

14 November 2016

Australian Competition and Consumer Commission
New car retailing industry market study

via ACCC Consultation Hub

Dear Sir/Madam,

New car retailing industry market study: Response to Issues Paper

Consumer Action Law Centre (**Consumer Action**) is pleased to make this submission to the Australian Competition and Consumer Commission (**ACCC's**) review of the new car retail market.

Consumer Action's legal advice service deals with a significant number of complaints about problems with motor vehicles and how these problems are handled by dealers, manufacturers and insurers. We have commented to other inquiries and reviews on what would effectively address the problems we see with these matters.

This submission focuses on three key issues: exercising consumer guarantee rights under the Australian Consumer Law (**ACL**), problems with dealer-issued extended warranties which are not insurance products, and difficulties faced by consumers in disputes. Our comments are detailed below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

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Consumer guarantees

The ACCC's market study does not appear to be examining the potential for changes to the law to better protect consumers in the new car retail market. However, we think it is important to note that a number of recent reviews have considered motor vehicle 'lemon laws'. The concern has been that some dealers ineffectively respond where there is a major failure to comply with consumer guarantees under the ACL, in particular where goods are not of an acceptable quality.¹

In Consumer Action's submission to the 2015 Queensland Parliamentary inquiry into lemon laws, we strongly recommended introducing national lemon laws under the ACL. We noted that the key benefit of lemon laws is to provide 'bright line' rules as to when consumers are entitled to a remedy, rather than the uncertainty produced by the current regime, which lengthens and exacerbates disputes.² We made this submission in light of the difficulties that consumers face in exercising their consumer rights where the dealer does not provide a remedy.

The Queensland inquiry found that it was very clear that 'where a consumer has purchased what they perceive is a lemon, it is of great significance to that individual, with significant health and financial costs'.³

In our submission to this year's Consumer Affairs Australia and New Zealand (**CAANZ**) ACL Review, we recommended that the ACL be strengthened with lemon laws akin to those in Singapore, where:

- the guarantee covers new, second-hand, discounted and perishable goods,
- the defect is assumed to exist if it is found within six months of delivery, placing the onus of proof on the retailer,
- the consumer can request a refund or replacement, or if that is not possible, a reduction in price or refund.⁴

Challenges with exercising consumer guarantee rights are clearly a critical consumer issue. Almost half of the comments from individuals to the ACL Review through its website were about consumer guarantees, and most related to lemon laws for motor vehicles. This was the most common issue raised by individuals.⁵ We encourage the ACCC to consider what changes to the law would improve consumers' access to justice.

¹ Legal Affairs and Community Safety Committee, Parliament of Queensland, *'Lemon' Laws - Inquiry into consumer protections and remedies for buyers of new motor vehicles*, Report No 17, 55th Parliament, November 2015,

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T1704.pdf>.

² Consumer Action, *Lemon' laws—An inquiry into consumer protections and remedies for buyers of new motor vehicles*, 8 October 2015, p 8, <http://consumeraction.org.au/lemon-laws-an-inquiry-into-consumer-protections-and-remedies-for-buyers-of-new-motor-vehicles/>.

³ Legal Affairs and Community Safety Committee, Parliament of Queensland, *'Lemon' Laws - Inquiry into consumer protections and remedies for buyers of new motor vehicles*, Report No 17, 55th Parliament, November 2015, p xi.

⁴ Consumer Action, *Australian Consumer Law Review*, 30 May 2016, pp 25-26,

<http://consumeraction.org.au/australian-consumer-law-review-submission/>.

⁵ Consumer Affairs Australian and New Zealand, p 57.

Dealer-issued extended warranties

While extended warranties provided for new cars are generally insurance products and outside the scope of this review, some dealer-issued extended warranties are not insurance products.⁶

The problems consumers face with these warranties include:

- the exclusion of wear and tear from the warranties,
- being locked into servicing with a particular provider or group of providers, and
- some consumers being led to believe that if they don't buy the extended warranty, they have no rights in relation to defects.

These products, while not insurance, are sold in the same way that add-on insurance and other extended warranties are sold with new and used cars. Consumer Action has seen widespread mis-selling of these products, along with a lack of consumer understanding.⁷

To ensure that consumers have a good understanding of extended warranties sold as an add-on, we recommend the introduction of an 'opt-in' model, along the lines to that which was implemented in the United Kingdom following the Financial Conduct Authority's 2014 market study into add-on products.⁸ Under an opt-in model, there is a mandatory delay between the sale of the primary product and the sale of the add-on product. The aim of this is to empower consumers to make informed decisions about whether they need these forms of extended warranties and, if so, how they buy it.

Dispute resolution

Access to effective dispute resolution is a significant hurdle for many people who have problems with their motor vehicles. Our submission to the Queensland Parliamentary inquiry into lemon laws showed that even when consumers do try to enforce their rights under consumer guarantees, they are intimidated and deterred by the prospect of dealing with manufacturers' lawyers and pursuing a legal claim.⁹

In our submission to the ACL Review, we recommended the establishment of a specialised tribunal or ombudsman for motor vehicle complaints. This was because motor vehicle disputes are common, consumer outcomes are often poor and the negative impact of those outcomes

⁶ See for example the Volkswagen Factory Extended Warranty, http://www.volkswagen.com.au/content/medialib/vwd4/au/common/tech-service/volkswagen-extended-warranty-document-pdf/_jcr_content/renditions/rendition_0.file/volkswagen-extended-factory-warranty--pv--terms-and-conditions-final.pdf.

⁷ Consumer Action, *Donating Your Money to a Warranty Company: Why the motor vehicle warranty you bought might be worthless*, August 2015, <http://consumeraction.org.au/wp-content/uploads/2015/08/DonatingYourMoneyToAWarrantyCompany.pdf> and *Junk Merchants: How Australians are being sold rubbish insurance, and what we can do about it*, December 2015, <http://consumeraction.org.au/junk-merchants-report-how-australians-are-being-sold-rubbish-insurance-and-what-we-can-do-about-it/>.

⁸ Financial Conduct Authority, *General Insurance Add-Ons: Final Report – Confirmed Findings of the Market Study*, Market Study MS14/1, July 2014, <https://www.fca.org.uk/publications/market-studies/general-insurance-add-ons-market-study>.

⁹ Consumer Action, *Lemon' laws—An inquiry into consumer protections and remedies for buyers of new motor vehicles*, 8 October 2015: see 'Tarek's story', p 3.

can be very significant for consumers. We pointed to the New Zealand Motor Vehicle Disputes Tribunal as an example of an effective model.¹⁰

The Victorian Government's recent Access to Justice Review similarly reported that consumers face considerable difficulties in Victorian Civil and Administrative Tribunal (**VCAT**) disputes about motor vehicles. It noted that these disputes have a significant impact on people's livelihood and access to education, health, and other services. Obtaining expert evidence is costly, which is a barrier for people trying to enforce their rights. The report recommended compulsory conciliation of motor vehicle disputes by Consumer Affairs Victoria (**CAV**) before a VCAT claim is commenced, and that CAV be funded to produce technical assessments such as expert reports.¹¹ In our view, this would address the most significant problems consumers face in motor vehicle disputes, but only if the forum also had 'teeth' (that is, the power to make findings that are binding on the motor vehicle dealer or repairer). We encourage the ACCC to explore whether it can undertake advocacy for the establishment of such a dispute resolution nationally.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer

¹⁰ Consumer Action, *Australian Consumer Law Review*, 30 May 2016, p 6.

¹¹ Victorian Department of Justice and Regulation, *Access to Justice Review: Summary Report*, August 2016, p 287.