



7 September 2017

Submitted via the ACCC Consultation Hub

Australian Competition and Consumer Commission
New Car Retailing Industry
23 Marcus Clarke Street
CANBERRA ACT2601

Dear Sir/Madam

New Car Retailing Industry – Draft Report

Consumer Action Law Centre (**Consumer Action**) is pleased to make this submission to the Australian Competition and Consumer Commission (**ACCC**) new car retail industry market study draft report (**the Draft Report**).

Our legal advice service receives many complaints about problems with new and used cars. Often it can be difficult for individuals to deal with these problems with dealers, manufacturers and insurers. We have made submission to other inquiries (including the Review of the Australian Consumer Law (**ACL**)) and the Issues Paper for the ACCC new car retail market study (**the Issues Paper**) about these issues.

We have focussed this submission on four key areas: consumer guarantees and warranties, the limitations of disclosure, enforcement action and dispute resolution.

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.

Consumer guarantees and warranties

We strongly support the amendments proposed by Consumer Affairs Australian and New Zealand (**CAANZ**) in the recent ACL Review, which aim to enhance the ACL and clarify consumer guarantee rights. Proposals 1, 2 and 3 would significant improve consumer outcomes, particularly in the new and used car market.

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Proposal 1 would effectively introduce an economy-wide ‘lemon law’, which would provide bright line rules as to when consumers are entitled to a remedy under the ACL. We have previously made submissions supporting the introduction of a lemon law akin to those in Singapore.¹ The Singaporean regime is similar to that proposed by the ACL Review, albeit the defect is assumed to exist if it is found within six months of delivery, as opposed to the ‘short specified period of time’ suggested by CAANZ. In our view, six months is a preferable period for the lemon law to apply. We often receive complaints from consumers who have noticed defects within six months of purchasing a new car, but rarely receive complaints about defects noticed within one month (as suggested by the ACL Review Final Report). For a purchase as significant as a car, it is not unreasonable that a refund or replacement be the default remedy where the car fails to meet the consumer guarantees within six months of purchase.

We therefore support Draft Recommendation 3.1, although we recommend that the ‘short specified period of time’ set out in Proposal 1 be extended to six months in line with the Singaporean model.

We note that the recent meeting of Australian Ministers of Consumer Affairs committed to undertaking regulatory impact assessment for seven proposals (including proposals 1,2 and 3) to amend the consumer law to inform future decision making.²

Limitations of disclosure

We are supportive of ACCC action 3.1 to better inform consumers of their rights. However, there are limitations to the effectiveness of disclosure as a consumer protection tool. Significant behavioural research has shown that disclosure constitutes a very weak (i.e. ineffective) form of consumer protection.³

Disclosure measures such as providing mandated written warnings are insufficient if the consumer is not also provided with clear verbal advice about their rights under the ACL at critical points during purchase. The Draft Report noted that part of the problem is the focus by dealers at the point of sale on the manufacturer’s warranty and the potential sale of an extended warranty.

Consumer Action is aware that retailers commonly sell extended warranties as an “add-on” product, just as consumers are finalising their purchase. We believe that extended warranties are analogous to junk insurance policies, as they offer very little (if any) real value, are sold at the same stage of the selling process, and play on the same vulnerabilities and fears. Consumers are made to feel that they should purchase the product, as it is better to be “safe than sorry”. This is a deceptive sales pitch, however, as consumers are already protected by the consumer guarantee provisions of the ACL.

¹ Consumer Action Law Centre, *Submission: Australian Consumer Law Review*, 30 May 2016, available at: <http://consumeraction.org.au/wp-content/uploads/2016/05/Consumer-Action-ACL-Review-Submission-FINAL.pdf>; Consumer Action Law Centre, *Submission: ‘Lemon’ laws – An inquiry into consumer protections and remedies for buyers of new motor vehicles*, 8 October 2015, available at: <http://consumeraction.org.au/wp-content/uploads/2015/10/Submission-Consumer-Action-FINAL-08102015.pdf>.

² Legislative and Governance Forum of Consumer Affairs, *Joint Communiqué - Meeting of Ministers for Consumer Affairs*, 31 August 2017, available at: <http://consumerlaw.gov.au/communiqués/meeting-9-2/>.

³ For example see: Omri Ben-Shahar and Carl E. Schneider, *More Than You Wanted To Know: The Failure of Mandated Disclosure*, Princeton, Princeton University Press, 2014.

We therefore recommend the introduction of an 'opt-in' model for extended warranties, as set out in our submission in response to the Issues Paper. This opt-in model would be 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.

Similar considerations apply to Draft Recommendation 6.1 and 6.2 relating to disclosure of fuel consumption and emissions. While we are supportive improving disclosure about fuel consumption and emissions, enhanced disclosure should not be regarded as a 'silver bullet'. Proactive enforcement action by the ACCC and improvements to dispute resolution, as recommended elsewhere in this submission, are also necessary to complement any disclosure regime.

Enforcement action

We support ACCC actions 3.3 and 3.4, which will see the ACCC undertake enforcement action in relation to misleading and deceptive conduct about repairs and servicing, and complaints handling systems. However, we recommend that the ACCC also explicitly commit to continuing its enforcement action against car manufacturers and dealers for failing to comply with consumer guarantees. We continue to receive complaints about multiple non-major failures and major failures in new cars, and see evidence of these failures causing significant consumer harm. We consider that consumer guarantees, particularly in the new and used car markets, should be an enforcement priority for the ACCC.

Dispute resolution

We agree with the conclusion in the Draft Report that consumers are having difficulty enforcing consumer guarantees when problems occur with new cars. Our casework experience suggests that obtaining necessary independent technical assessments of defects, as required by most courts and tribunals, is prohibitively expensive. The cost of obtaining an expert's report can sometimes even exceed the value of the repair in dispute. Further, many consumers do not have the resources, expertise or time available to successfully pursue a claim under the ACL in a court or tribunal.

We do not agree with the conclusion in the Draft Report that this issue is 'chiefly a compliance problem associated with manufacturers' complaints handling systems failing to adequately take consumer guarantees into account.' While internal dispute resolution processes are important, ultimately there needs to be an accessible external dispute resolution forum for consumers to provide an incentive for car dealers and manufacturers to resolve disputes internally. It is also inevitable that some disputes will be unable to be resolved internally, and that an external dispute resolution service will be required.

We recommend the establishment of a specialised tribunal or ombudsman for motor vehicle complaints. We have supported a recent recommendation by the Victorian Government's *Access to Justice Review* that the state government propose legislation for compulsory conciliation of motor vehicle disputes by Consumer Affairs Victoria before a claim can be made the Victorian Civil and Administrative Tribunal and funding for CAV to produce technical assessments.⁴ The Victorian

⁴ Victorian Government, *Access to Justice Review*, August 2016, Recommendation 5.8.

Government is giving this recommendation further consideration. We believe this would be a significant improvement in access to justice for consumers who purchase defective cars. While improvements to manufacturers' complaints handling systems would be welcome, this needs to occur in conjunction with the establishment of an accessible external dispute resolution body.

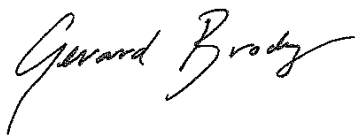
More broadly, we note that the Review of the Australian Consumer Law highlighted many concerns and submissions about access to remedies at courts and tribunals but stated that this was beyond the scope of the Review due to civil justice systems being a state and territory responsibility.⁵

Given that car retailing is such a significant industry in Australia, and that access to justice is an important issue raised in the context of this review, we urge the ACCC to consider and propose alternative ways to enhance access to justice outside the state and territory civil justice systems. Perhaps the most significant way that the ACCC could advance industry practices and consumer outcomes in the car retailing market would be for it to recommend the establishment of a national dispute resolution service that is specifically tasked with resolving individual disputes as well as systemic problems in the sector.

Please contact Katherine Temple, Senior Policy Officer on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about our comments on the review.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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⁵ CAANZ, *Review of the Australian Consumer Law Final Report*, March 2017, p. 81, available at: <http://consumerlaw.gov.au/review-of-the-australian-consumer-law/final-report/>.