

Lemon Laws: an inquiry into consumer protections and remedies for buyers of new motor vehicles

LAQ submission

Submission to the Lemon Laws Inquiry

8 October 2015



Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee's "Lemon Laws: an inquiry into consumer protections and remedies for buyers of new motor vehicles".

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ's Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation to vulnerable clients in consumer law matters. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to:

- mortgage stress
- housing repossession
- debt
- contracts
- loans (including small amount loans and car loans)
- telecommunications and unsolicited consumer agreements (including door to door selling).

This submission is informed by that knowledge and experience.

Lemon laws should apply to both new and second hand cars

LAQ does not provide advice on new car contracts unless the issue relates to the associated finance contract or where the vulnerability of the client means it is appropriate to provide advice and assistance.

However, LAQ sees similar and equally harmful problems arising as a result of newly purchased second-hand cars which do not perform as advertised and require extensive and expensive repairs. This problem is exacerbated for a large number of vulnerable consumers that LAQ assists who are less financially well off and can only afford cars that are more than 10 years old and have odometer readings greater than 160,000kms. The problem for our clients is that cars with these characteristics are not subject to any statutory warranty. The current second hand car warranty only applies to second hand cars under 10 years and with odometer readings of less than 160,000kms. That warranty is for a period of 3 months or the first 5000kms travelled, whichever occurs first. As a consequence, when an older second hand car breaks down, LAQ's clients do not have an easily accessible mechanism for covering the costs of repair to the car.

The effect on vulnerable consumers in this position in Queensland can be great as the car is often relied to travel to work in places where public transport is not readily accessible and/or to provide support to family members unable to drive due to a disability or the elderly. It should also be acknowledged that the impact on a less wealthy consumer of purchasing a defective second hand vehicle is just as significant as the impact on a more affluent consumer who has purchased a new car with defects that require extensive repair.

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Prior to legislative changes made in 2014, the current limited second hand car warranty applied to all second hand cars purchased from dealers, and this was relatively widely-known in the community. So consumers believed they had some warranty protection when they purchased a vehicle from a dealer, even if it was limited. Many consumers are unaware of the change in the law limiting the warranty to newer second hand cars.

LAQ recommends that the inquiry into lemon laws recognises and considers the adverse impact on a vulnerable consumer who has purchased a second hand car with severe defects and is costly to repair.

Recommendation: LAQ recommends that the current statutory warranty for second hand cars be extended to cars which are more than 10 years old and which have travelled more than 160,000kms.

Purchasing a lemon motor vehicle and linked finance contracts

In LAQ's casework and advice experience, a large number of consumers who purchase a car are able to afford the purchase because they take out a finance contract at the same time.

There are a number of problems created for consumers in these circumstances:

- (a) A common mistake that can be made by consumers is that because their car is not working and needs repair they do not have to make the payments on the loan. Under the law they are still required to make the repayments on the loan as the lender and the seller of the car are separate entities.
- (b) The car may not be covered by a warranty which means the cost of repairing the car is on the consumer. This cost will often leave the consumer with a choice to make between fixing the car and making the repayments on the loan. Hardship variations available under the national Consumer Credit legislation provide some relief to consumers in these circumstances. However they are not designed to provide long term relief where it takes a long time for the car to be repaired.
- (c) Ombudsman schemes such as the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO) will not consider complaints solely or predominantly about the condition of the car even where the financier and the seller of the product are linked.

Existing protections available to consumers

The key protections available to consumers are set out in Part 3.2 of the Australian Consumer Law (ACL) in sections 51-61. Of most relevance for consumers experiencing problems with lemon car laws are:

- section 54 Guarantee as to acceptable quality
- section 55 Guarantee as to fitness for any disclosed purpose and
- section 56 Guarantee relating to the supply of goods by description.

These guarantees apply to all cars purchased by consumers in Qld by virtue of section 3(1)(c) of the ACL.

Remedies which are available for a breach of guarantee under the ACL include:

- (i) Asking for an interim injunction under section 234
- (ii) Asking for damages under section 236
- (iii) Asking for a declaration under section 243.

Section 260 of the ACL provides that this relief is dependent upon a consumer showing that a major failure has occurred with the product. The remedies and protections under the ACL do not apply to cars sold and purchased privately.

However, in LAQ's view, the key question is whether these remedies can be easily accessed by vulnerable consumers who have purchased a lemon motor vehicle.

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There appears to be three options open to consumers:

- the Federal Circuit Court for disputes up to \$700,000,
- the Magistrates Court for disputes up to \$150,000,
- the Queensland Civil and Administrative tribunal for disputes about cars up to \$25,000.

The problem faced by a consumer commencing proceedings in the QCAT is that QCAT has no power to grant injunctive relief or make a declaration under s234 and 243 of the ACL. Its powers are limited by s13(2) of the *Queensland Civil and Administrative Tribunal Act 2009* and section 138B of the *Competition and Consumer Act 2010*. This means that the most vulnerable consumers do not have access to the full range of remedies provided for under the ACL.

In LAQ's experience the three problems most frequently experienced by vulnerable consumers are:

- (a) Access to these remedies only occurs after they have suffered a substantial harm that is difficult to recover from. For example, the car is off the road for a number of months causing the client problems with difficulty in making it to work. This problem may be addressed by a definition of lemon laws that allows a determination that a car is a lemon a lot earlier in the process.
- (b) Accessing a Court remedy carries with it the risk of costs and most consumers only feel comfortable accessing the court with the assistance of a lawyer. Many vulnerable consumers cannot afford a lawyer and availability of free legal advice and representation from organisations like LAQ does not meet all of the need in this area. Moreover, where the only issue relates to the condition of the vehicle, legal aid for representation is not available.
- (c) Even in accessing the QCAT jurisdiction, which is set up to encourage access without needing the assistance of a lawyer, many vulnerable consumers still feel uncomfortable accessing QCAT without at least talking to a lawyer about what to do. While services like LAQ, Community Legal Centres and the QPILCH self-representation service go some way towards meeting demand, these services do not have the scope or capacity to meet all of the need in the wider community. In addition, many new car contracts would exceed the jurisdictional limit of QCAT.

Recommendation: LAQ recommends that the jurisdiction of QCAT be expanded to provide for the tribunal to grant injunctive and declaratory relief as provided for under the ACL as a remedy for complaints about lemon cars purchased for personal use.