceptable quality' and enhanced guarantees to apply to manufacturers and distributors supplying new vehicles.
4. Make justice easily accessible and affordable for consumers by removing the \$25,000 limit set at QCAT and all other monetary limits that may be set in any other Australian States and Territories for civil disputes matters.
5. To make mediation more efficient, Government could provide a *Motor Vehicle Dispute Resolution Form* which lists how and when the consumer guarantees or 'acceptable quality' have not been met. This would not only assist the consumer, it would also benefit dealerships and any parties involved in the mediation process when making claims for redress (**Refer attachment 5**).
6. Implement a 'Lemon Register' so that when a problematic new car has been replaced or refunded that this information is available to all potential buyers.
7. Manufacturers and distributors to provide extended manufacturers warranties for any vehicle deemed to be a lemon and for any vehicles that have been recalled.
8. Introduction of a motor industry-based consumer dispute resolution scheme or a Motor Vehicles and Automotive Services Ombudsman to resolve disputes between consumers and the motor industry.
9. State and Federal Governments to implement business and consumer awareness programs to further educate the community on the Australian Consumer Laws and the Consumer Guarantees.



Connie Cicchini

Lemon Laws 4 Aus



ATTACHMENT 1

Source:
<https://www.accc.gov.au/media-release/chrysler-undertakes-to-remedy-customer-service-complaints-following-accc-investigation>

Chrysler undertakes to remedy customer service complaints following ACCC investigation

11 September 2015

Fiat Chrysler Australia (Chrysler) has provided an administrative undertaking to the Australian Competition and Consumer Commission, following an investigation into consumer guarantee complaints concerning vehicle faults and Chrysler's handling of those complaints.

Chrysler's undertaking includes a commitment to establish a consumer redress program, and to review its handling of previous complaints, as well as an Australian Consumer Law (ACL) compliance program which includes a complaints handling system.

Chrysler distributes several vehicle brands in Australia including Jeep, Alfa Romeo, Fiat and Chrysler.

The ACCC received a number of complaints from Chrysler customers concerning vehicle faults and how their complaints were handled by Chrysler and its dealers. The complaints related to various issues including delays in sourcing spare parts and failing to adequately deal with customer complaints.

Chrysler has acknowledged the ACCC's concerns and cooperated with the investigation. Chrysler has advised the ACCC that it has taken a number of steps to improve its aftersales care, particularly complaint handling, to address these concerns.

"The consumer guarantees mandate that vehicles will be fit for purpose, free from defects and as durable as a reasonable consumer would expect. Where the guarantee is not complied with, a consumer will have rights against the supplier and in some cases the manufacturer, who will have to provide a remedy," ACCC Chairman Rod Sims said.

"This means that all car manufacturers and suppliers, including dealers, need to think beyond the initial sale and invest in their aftersales care."

Chrysler's administrative undertaking includes a process where particular affected Chrysler customers can agree to have their previous complaints independently reviewed, with Chrysler committing to implement the remedy recommended by the independent reviewer.

The ACCC is pleased that this program will be available for these customers and will monitor its implementation.

"The ACCC is considering concerns about the motor vehicle industry more generally, with a particular focus on ensuring compliance with the consumer guarantee provisions of the consumer law." Mr Sims said.

Background

Consumer Redress Program

Under the consumer redress program, Chrysler will:

- identify and contact customers who made a complaint to Chrysler about vehicle issues between the period 1 January 2013 and 31 December 2014, and who were refused a particular remedy by Chrysler (other than those customers whose complaints were resolved to their satisfaction or were resolved in a Court or Tribunal);
- offer to have an independent person review their complaint to determine whether the outcome was in accordance with ACL or *Trade Practices Act 1974* (TPA) consumer rights; and
- where a review is conducted and it is determined that the outcome was not in accordance with ACL or TPA consumer rights, provide or procure that a dealer provide a remedy on Chrysler's behalf as recommended by the independent reviewer, which is consistent with those rights.

Affected customers who are not contacted by Chrysler within 60 days should contact Chrysler's Customer Care Assistance Centre on 1300 133 079.

Chrysler will report to the ACCC on the number of reviews undertaken and the outcomes reached.

Consumer guarantees under the ACL

The ACL has introduced a regime of consumer guarantees that applies to products and services bought after 1 January 2011. In relation to motor vehicles, manufacturers and suppliers including dealers, have obligations under these consumer guarantees.

When the problem is minor, the supplier can choose between providing a repair or offering the consumer a replacement or a refund. When there is a major failure, the consumer can reject the vehicle and either choose a refund or a replacement. Consumers can also seek compensation from suppliers or manufacturers. More information is available on the ACCC's website at: [Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law](#).

For products and services bought before 1 January 2011, consumers may still have rights under previous consumer protection laws in the *Trade Practices Act 1974*.

Release number: MR 174/15

Media enquiries: Media team - 1300 138 917

ATTACHMENT 2

Source:

<https://www.accc.gov.au/media-release/accc-update-on-vw-enforcement-investigation>

ACCC update on VW enforcement investigation

1 October 2015

The Australian Competition and Consumer Commission is today providing an update on its investigation into Volkswagen Group (VW) for possible use of 'defeat devices' in Australia, following significant public interest.

Defeat devices can be used to make vehicles perform better in testing than in real world operations.

"This enforcement investigation is a priority for the ACCC. We are very concerned about the potential consumer and competition detriment from this alleged conduct," ACCC Chairman Rod Sims said.

"First, using defeat devices is specifically prohibited under the Australian Design Rules, which are picked up as Australian Consumer Law (ACL) mandatory safety standards."

"As the enforcer of the ACL, the ACCC can take action against any corporation that has breached mandatory standards," Mr Sims said.

"Secondly, cars are a big purchasing decision and claims that relate to environmental benefits or fuel efficiency can influence consumer choice."

"Businesses must be able to substantiate any claims they make. The ACCC will be seeking marketing materials from VW Group and will not hesitate to take action if consumers were exposed to false, misleading or deceptive representations," Mr Sims said.

The maximum penalty per breach of the ACL is \$1.1 million for a corporation.

VW Australia is yet to clarify if it has supplied cars or car components into the Australian market that use defeat devices.

The ACCC is considering public comments made by Audi Australia on how their Australian customers are affected.

The ACCC continues to work closely with the Department of Infrastructure and Regional Development to determine the impact on Australian consumers.

Release number:

MR 187/15

Media enquiries:

Media team - 1300 138 917

Source:

<http://www.brisbanetimes.com.au/queensland/man-jailed-for-trying-to-blow-up-car-dealership-20150317-1m10o9.html>

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Man jailed for trying to blow up car dealership

March 17, 2015 ☆ Read later

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A man who planted bombs at a Gold Coast car dealership has been jailed for three years. *Photo: Louie Douvis*

A man has been jailed for trying to blow up a Gold Coast car dealership because they wouldn't fix his car under warranty.

Jamie Peter Ripley, 38, planted the three explosives in mid-2013.

Two of the pipe bombs were found at the Robina car lot, while the third was in a car that had been driven between the dealership and a mechanic workshop.

Ripley has pleaded guilty in the District Court in Southport to offences including attempting to destroy property by explosives, and not having authority to possess explosives.

He was sentenced on Tuesday to three years' jail, and will be eligible for parole after six months.

AAP

Defined Acceptable Quality and Enhanced Consumer Guarantee Clauses

by Connie Cicchini in conjunction with Ashton Wood and Stewart Lette

ANNEXURE

To Contract/Purchase Agreement for the Acquisition of a New Motor Vehicle

This Annexure does not contract out the legislated rights of the consumer under the Australian Competition and Consumer Act 2010 (Australian Consumer Laws) and is included in this Contract/Purchase Agreement to enhance the Australian Consumer Law (Schedule 2), Specific Protections (Chapter 3), Consumer Guarantee (Section 54), Guarantee as to acceptable quality.

Both the Dealership and the Purchaser/s agree:

1. The acquired new vehicle will be deemed to be of acceptable quality if the motor vehicle has not been presented by the Purchaser/s to the Dealership within the first twenty-four (24) months from date of purchase for the following:
 - a. Two (2) events for safety related non-scheduled repair issues, or
 - b. A total of four (4) accumulated events for non-scheduled repair issues, or
 - c. Has spent a total of twenty (20) accrued days for repair
2. If within the first twelve (12) months from the date of purchase the motor vehicle is not of acceptable quality, then the Purchaser/s can request from the Dealership the choice of a replacement of a like for like new vehicle, or a full refund of the purchase price, including any costs incurred by the Purchaser/s regarding any financial arrangement associated with the purchase of the motor vehicle.
3. If within the first twenty-four (24) months from the date of purchase the motor vehicle is not of acceptable quality, then the Purchaser/s has the choice to request from the Dealership a replacement like for like used vehicle, or a refund of the purchase price prorated from the date the vehicle was first presented to the Dealership for non-scheduled repairs. In addition to such refund the Purchaser will be entitled to be refunded any costs incurred by the Purchaser/s regarding any financial arrangement associated with the purchase of the motor vehicle calculated in accordance with the following formula:

$$R = A - [(B \div C) \times 100 = D]$$

R is the refund payable to the Purchaser/s

A means the price paid for the vehicle and includes on road costs, delivery costs, tax imposed and other options costs on the vehicle at the point of sale.

B means from delivery to the Purchaser/s the kilometres travelled by the vehicle when it was first returned to the Dealership for correction of a problem.

C means the total of 200,000 kilometres being an average of distance travelled over ten year life of vehicle.

D means the percentage of use of vehicle distance travelled.

4. Within the warranty period, cosmetic defects which do not affect the functionality are excluded from clause (1), and this clause does not remove any of the legislated rights the Consumer (the Purchaser/s in this instance) has from the Australian Competition and Consumer Act 2010 (Australian Consumer Laws) should the cosmetic defect not be repaired by the Dealership.
5. Subject to clause (1) hereof In the event the motor vehicle is not of acceptable quality, the Dealership will provide to the Purchaser/s the choice of the relevant applicable refund within ten (10) working days, or the relevant applicable replacement motor vehicle within twenty (20) working days from written notification by the Purchaser/s to the Dealership advising that the new motor vehicle is not of acceptable quality.
6. The Dealership will, in the event of either a transmission or engine fault and/or failure within the first twelve (12) months of the date of purchase of the vehicle, replace entirely the faulted and/or failed transmission or engine within one (1) month of the vehicle being presented with such fault.
7. In the event the transmission or engine faults or fails after the first twelve (12) months from the purchase date of the vehicle, the Dealership will repair any faults or failure of the transmission or engine for the first two hundred thousand kilometres (200,000) or ten (10) years, whichever is the sooner.
8. The Dealership, on request from the Purchaser/s, will provide for use at no charge to the Purchaser/s an equivalent courtesy motor vehicle or hire car in the event that the acquired motor vehicle has been presented to the Dealership for non-scheduled repair works.
9. The Dealership will, if requested by the Purchaser/s, provide scheduled servicing and non-scheduled repairs during the course of the new motor vehicle's Manufacturer Warranty Period.
10. The Dealership will, on completion of any investigations, servicing or repair works, provide to the Purchaser/s service documentation stating type of investigations and/or service and/or non-scheduled repairs and how the Dealership has rectified these works and/or provide diagnostic results if repairs have not been able to be carried out.
11. The Purchaser/s is required to adhere to the motor vehicle's service scheduling, give or take (whichever is the sooner) two thousand, five hundred (2,500) kilometres or eight (8) weeks either side of any scheduled services so as not to void the Manufacturer's Warranty.

PURCHASER'S NAME (1)	SIGNATURE	____/____/____ DATE
PURCHASER'S NAME (2)	SIGNATURE	____/____/____ DATE
DEALERSHIP	SIGNATURE	____/____/____ DATE

THIS SIGNED ANNEXURE MUST BE ATTACHED TO BOTH THE PURCHASER/S AND DEALERSHIP'S COPY OF THE CONTRACT/PURCHASE AGREEMENT AND BOTH COPIES OF THE CONTRACT/PURCHASE AGREEMENT MUST INCLUDE THE WORDING 'SEE ATTACHED ANNEXURE'.

IT IS RECOMMENDED THE PURCHASER/S TO FIRST OBTAIN LEGAL ADVICE BEFORE SIGNING ANY CONTRACT OR AGREEMENT.

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MOTOR VEHICLE DISPUTE RESOLUTION FORM

Purchaser's Name		
Address		
Contact number	Home	Mobile
Email Address		

Make of Vehicle		
Model of Vehicle		
Rego Number	VIN Number	
Purchase Date	Odometer Reading	klms

Dealership		
Address		
Contact number		
Email address		

How many issues have you had with this vehicle?	
IN THE BELOW QUESTIONS PLEASE CIRCLE IF YOU HAVE CONTACTED EITHER THE DEALERSHIP AND/OR THE MANUFACTURER	
Have you contacted the Dealership/Manufacturer to organise repairs?	YES / NO
Has the Dealership/Manufacturer repaired the vehicle?	YES / NO
At any time did you request from the Dealership/Manufacturer to either replace the vehicle or refund your money for the purchase of the vehicle? (attach documentation)	YES / NO
Did the Dealership/Manufacturer refund or replace your vehicle when requested?	YES / NO
If the Dealership/Manufacturer did not replace your vehicle or refund your money what were their reasons not to do so?	

DETAILS OF ISSUES WITH THE NEW MOTOR VEHICLE ACQUIRED
(provide documentation)

Date	Issue reported	Number of Days in Workshop	Issue resolved Y/N