



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

8 October 2015

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

Email: lacsc@parliament.qld.gov.au

Dear Sir

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION (AADA) SUBMISSION INTO CONSUMER PROTECTIONS AND REMEDIES FOR BUYERS OF NEW MOTOR VEHICLES

AADA welcomes the opportunity to provide a submission to the Legal Affairs and Community Safety Committee (the Committee) in respect of its inquiry into whether there is a need to improve the consumer protections and remedies for buyers of new motor vehicles with numerous, severe defects that reoccur despite multiple repair attempts or where defects have caused a new motor vehicle to be out of service for a prolonged period of time.

2. Preamble

2.1. On 15 July 2015, the Legislative Assembly directed the Committee to report to the Queensland Parliament by 30 November 2015. In undertaking the inquiry the Committee has been asked to consider, but not limited to:

- the experiences of consumers in Queensland who have purchased 'lemons' including the community expectations of what constitutes a 'lemon' motor vehicle and the impacts, financial or otherwise, on consumers who have purchased 'lemons';
- the consumer protections and remedies available under existing legislation, such as those contained in the Australian Consumer Law and state-based legislation, including remedies available through Queensland courts and the Queensland Civil and Administrative Tribunal, and their adequacy in assisting consumers who have purchased 'lemons';

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- how legislative protections and remedies might be improved to better protect Queensland consumers who have purchased 'lemons', including improving the ability of consumer to enforce their rights without recourse to courts or tribunals; and
- any legislative and other protections in other jurisdictions assisting consumers who have purchased 'lemons', including the costs and benefits of existing and proposed protections.

3. Australian Motor Vehicle Market

3.1. The *Motor Vehicle Standards Act 1989* provides the regulatory framework for the entry of new and used vehicles into Australia. In 2013-14 approximately 1.1 million new vehicles entered the Australian market. These vehicles are required, among other things, to be compliant with the Australian Design Rules (ADRs). Consumer choice is not lacking with over 67 brands and 350 models competing for market share. There are approximately 17.2 million used vehicles in Australia and the average age of the Australian fleet is 10 years which is older than in comparable countries – Great Britain (7.3 years) and Japan (7.5 years).

3.2. The Australian market is highly competitive and Australia has more brands for sale than in Canada (49) sales 1.6 million, the United States (51) sales 13 million and the United Kingdom (53) sales 2.2 million.

3.3. A new motor vehicle is a highly complex product utilising sophisticated technologies. Manufacturers do not set out to produce and market defective motor vehicles and parts. Their product is supported by AADA members who have made significant investments in people and facilities including specialised tooling and country-specific diagnostic equipment. Motor vehicle dealers fiercely compete for high customer satisfaction ratings in sales and service in order to retain their franchises.

4. AADA

4.1. AADA is the peak industry body representing franchised new car dealers in Australia. There are over 1,500 new car dealers in Australia that operate approximately 2,600 new vehicle outlets. Motor vehicle dealership agreements are subject to the *Franchising Code of Conduct* which regulates the conduct of the distributor (franchisor) and dealer (franchisee). Dealerships range from family-owned small businesses to larger businesses and two public companies operating in the regions, metropolitan areas and across all States and Territories. The authorised dealer network generates annual revenue in excess of \$72 billion, pays wages in excess of \$5.6 billion annually, employs in excess of 66,000 people and has invested around \$17 billion in facilities.

5. Introduction

5.1. In making this submission, AADA has limited its scope to existing protections and remedies available under the Australian Consumer Law (ACL) in respect of the purchase of a new motor vehicle. We note that the Office of Fair Trading (Qld) (OFT) has collected information to assist the Committee with its inquiry. That information is not considered to be an “official complaint” and should, in our view, be treated with caution. The “experience” as it was referred to on the OFT website is not dissimilar to a blog, is subject to a 1000 word limit and the full circumstances of each complaint have not been investigated. The vehicle identification number (VIN) was not asked for and information symmetry is lacking.

6. ACL

6.1. The ACL commenced as a law of the Commonwealth and of each State and Territory on 1 January 2011. The text of the ACL is set out in Schedule 2 of the *Competition and Consumer Act 2010* (CCA). Where the ACL is applied as a law of a State or Territory, its citation refers to that jurisdiction. For example, under section 16 of the *Fair Trading Act 1989* (QLD), when the ACL is applied as a law of Queensland, it is referred to as the Australian Consumer Law (Queensland).

6.2. The development and administration of the ACL is governed by the *Intergovernmental Agreement for the Australian Consumer Law* (IGA), which was signed by the Council of Australian Governments (COAG) on 2 July 2009. The IGA provides that the operation of the ACL will be reviewed within seven years of implementation (2016).

6.3. The ACL review will be conducted by Consumer Affairs Australia and New Zealand (CAANZ) with a final report to be provided to Ministers by March 2017. The Queensland Attorney-General took a request to introduce lemon laws into Queensland to a meeting of Ministers for Consumer Affairs in June 2015. At that meeting it was decided that as existing protections fall within the scope of the ACL it would be preferable to have a nationally consistent approach and lemon laws be considered as part of the general review of the ACL.

6.4. AADA supports the current national and consistent generic approach to consumer protection and guarantees. It avoids regulatory duplication and inconsistency through industry specific regulation and enhances productivity.

6.5. Enactment of Queensland industry specific laws such as those under consideration could lead to unintended consequences and place Queensland motor vehicle dealers at a competitive disadvantage relative to dealers in other States and Territories. Such a law would fail to recognise the national consumer market in which distributors and dealers operate.

7. Why did the ACL not include specific “lemon laws” when it was introduced?

7.1. On 12 March 2009, the then Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, requested the Commonwealth Consumer Affairs Advisory Council (CCAAC) to undertake a review of statutory implied conditions and warranties as part of the broader Australian Consumer Law reforms.

7.2. The CCAAC, in its final report dated October 2009, recommended that Australia should adopt a system of statutory consumer guarantees to replace existing laws that imply conditions and warranties into consumer contracts. As part of its review, the CCAAC considered whether there was a need for specific ‘lemon laws’ for motor vehicles or other goods.

7.3. The CCAAC examined whether there was a need to introduce lemon laws for new and used motor vehicles and other goods. It found that “There is little empirical evidence to suggest that ‘lemons’ are a common feature of the market for motor vehicles or any other market in Australia.” Furthermore, it found “There is no need for a lemon law in Australia at this time. However, this is an area which policy makers should consider in the future.”

7.4. The CCAAC findings are reproduced below:

Findings

9.1 CCAAC does not believe the case for the introduction of a separate ‘lemon law’ has been made at this time. However, governments should monitor the effectiveness of national consumer guarantees as they apply to motor vehicles, including gathering data about the number and nature of complaints and disputes about statutory guarantees involving new and used motor vehicles.

9.2 The new statutory consumer guarantees should cover new and used motor vehicles.

9.3 Australian consumer agencies should provide clear, consistent information about the application of statutory consumer guarantees to motor vehicles, particularly about consumers’ rights, businesses’ obligations and the options for resolving disputes about statutory consumer guarantees as they relate to motor vehicles.

9.4 State and territory governments should give active consideration to the appointment of specialist adjudicators and assessors to deal with disputes involving motor vehicles and statutory consumer guarantees.

8. ACL Consumer Guarantee Provisions

8.1 The consumer guarantees in the ACL apply to consumer transactions and with the exception of busses, the consumer guarantees will apply to sales of all motor vehicles designed to be driven on public roads. The consumer guarantees apply regardless of whether the vehicle is purchased for business use. The ACL also provides for direct rights of action by the consumer against manufacturers and importers in relation to goods (Part 5-4 Division 2 of the ACL). A consumer's rights include a right to repair, replacement or refund as well as compensation for damages or loss.

8.2. Consumer guarantees under the ACL are imposed on manufacturers (OEMs), distributors and dealers in respect of the supply of motor vehicles and vehicle components to guarantee the performance of those goods. The "traditional" manufacturer's warranty could be described as a voluntary private contract between the manufacturer, the dealer and the consumer to fix or replace a part for a limited period of time (say 3 years) or say 150,000 kilometres whichever occurs first. That warranty may require the vehicle to be serviced by an authorised dealer according to a manufacturer's specification and using genuine parts where appropriate.

8.3. The intense competition in the Australian motor vehicle retail market has led to a situation where manufacturers (OEMs), distributors and dealers augment the consumer guarantees under the ACL by offering additional consumer benefits including warranting a vehicle for longer than required by the ACL guarantees, or providing free or capped price servicing. Such offers have obvious public benefits.

8.4. The Australian Competition and Consumer Commission (ACCC) and State Governments have websites which set out guides to ensure consumers are sufficiently well informed in respect of consumer guarantees.

8.5 The ACCC and the Department of Justice and Attorney-General, Queensland (and other States) each publish an annual report which includes details of complaints received, investigated and resolved. We submit that this inquiry must carefully examine official complaints lodged in respect of new motor vehicles rather than experiences shared on the OFT website in order to establish a case for the introduction of lemon laws.

8.6. If you require further information please contact me on mobile [REDACTED]
[REDACTED] or our Policy Director [REDACTED]
[REDACTED]

Yours faithfully

[REDACTED]
Bruce McDonald
Chief Executive Officer