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**Motoring** **Insurance** **Travel** **Finance**

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Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sir / Madam,

Thank you for the opportunity to comment on the need to improve consumer protection and remedies available to buyers of new motor vehicles.

This submission focuses on the Queensland experience, however we believe these issues are not confined to this State and we see no reason why our proposed solutions cannot have a broader application.

RACQ members regularly convey to us their concerns about defects in vehicles covered by new vehicle warranties.

These usually relate to situations where:

- the source of the problem or issue cannot be correctly identified
- an ongoing issue hasn't or can't be corrected
- an owner isn't convinced an issue is resolved
- an issue keeps recurring
- the vehicle has a string of different issues

It isn't uncommon for problem vehicles to spend inordinate amounts of time in workshops, which greatly inconveniences the owner.

Characteristics that the owner finds undesirable but are claimed by the vehicle manufacturer / distributor to be normal or acceptable is another common source of conflict. These can range from a noise the owner finds objectionable to concerns or perceptions of a vehicle's safety (for example the operation of the vehicles brakes) that can result in the owner in some way limiting their use of the vehicle.

In our experience, these issues often lead to disputes between the consumer and any or all of the following parties:

- the servicing dealer/s
- the selling dealer
- the agent, importer or manufacturer

In our experience these matters become increasingly difficult to resolve as relationships breakdown and positions become entrenched.





While consumers have a level of protection under the Australian Consumer Law (ACL), this does not always guarantee a satisfactory outcome to these issues. In our experience current mechanisms for dealing with these vehicles can leave consumers disgruntled and financially disadvantaged. A common outcome is that the vehicle is sold to another consumer who will continue to have similar problems, with the seller realising a significant financial loss.

In a very small number of cases dissatisfied vehicle owners may receive a trade-in offer for their vehicle from the dealer, possibly with some level of assistance from the manufacturer / distributor. However, even if a trade-in offer is made, the owner commonly incurs some level of financial loss, and the vehicle and the problem is simply moved to a new owner.

The financial and personal impact on affected owners should not be underestimated.

### **The problem**

While we acknowledge that the Australian Consumer Law has improved the avenues of recourse available to vehicle owners to resolve such issues, it relies on the Queensland Civil and Administrative Appeals Tribunal (QCAT) to make and implement the necessary determinations.

A problem with this tribunal is that in many cases the adjudicator does not have the technical expertise required to enable them to make a technically informed decision with respect to such disputes. Simply, adjudicators are well versed in the law but do not necessarily know about motor vehicles, technical issues associated with vehicle repairs, or have knowledge of the motor vehicle industry in general.

This can result in a win for the party that puts up the best performance on the day, rather than the one that has the strongest case.

Additionally, while QCAT is a low cost forum for hearing such matters, obtaining independent expert evidence to support such claims can be difficult and prohibitively costly. Vehicle manufacturers / distributors in general have an advantage as they have access to their own subject matter experts. In contrast, the costs to the consumer of securing expert testimony may well exceed the value of the vehicle in dispute, in circumstances where there can be no guarantee of the outcome.

### **The quantum of the issue**

RACQ has no quantitative data on the number of consumer complaints arising from this issue. However our Motoring Advice Service notes that they routinely receive reports of difficulties arising with vehicles covered by new vehicle warranties. Often only limited assistance can be offered apart from recommending that the person works with the dealer / manufacturer in resolving the problem.

A commonly expressed view is that manufacturers will keep attempting repairs on problem vehicles until the warranty expires and then decline further assistance. We have no hard evidence of this however based on our observations, it's clear that there are vehicles that receive substantial repairs throughout their warranty period and manufacturers are unlikely to continue offering repairs for too long after the express warranty period has concluded.





### **A proposed solution**

As outlined above, the application of the Australian Consumer Law by the Queensland Civil and Administrative Appeals Tribunal has not proven to be an entirely satisfactory arrangement.

RACQ believes the aim of any new legislation should be to place all parties on equal footing with respect to access to legal, financial and technical resources that could otherwise be an impediment to consumers having issues fairly resolved. The current arrangements only partially achieve this outcome.

We believe a specialist group that has relevant technical and industry experience is needed to assist the adjudicator in making informed assessments of such cases.

This would largely alleviate the imbalance of power / knowledge between the consumer and the vehicle manufacturer and would in many cases eliminate the need to engage an independent and suitably qualified person to support the consumer, as the specialist group could in effect become the independent party to the proceedings. Our view is that this would not and should not remove the ability of either party to obtain expert technical assistance if they wished. In some cases such support may still be essential in providing a detailed explanation of the issues involved.

Importantly, it would be necessary to provide members of the specialist group with appropriate legal protection to ensure they can conduct their roles without fear of litigation from an aggrieved party.

The make-up of the proposed specialist group and its funding arrangements would need detailed consideration.

Any legislation needs to also provide an incentive for dealers and manufacturers to resolve problems in a timely manner so that involvement of the tribunal becomes a matter of last resort. This could be achieved by introducing the possibility that the vehicle may have to be replaced, or its owner appropriately compensated if it can't be satisfactorily repaired in a certain time frame, or when the same or different problems keep appearing. The criteria for such trigger points is well documented in the various pieces of US legislation that deal with what there are called Lemon Laws. We believe these should be considered when drafting any local legislation.

It should also provide cover for all vehicles, regardless of whether they are intended for private or business use and for all owners while the vehicle is covered by a new vehicle warranty.

A positive for dealers and manufacturers would be that such legislation could provide a means of managing the myriad of minor points of conflict that regularly occur between customers and dealers. That is, it should have the ability to be able to determine if a fault is of a major or minor nature and how it is to be resolved, or if it is in fact an acceptable 'characteristic' of the vehicle type that requires no further action.

However, an issue that potentially limits the effectiveness of QCAT in these matters, and that would need to be addressed if this proposal were adopted, is that QCAT proceedings are limited to a maximum value of \$25,000.





This is insufficient to cover the costs of some major repairs and would certainly limit the tribunal's ability to order replacement of a vehicle. Failure to address this point would mean that claims for higher values would need to be dealt with by a higher court, which we believe to be undesirable.

Where a vehicle is replaced by its manufacturer / distributor, there would clearly be a need to flag its status to alert future buyers to its history. We also believe that in such cases the manufacturer / distributor must be compelled by legislation to repair the defect/s and warrant the repairs before the vehicle can be resold. We would also expect that such actions would not remove or limit a consumer's rights to have any future issues pertaining to the vehicle considered by the tribunal.

An appropriate method of flagging these vehicles may be the existing Personal Property Security Register which, while primarily intended to record financial interests, also records aspects such as written off and stolen status. The addition of an appropriate flag for such vehicles is likely to be fairly straightforward given that this register is already being used to identify similar pertinent matters.

Informal discussions with vehicle manufacturers representatives suggest that while some are supportive of such initiatives and see the benefits they would produce, others strongly oppose them claiming that there is no need for such measures as they resolve any issues that arise. This opposition is clearly flawed as the introduction of appropriate legislation would be of no consequence to a manufacturer / distributor that resolves issues as claimed. In fact such legislation is likely to be beneficial to the manufacturer as it would provide a formal dispute resolution mechanism that would move any ongoing conflict to a neutral venue.

Should you wish to discuss this submission please contact [REDACTED] on [REDACTED]  
[REDACTED]

Yours faithfully,

[REDACTED]

**Steve Spalding**  
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