



8th October 2015

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

Email: lacsc@parliament.qld.gov.au

Dear Research Director

**Re: 'Lemon' Laws - An Inquiry into consumer protections and remedies
for buyers of new motor vehicles**

1. Introduction

1.1 The Motor Trades Association – Queensland (MTA Queensland or the Association) responds to the Queensland Parliamentary Legal Affairs and Community Safety Committee's invitation for submissions to its *Inquiry into consumer protections and remedies for buyers of new motor vehicles (the Inquiry)*. The MTA Queensland's comments are on behalf of its constituent divisions and are confined to issues which relate to the interests of the Queensland automotive value chain.

1.2 The full terms of reference are:

That the Legal Affairs and Community Safety Committee inquire into and report on 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 ('lemons'). That, in undertaking the inquiry, the Committee should consider, but not be limited to:

1. the experiences of consumers in Queensland who have purchased 'lemons' including community expectations of what constitutes a 'lemon' motor vehicle and the impacts, financial and otherwise, on consumers who have purchased 'lemons';
2. the consumer protections and remedies available under existing legislation, such as those contained in the Australian Consumer Law (ACL) 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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3. how legislative protections and remedies might be improved to better protect Queensland consumers who have purchased 'lemons', including improving the ability of consumers to enforce their rights without recourse to courts or tribunals; and
4. any legislative and other protections in other jurisdictions assisting consumers who have purchased 'lemons', including the costs and benefits of existing and proposed protections.

1.3 The MTA Queensland submission is confined to issues relating to the commercial sale of motor vehicles. The issue of the private sale of motor vehicles and the private importation of motor vehicles is beyond the purview of the Association. It is also restricted to issues that relate to commercial transactions with individual private consumers and is not intended to cover large fleet sales or transactions that involve commercial entities as the purchaser.

2. Context

2.1 The acquisition of a motor vehicle by a private consumer traditionally has been recognised as a major capital acquisition with risks that have been mitigated by statutory consumer frameworks.

2.2 There are two parallel but different statutory frameworks that protect the interest of consumers in respect of the commercial acquisition of a motor vehicle. The frameworks are based on whether the vehicle is pre-owned (i.e. a used car) or a first time registration acquired from a franchised new motor vehicle dealer.

2.3 In the case of pre-owned motor vehicles (used cars) the interest of private consumers is protected by a State based statutory framework. This regulatory framework requires the registration of all entities engaging in the commercial trading of pre-owned motor vehicles; all sales staff having to be of good character and undergo criminal history checks to be licensed to transact the sales of used motor vehicles; statutory documentation mandatory to complete the transfer of title; and the 'motor vehicle dealer' is required to guarantee clear title. In addition there are prescribed obligations in respect of the premises from which 'motor vehicle dealers' can operate and a statutory warranty period typically 90 days on such transactions.

2.4 In respect of 'first time registrations' (i.e. new motor vehicles) purchased from a franchised new motor vehicle dealer there is no State regulatory framework, but statutory protection for the consumer is available under Commonwealth generic consumer protection law enshrined in the ACL administered by the Australian Consumer and Competition Commission. This provides obligations in respect of the motor vehicle that it must be fit for purpose and must have product performance that would be 'reasonably' expected from such an acquisition.

2.5 In respect of new motor vehicles, there is consumer protection provided by the warrants from the manufacturer. The behaviour of the 'new vehicle franchised dealer' towards the consumer is managed by the terms of the franchise arrangement between the dealer and the manufacturer.

2.6 The warranty period and the comprehensive nature of the protection being offered to consumers as part of the 'package' in a new motor vehicle acquisition is now

becoming a contestable selling point. Warranty periods are being extended as a way of competing in the market for new motor vehicles. Five year warranty periods without distance limits are now common and a number of models offer seven year warranties.

2.7 The extension of warranties has implications for the pre-owned market because in most cases the warranties are transferable and therefore the warranty extends to the subsequent owners while it is current.

3 Consumer protection for new vehicles not fit for purpose

3.1 It appears that if the consumer protection framework is understood by consumers, it is robust and has the competence to protect the interests of the private consumer. If there is however, a perception by the private consumer that new motor vehicles purchase risks are sufficiently mitigated in respect of a situation where a new vehicle is not fit for purpose (i.e. commonly known as a 'lemon' or a 'Friday car' then governments need to give this situation consideration. Any enhancements to the legislative framework need to be carefully considered, and the MTA Queensland submits the following matters for consideration to any regulation initiative considered in this regard.

3.2 Contemporary Australian consumer legislation has been based on generic regulation that would be applicable to products generally in the market rather than sector specific legislation. If sector specific legislation was to be considered in respect of the ACL regime, it would tend to indicate that very high level of risks existed in the acquisition of new market vehicles.

3.3 Anecdotally, and traditionally this is unlikely to be the case. The risk associated with the purchase of new motor vehicles has been relatively modest particularly with the increase in technical sophistication and statutory requirements in relation to safety and environmental performance. Also, there may be a tendency for greater after sales servicing to ensure that technical performance meets specifications and consumer expectation. The percentage of vehicles that manufacturers deliver to the market that are not fit for purpose is unlikely to be high because of the reputational risk this constitutes to brand value.

3.4 The first challenge of any specific legislation involving new motor vehicles would be definitional. The question is: what constitutes a new motor vehicle? Technically, the industry always has taken the first registration of the motor vehicle as the defining event of a new motor vehicle. Any subsequent registrations define the car as a used motor vehicle. This would have to be clearly enunciated in the legislation.

3.5 In the case of any so-called 'lemon' legislation there would need to be a chronological definition - how long would a car remain new? This should include a responsibility on the consumer to advise of any deficiencies in the new motor vehicle as soon as possible - and certainly advise before the deficiencies became chronic. Any legislation or regulation would need to clearly define the obligations and the ultimate responsibility for any remedies under the legislation.

3.6 Ultimately, the manufacturer or the manufacturer's representative that is the importer or the distributor has to be the 'responsible entity' for the remedies under the legislation for new vehicles not fit for purpose. In other words the franchise new motor vehicle dealer can be called upon to provide remedies but cannot be held responsible for the original manufacturing deficiencies. Irrespective of the contract of sale, the contract

is between the dealer and the consumer. The dealer, however, is only acting on behalf of the manufacturer or the importer/distributor. Such legislation would require the responsible entity to be incorporated under Australian corporation law and have sufficient resources to meet obligations to be imposed by any legislation.

3.7 Any so-called 'lemon' legislation would ideally distinguish between specific individual vehicle failures not fit for purpose ('lemons'), generic design manufacturing defects which require general recalls or serious design safety defects which require immediate/urgent attention.

3.8 Legislative enhancements need to be symmetrical. While the legislation will provide recourse for the consumer against the manufacturer, the manufacturer should be protected from frivolous or without merit claims by disingenuous consumers because the manufacturer and dealer in such cases not only suffer the costs of defending a without merit claim is also unfairly exposed to reputational risk. Such legislative circumstances will require a cost effective dispute mechanism, because as much as the existing system is robust, the dispute mechanisms are cumbersome and costly in terms of representation and time. This in itself means that the system is not consumer friendly.

3.9 If the consumer protection framework is enhanced with consumer specific 'lemon' laws, these will need to establish precedence and ensure that the specific legislation and the generic legislation are mutually exclusive otherwise the manufacturers will be faced with the possibility of the same complaint under both legislative regulations.

3.10 If the 'lemon' laws are introduced and apply to imported new vehicles, and if authorisation is extended to the import of used motor vehicles on a commercial basis for resale to private owners then it appears appropriate that these laws should apply equitably.

4. Harmonisation

4.1 Prima facie and anecdotally there appears to be some justification to enhance state based consumer protection for consumers purchasing new vehicles which are not fit for purpose. The evolution of the Australian automotive market means that such regulation is likely to be very difficult to administer unless harmonised across the Commonwealth. The advent of electronic selling of motor vehicles means that state origin based legislation will present difficulties for the Queensland automotive value chain. It is the strong view of the MTA Queensland that such legislation should only be contemplated if introduced nationally.

4.2 We are supportive of the substance of a Joint Communiqué of a meeting of Australian and New Zealand Consumer Affairs Ministers which noted an "e-petition in Queensland requesting that the Queensland Parliament introduce 'lemon' laws into Queensland to protect Australian consumers with long term plan to release for national acceptance." The Joint Communiqué stated that "as existing protections fall within the scope of the ACL ... it would be preferable to have a nationally consistent approach; Consumer Affairs Ministers preferred that the issue of lemon laws be considered as part of the general review of the ACL" (Joint Communiqué, Meeting of Ministers of Consumer Affairs, Melbourne, 12th June 2015).

4.3 A review of the ACL will commence in 2016, to satisfy the requirement of the Intergovernmental Agreement for the Australian Consumer Law signed in 2009 by the

Council of Australian Governments. It is MTA Queensland's view that this would be a preferred approach to any consideration of 'lemon' laws.

5 Education

5.1 The lack of understanding of consumer rights by the public is a major issue. If the State makes the decision to introduce 'lemon' laws as part of a harmonised framework across the Commonwealth or in a standalone provision, it is essential that it be accompanied with a consumer education program that informs new motor vehicle purchasers of their rights under both Commonwealth and State legislation.

5.2 Legislation without education would not let the full benefits to consumers be realised. The extension of the education to new motor vehicle dealers should be considered.

6 The MTA Queensland background

6.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of the automotive industry located in Queensland. The 2015 Automotive Environmental Scan data indicates that there are some 13,800 automotive value chain businesses operating within the State employing in excess of 92,000 persons.

6.2 It is an industrial association of employers incorporated pursuant to the *Industrial Relations Act* of Queensland. The Association represents and promotes issues of relevance to the automotive industries to all levels of government and within Queensland's economic structure.

6.3 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry through the MTAIT. It is the largest automotive apprentice trainer in Queensland employing 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTAIT last financial year accredited courses to in excess of 1,600 apprentices and trainees.

7 Conclusion

7.1 We would be pleased to provide further comment on any matters in our submission that may require further clarification or amplification.

Thank you for your consideration.

Yours sincerely



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