

8 October 2015

Ms Bernice Watson  
Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Ms Watson

### **Lemon Laws Inquiry**

I refer to your invitation to comment on this Inquiry dated 3 August 2015, and thank you for same. Queensland Law Society appreciates being consulted on this important legislation.

The Society referred this matter to its Competition and Consumer Law Committee, and this response has been prepared with their assistance.

The Society has a long-held commitment to evidence-based policy and, in addition to seeking general comment, the Society asked its Competition and Consumer Law Committee to advise as to whether or not there was a rising trend in relation to consumers seeking legal advice regarding poorly performing motor vehicles. The members of the committee did not report any trend of this nature.

However, it should be noted that this may reflect a lack of consumer knowledge of the legal rights available to them rather than the absence of ongoing problems in relation to motor vehicles. In addition, it is possible that consumers are taking their complaints directly to the Office of Fair Trading or other Government entities involved in consumer protection. No doubt those departments will be able to assist in providing the Inquiry with complaint numbers.

A further contributing factor to the lack of a trend in complaints seen by members of the Society operating in the consumer law space may be that one of the main forums for the enforcement of consumer rights is the Queensland Civil and Administrative Tribunal (QCAT), and legal representation in that tribunal is not as of right. No doubt QCAT itself will be able to provide the Inquiry with details of the number of complaints received in relation to poorly performing motor vehicles.

### **Current protections and remedies**

It is the Society's view that the current legislation, protections and remedies available are sufficient to provide consumers with adequate protections. In particular, QCAT has all the necessary powers to create declarations and give equitable relief in relation to claims

## Lemon Laws Inquiry

regarding motor vehicles which perform poorly or are not fit for the purpose for which they are purchased.

The difficulty faced by consumers in these issues, and possibly the members of QCAT who hear these matters, is that the legal concepts involved, and remedies available, are exceedingly complex and unlikely to be easily applied by unrepresented litigants.

For example, the powers which might be exercised by a member of QCAT in applications of this nature could include:

- granting a declaration
- providing equitable relief
- varying/voiding contracts
- issuing corrective advertising orders

These are powers that a magistrate does not ordinarily have, and they must be applied judiciously. Given that magistrates can, especially in remote regions, function as members of QCAT, having the assistance of legal representatives for the parties involved is essential. It is highly unlikely that an unrepresented litigant will have the knowledge and time to ensure that all relevant issues are fully ventilated in the material raised before the tribunal, or that submissions in relation to the appropriate relief will be of assistance to the tribunal member.

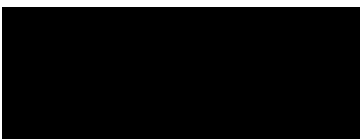
This is in addition to the ongoing problem in tribunals where legal representation is not as of right, in that a party appearing regularly in those tribunals will, over time, acquire specific knowledge of the procedures and the law applicable. This confers an unfair advantage on the regularly appearing party. In the context of this Inquiry this would mean that it is likely that car retailers will hold an unfair advantage over self-represented consumers seeking to enforce their rights in relation to poorly performing motor vehicles.

This element of the problem can be compounded if retailers employ people with specific knowledge of these matters, to act on behalf of the retailer in action taken by a consumer. These employees may even possess legal qualifications, but in any event will possess significantly more experience and knowledge of the concepts involved than a consumer appearing before the tribunal for the first and only time.

In the Society's submission, the most effective way to empower consumers is to provide for legal representation as of right in QCAT, at least in relation to consumer protection issues. Allowing consumers access to legal representation is the only realistic way to address the inherent imbalance in experience, knowledge of the motor vehicle industry and commercial weight which exists between motor vehicle retailers and their customers.

Having access to legal representation would also mean that consumers would not bring spurious or unwinnable claims which might consume tribunal resources unnecessarily.

Yours faithfully



Michael Fitzgerald  
**President**