

06 September 2017

Australian Competition & Consumer Commission
newcars@accc.gov.au

RE: *New Car Retailing Industry – a market study by the ACCC: Draft Report*

Dear Australian Competition & Consumer Commission (ACCC),

RACQ thanks the ACCC for calling for submissions and feedback on the *New Car Retailing Industry – a market study by the ACCC: Draft Report* (the 'Draft Report').

As Queensland's peak motoring organisation, representing more than 1.6 million members, RACQ has a long history of advocating for motorists' rights as consumers. As identified in the Executive Summary of the Draft Report (2017, piii) buying a new car is a significant purchase for a consumer and the ongoing maintenance costs of a vehicle are also a significant financial commitment.

This submission will provide an outline of RACQ's policy on 'Lemon Laws', and provide comments on selected draft recommendations as mentioned in the Draft Report.

Lemon Laws

RACQ members regularly draw our attention to concerns about defects in vehicles covered by new vehicle warranties.

These concerns include instances where the member claims a defect remains present after attention by the servicing dealer or a condition is present that is of ongoing dissatisfaction to them.

Ongoing problems and dissatisfaction relating to the vehicle often lead to disputes between the owner and the selling dealer, agent, importer or manufacturer.

New vehicle owners often cannot and should not be expected to have the technical expertise to properly identify a technical (commonly mechanical or electrical) problem with a vehicle or adequately explain this problem to a motor dealer. Consumers therefore find it extremely difficult to engage with a motor vehicle dealer or manufacturer about such problems and mount an argument for rectification.

Consumers are also at a disadvantage under the current system because, as well as having a lack of technical and/or product knowledge, they are also unlikely to have a solid understanding of their legal rights and sufficient financial ability to pursue action against a motor dealer or manufacturer if their request for rectification is refused.

RACQ believes that once it is identified that a motor vehicle has a defect or technical problem, the system to address and rectify the issue needs to:



- be practical, accessible and affordable (or free) for consumers;
- be timely;
- allow for resolution of disputes with the assistance of independent technical advice;
- be equitable in terms of legal and technical knowledge; and
- have determinations that are binding on all parties involved.

While *Australian Consumer Law* currently provides clear requirements, this is not used by many consumers because legal remedies are often difficult and time consuming. Consumers are at a distinct disadvantage in legal and technical expertise and funding compared to a well-resourced motor vehicle dealer or manufacturer.

Lemon laws for new motor vehicles are needed because there is a national need for legislation that places all parties involved in the manufacture, sale and purchase of a new motor vehicle on equal footing. By neutralising the inequity in access to legal, financial and technical resources fairer and more timely outcomes can be reached.

These laws, and assessment of claims made under the laws, should be managed by a specialist group with relevant technical and industry experience.

This would address the issue of inequity between the consumer and the vehicle manufacturer by giving a recognised, credible and independent authority the ability to make decisions on:

- (a) whether the vehicle has a problem or defect that needs to be repaired;
- (b) how the repair will be done and by whom;
- (c) the timeframe in which the repair will be completed; and
- (d) what will happen if the repair is not completed in the manner or timeframe specified.

The laws should also make provisions for the complete refund or replacement of the product (vehicle) in instances where:

- the vehicle continues to display the original problem or develops additional problems after a predetermined number of reasonable repair efforts; and
- a significant amount of time has elapsed since the problem was first identified and there is no rectification of the issue/s.

Manufacturers and dealers will be more likely to resolve problems in a timely manner if there is a possibility that a vehicle purchased from them will need to be refunded or replaced if it can't be satisfactorily repaired in a reasonable timeframe / number of attempts or when the same or different problems keep appearing.

If a vehicle is completely refunded or replaced, the original vehicle in question needs to be recorded or flagged, potentially on the Personal Property Security Register or a similar instrument, to alert future buyers of its history. The reason RACQ believes this to be necessary is because at present it is common for owners of 'problem' or 'Lemon' vehicles who do not reach satisfactory resolutions to ultimately sell the vehicle, passing the problem/s to the next consumer of the product.

A positive feature of this type of law for manufacturers and motor dealers is that the clarity of the laws and the administration of them would provide a distinction between defects and problems and acceptable characteristics of the vehicle. Also, the decisions of the authority would be binding on both parties, providing some additional protection to dealers and manufacturers when problems are fixed.



Desirable characteristics of motor vehicle consumer protection:

- It is nationally consistent.
- It must be structured and capable of delivering outcomes quickly, decisively and fairly to all parties involved.
- It must provide clarity in terms of eligibility of defects/problems.
- It must deliver binding decisions.
- It must be inexpensive (or free) for consumers.
- It must ensure consumers' access to the process does not depend on financial, technical or other resources.
- It must discourage frivolous or vexatious claims.
- It must be able to order rectification repairs, reimbursement of repair costs and/or refunding or replacement of the vehicle.
- It must deal with the post claim status/disposal of the affected vehicles.

As mentioned previously, the *Australian Consumer Law* provisions of the federal *Competition and Consumer Act 2010* go some way in providing this, but in our opinion it is limited by its ability to only address immediate issues at hand. It does not address ongoing issues or issues that become so frustrating or costly (in time or financially) that the owner chooses to dispose of the vehicle, rather than persevere with rectification efforts.

Overall RACQ Position:

- RACQ supports improving consumer protection laws for motor vehicles;
- RACQ supports consultation with relevant stakeholders in developing these improved consumer protection laws; and
- RACQ believes that enhancements to such laws should be adopted nationally and provide consistency in terms of consumer protection, dispute handling processes, defect and vehicle status definitions and resolution options and remedies.

Comments on Draft Report and Draft recommendations:

Overall the RACQ believes that the *Draft Report* provides a good overview of the relevant issues and we agree with most of the findings/recommendations. This section provides additional comment where RACQ wants to highlight certain views/issues.

Specifically, RACQ agrees with the key points in section 3 'Consumer guarantees and warranties' (p28) and we believe that the definition of a 'major failure' (p29) should be formalised and clearly communicated to consumers and dealers.

RACQ also agrees with the draft findings on consumer understanding about consumer guarantees at the point of sale of a new car (p37) and the ACCC actions 3.1 and 3.2 on consumer understanding of their rights.

It is pleasing to see the ACCC proposed action 3.3 (p41) includes potential enforcement action, and we believe it is essential that misleading or deceptive conduct or misrepresentations in relation to the use of independent repairers or non-OE parts will be targeted by the ACCC. This also reinforces the need for an independent authority to investigate and enforce these laws.



RACQ agrees with and can relate to the discussion around section '3.3. The consumer experience of enforcing their rights' and this area is of particular concern. As mentioned above there is an urgent need to remove barriers to consumers being able to commence action and enforce their rights, and there needs to be an independent authority to assess claims and make legally binding decisions.

RACQ agrees with ACCC action 3.4 and is pleased to see enforcement in this space, but also believes that this is another example of where an independent authority to administer and enforce the consumer law for motor vehicles could provide a lot of value to both new car owners and the dealers and manufacturers – by becoming the official and neutral complaints handling authority.

Conclusion

We thank the ACCC again for calling for submissions and feedback on the *New Car Retailing Industry – a market study by the ACCC: Draft Report* (the 'Draft Report') and trust that our comments are of assistance to the ACCC. Should you wish to discuss this submission further, I can be contacted by telephone on (07) 3666 9750 or by email at steve.spalding@racq.com.au

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Spalding'.

Steve Spalding

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