

Response to Draft Report, released in August 2017

Introduction:

Firstly, congratulations on the completion of the Draft report for the New Car Retailing Industry Market Study.

It's clear that a lot of time has been put into this study, with stakeholder feedback from the automotive industry, consumers, suppliers, independent mechanics, independent research and other committee findings.

Your findings are clear evidence that the automotive manufacturers and dealers have "self-regulated" for far too long, at the detriment of quality, reliability, consumer choice of repairer and consumer safety, so it's certainly time for change.

In addition to this, our consumer laws are currently 40 years behind that of the USA, who have had strict automotive-specific consumer laws in place since the 1970's, which they've called "Lemon Laws"

We currently have:

- No clear law to support consumers here in Australia,
- Evidence of misleading information given by some dealerships and manufacturers to consumers with regards to their rights and the performance of their vehicles,
- Evidence of manufacturers and dealers withholding information from independent repairers,
- Extensive use of non-disclosure agreements (GAG orders) on consumers who manage to negotiate a settlement for a lemon vehicle and,
- A tribunal system that supports the industry, not the consumer

it's no wonder consumers have been left with no choice but to take matters into their own hands to force the industry into action, through social media campaigns designed to bring these issues into the public arena, to get help and to push for a review of the current landscape.

What affect have consumer complaints had on sales?

The automotive industry reported record sales of new vehicles in 2016, surpassing sales made in 2015.

(source: www.practicalmotoring.com.au)

Fiat Chrysler Automobiles Australia (FCA) reported a record drop of 57% in Jeep sales in July 2016, a clear indicator that the consumers were now voting with their wallets and purchasing other brands.

Interestingly BMW, Volvo and Toyota all saw an increase in sales of their SUV's in that same period. (source: www.whichcar.com.au)

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Social Media – keeping them honest:

Several social media campaigns have been run in Australia since 2014, in attempts to get a resolution for issues that were ignored, dismissed or unfixable as follows:

October 2014: Destroy My Jeep event, held on the Sunshine Coast in Queensland Australia, where I publically tore apart my \$49,800 Jeep Cherokee in front of 250 onlookers and thousands of online viewers, after trying everything to get an outcome with the dealer and manufacturer. This event also raised awareness for better consumer protection.

After this event, I was inundated with people with similar new vehicle ownership stories.

The major event sponsor was Lemon Laws 4 Aus, with attendance from the Hon Peter Wellington (current Speaker of the Legislative Assembly of Queensland) addressing the crowd on the day about the requirement for stronger laws.

My case with FCA is still unresolved.



November 2015 - Music Video “I Made a Mistake I Bought a Jeep”, created and performed by Teg Sethi in Melbourne Australia, after giving the dealership and the manufacturer many opportunities to resolve the issues with his new Jeep privately.

The music video was uploaded to YouTube where it went viral and has been viewed over \$2.5Million times on YouTube alone. Sunrise (channel 7) also picked up the story and interviewed Teg on their morning show which was seen by millions more.

A few months later, the clip found its way onto Weibo (China’s equivalent of Facebook) where it quickly reached 10’s of millions of views.

Teg’s case with FCA has now been resolved, but the bitter taste of the subsequent gag order remains.



June 2016 - Tank My Lemon event, held on Tamborine Mountain, Australia.

You would have thought that FCA would want to help consumers by now, but after trying everything to get a resolution for their lemon vehicle, Joe and Kate ensured their vehicle could not be on-sold, by crushing it with a 52 tonne Centurion Army Tank.

The event was attended by past Senator Glen Lazarus and broadcast live to millions of viewers on Sunrise 7 with coverage on all major TV news bulletins that evening.

Joe and Kate are still waiting for an apology and a settlement from FCA.



Interestingly, the dealership who sold Joe and Kate their new vehicle, and gave them the run around for so long, is no longer in business.



What's been happening behind the scenes:

In 2015, the ACCC received enough evidence from consumers, to investigate FCA and put them on a “redress program”.

In 2016, I enquired on the progress of this redress program, but was told by the ACCC that “it’s private”, so the only visibility I have of the success (or failure) of the redress program, is the oversight I put on cases I forward to FCA for action.

It’s a double-edged sword for both myself and FCA, as I have much better things to do with my time than send FCA cases to action (and request ongoing updates), however there’s a very upset consumer at the end of every case who has sought me out through social media, asking for assistance and desperately needs my help.

I’m sure FCA would rather not have me watching over their shoulders, however they know that if cases are still finding their way to me, they’ve been dropped (or missed) internally, are already in the public domain and not far from getting media attention, so it makes good business sense to them to deal with these cases quickly and quietly.

I have seen a marked improvement of the way cases are handled since the current CEO came to the helm and my first meeting with him in October 2016, however I’m still getting contacted by consumers asking for help, so FCA are not out of the woods yet.

I feel that the current FCA CEO gets it, so perhaps it’s just a matter of time before FCA implement all the ACCC recommendations and FCA employees and dealerships understand and adopt the new approach.

At the end of the day, consumers deserve a vehicle that works, or their money back.. it’s that simple... and it’s the law.

I am looking forward to the day that consumers can purchase a motor vehicle in Australia with the confidence that they will enjoy many years of trouble-free motoring.

We are edging ever closer to consumer protection, with initiatives such as this and the amazing support shown by the Attorney General of Queensland who recently flew to Melbourne to seek the support of ministers Australia-wide for the implementation of the recommended changes to the current ACL with the following outcomes:

- It was noted that regulators need to publish guidance on existing laws as soon as possible, agreement was made to fifteen (15) proposals of minor adjustments,
- A public Regulatory Impact Assessment will be conducted on a further seven (7) proposals and
- Seven (7) further research and policy proposals will be placed on the forward work program on the 2018-2021 strategic agenda.

With the above in mind and my personal experience dealing with hundreds of consumers, many of whom are at their wits’ end, or in tears, my feedback to your draft report is as follows:

Destroy My Jeep - feedback to draft report:

General Feedback:

There's a statement in the Executive Summary that states that "the ACCC will continue to address non-compliance with the ACL..."

This "ACCC address of non-compliance" needs to be more visible to the public (so we know it's happening) and faster (so you stop the non-compliance as soon as possible).

Once such example is Mercedes Benz. There are many examples of possible ACL breaches by dealerships who are misleading consumers on their consumer rights, and it's very well known in the industry (just ask the AutoExpert, John Cadogan), however there has not been any announcement from the ACCC regarding an investigation into these cases raised.

Perhaps the ACCC will make a sudden surprise announcement like it has done recently with two other manufacturers, or perhaps the ACCC needs more examples of ACL/consumer guarantee breaches?... with the lack of information flowing from the ACCC it's currently impossible to gauge and impossible for consumers to know you need more information to help you with your potential investigations.

New vehicle optional extras including extended warranties:

A new vehicle purchase is normally a very emotive one, with much consideration given to make, model, price, features and even colour.

There is a LOT of pressure put on the consumer to purchase additional add-ons, like extended warranties, paint protection, rust protection, leather protection, tinted windows and floor mats... most of which come with a commission bonus for the salesperson.

If the consumer argues about the additional costs, the salesperson regularly just suggests that the costs be added to the finance of the vehicle, costing the consumer even MORE in the long-run once interest is accrued.

There needs to be clearer guidelines about consumer rights when it comes to extended warranties, or issues with the paint, rust, leather or other interior fading/cracking in the future.

Consumers need to be made aware that all of the vehicle is covered under consumer guarantees, even if the consumer does not purchase an additional warranty, additional paint protection, rust protection, additional leather protection and tinted windows.

Access to technical information / scan tools:

While I don't personally have visibility of profit margins on the supply of aftermarket services, including car servicing, repairs and supply of parts and tools, I can confirm that I have many examples of where a dealer and/or manufacturer rejects a claim because the vehicle was serviced outside of the dealer network, thus ensuring a monopoly on the customers' vehicle servicing requirements.

I have also spoken with a number of independent mechanical workshops, who have confirmed limited access to scan tools and technical information available to ensure they can work on some models of vehicles, your report and the research conducted by “Cartech” under the direction of the ACCC also confirms this.

Non-Disclosure Agreements (GAG orders):

GAG orders are still widely used by the Automotive industry as a means to “silence” a consumer once a settlement has been reached.

My personal opinion is: No GAG order was signed when you purchased the vehicle, so why should one be signed to exercise your consumer rights?

If the industry was clever, they’d WANT people to tell their friends about the excellent service they just received.

I’ve seen gag orders that restricted an owner’s family (which would include their 2 year old son) from ever talking about the result and I’ve recently seen a 7 page GAG order (with its own table of contents!) presented to a consumer in Australia.

Most GAG orders seem to focus on the restriction of the financial settlement amount and less and less on the ridiculous request to remove all history of issues/conversations from social media (it’s near impossible for a consumer to remove all comments on social media).

Offer to replace a vehicle without a demand from a customer:

I have sat across hundreds of individual cases and at the time of writing this and I am not aware of one case where a manufacturer offered to replace a defective vehicle without a demand from the consumer. The manufacturers and dealers will normally continue demanding the right to “try to fix it again” time after time.

Major Failures:

We need a VERY clear description of “Major Failure”, for example, I have seen cases where the consumer had several separate engine components fail, each time the vehicle was un-drivable. The dealership and manufacturer argued that each component was only a minor component, so the consumer was not entitled to a refund or replacement.

I would argue that if a vehicle cannot be used for its intended purpose (eg to drive it) then it’s considered a major failure.

A minor failure might be something like a heated seat not operational, or a blemish in the duco or interior.

You would not accept ANY failures on other products you purchase, so why should consumers be expected to accept failures on an expensive motor vehicle?

The recent announcement of a manufacturer offering a “60 day guarantee” to replace/refund a faulty vehicle is a step towards the Lemon Laws, which have been in place in the US for over 40 years, however I see many cases where the manufacturer/dealer runs

the consumer around in circles with repair attempt after repair attempt, sometimes for years.

If this run-around was allowed to continue, no consumer could ever claim the “60 day” refund/replacement period as that time would quickly lapse.

I’ve seen this type of activity in the past with dealership requests such as “the vehicle needs to be driven more for the problem to correct itself”, or “we can’t fit you in for a month due to other workload”

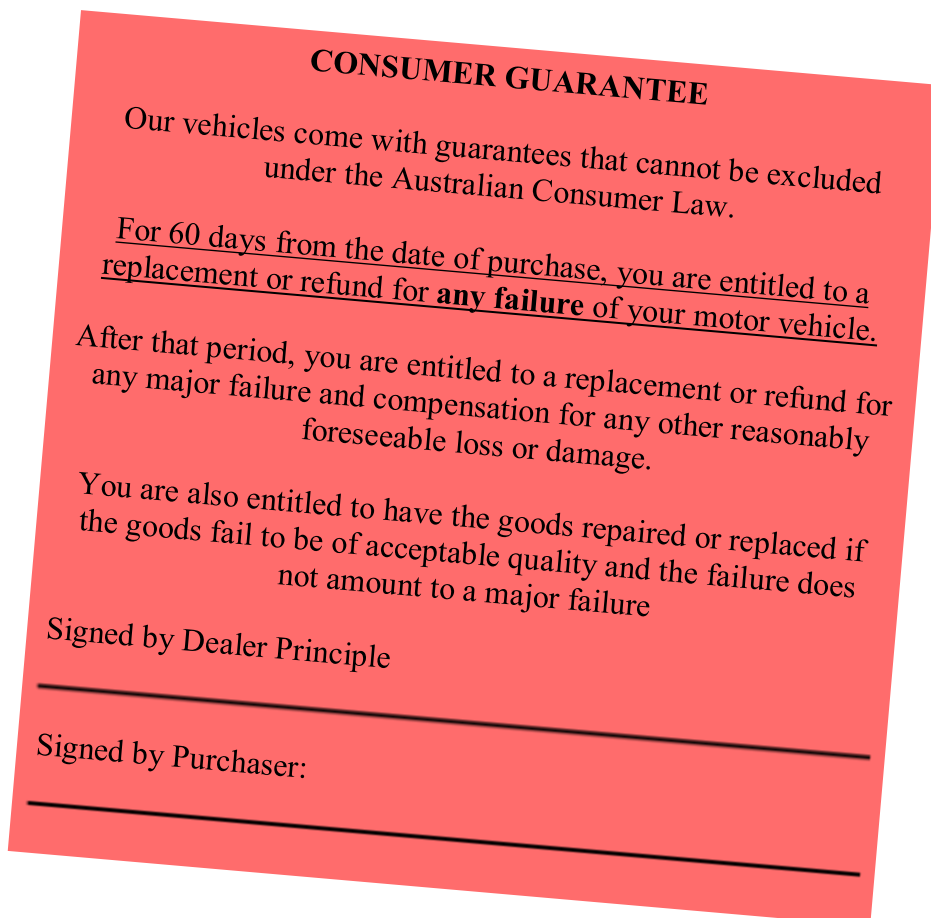
Consumers understanding their rights:

Consumers need a lot of education about consumer rights, as it’s something we generally don’t consider as we expect the products to function as designed.

Most of us (me included) thought that dealerships and manufacturers would stand by their products and that there would be safeguards in place if the communications broke down.

I’m aware of many current tribunal cases still happening today. If the laws were clear and if the industry abided to those laws, there would be NO cases in front of the tribunal right now, as it’s a “last resort” for many consumers.

There will need to be a very large national educational drive for consumers to know their rights, through TV / Radio / Post / Social Media campaigns and at the dealerships in large print as part of the handover, signed by the dealership and purchasing parties as per below:



Overall, the draft report is excellent and I'd just like some consideration of the issues I've identified as a consumer advocate with first-hand experience of the ownership of a lemon vehicle.

I look forward to seeing this progress to "final" version, the appropriate steps taken to ensure the findings are endorsed and the recommendations are put into effect in all states and territories of Australia.

I approve the public release of this document and welcome further discussions.

Without prejudice,

Kind Regards,

Ashton Wood
ashton@destroymyjeep.com