

Mr. Garry Clements
Chair, Consumer Affairs Australia and New Zealand
Parliament House
George Street
Brisbane Qld 4000

Mr. Ashton Wood
Lemon Laws advocate
PO Box 1440
Mooloolaba QLD 4557

Submission in relation to the Australian Consumer Law Review Issues Paper.

To Whom It May Concern:

My name is Ashton Wood and I destroyed a \$49,000 Jeep out of frustration with ongoing issues with my new motor vehicle and a law that is so open I could drive a 35 tonne excavator through it.

No laws were harmed in the destruction, but a LOT of questions were asked about why we are 40 years behind the USA in consumer protection laws for motor vehicles.

Since starting my campaign to raise awareness about the issues of lemon vehicles in Australia, my concerns have been supported by the following influential people/groups:

- Connie Cicchini – “Lemon Laws 4 Aus” lobby group
- Stewart Lette - “Lemon Vehicles in Aus” lobby group
- The Hon Yvette D’ath – Queensland Attorney General
- The Hon Peter Wellington MP - Queensland Speaker of Parliament
- The Hon Ricky Muir – Federal Senator for the Australian Motoring Enthusiast Party
- Steve Spalding – RACQ
- Scott McDougall – Caxton Legal Centre
- Gerard Brody and Katherine Temple – Consumer Action Law Centre
- John Cadogan – Autoexpert
- Professor Stephen Corones – QUT
- Michael Fitzgerald – Queensland Law Society
- Legal Aid Queensland
- Alan Kirkland – CEO, CHOICE

And Countless hardworking Australians, who are stuck in automotive hell with their lemon vehicles.

I was invited to attend, and speak at, the parliamentary inquiry held by the Legal Affairs and Community Safety Committee in 2015 after my submission about the urgent requirement for a review of our current Australian Consumer Law.

This submission is provided upon request from the speaker of Queensland Parliament,
The Hon. Peter Wellington MP.

1. Consumer policy in Australia:

The Australian Consumer Law was introduced in January 2011, to replace the out-dated Trade Practices Act.

This new law was put in place to better protect consumers in Australia.

Although I'm sure it has helped in some markets, it doesn't seem to have orchestrated any improvements in consumer rights or favourable outcomes in the Automotive industry.

There are terms in the Australian consumer law, which the automotive industry twist and manipulate in order to mislead the consumer on their consumer rights.

This constant manipulation by the industry has put consumer confidence at an all time low. The once enjoyable feeling of purchasing a new motor vehicle is now replaced with concern over reliability, durability and defects and it has become a case of "consumer beware".

Policies are vital to re-build consumer confidence, and education is required to consumers about their rights and to the manufacturers and dealers about their obligations.

At this point in time there is no "redress" in the event of the dealer/manufacturer ignorance of the law (see item 3 below)

2. *The legal framework:*

It's obvious that the Australian Consumer Law lacks the clarity required to hold the automotive industry responsible for the supply of quality motor vehicles in Australia.

The terms such as "fit for purpose" and "of merchantable quality" are too vague.

Even terms that seem to be clear, such as "consumer has the right to their choice of a refund or replacement..." are rigorously argued in the dealership showroom when a consumer pushes for their rights.

We require clear terms, such as those used in the lemon laws that have existed in the United States for over 40 years... terms like "three major issues" or "one unresolved safety issue", followed by a very clear timeframe for these issues to occur within (e.g. two or three years)

The current Australian Consumer puts the onus on the dealer to act in accordance with the Australian Consumer Law, including the management (and financing) of a replacement vehicle or full refund.

This arrangement is fundamentally flawed, as the dealer makes money on each repair carried out under warranty from the manufacturer/importer, so the dealer has no gain in replacing a vehicle or refunding a consumer, in fact that action will COST the dealer money.

Overseas, the onus sits with the manufacturer, so the dealer has the "support" required to replace a lemon vehicle or refund the consumers' purchase, by mediating with the manufacturer/importer on behalf of the unhappy consumer.

In your issues paper, you mention the undertaking Fiat Chrysler Automobiles Australia undertook as part of the ACCC "Redress Program" in 2015 (Case study 5). As far as the consumers are concerned, this has been a complete failure, as the purpose of the redress was to "make things right" and hopefully setup processes and procedures to ensure this

malpractice was stopped, unfortunately FCA have simply used this as a stalling tactic, hoping we will all forget about it and get on with our lives. There are still countless consumers waiting to hear from FCA and I'm personally hearing from many new unhappy FCA customers each week in Australia, so it's obvious that they haven't improved their internal processes, refund policy or customer care program.

3. Administration and enforcement:

While a national approach to the ACL makes sense, there seems to be a lot of confusion around the activity and responsibilities of ACL regulators.

It has been proven time and time again that the Office of Fair Trading (also known under different names in different states) hold NO power to MAKE the dealer or manufacturer adhere to the Australian Consumer Law.

I have personally experienced the frustration of their powerless attempts to resolve issues, as have countless other Australian consumers.

The ACCC are no better, as they make it very clear to people that they "don't investigate individual cases", so unless the consumer has access to a LOT of people with similar vehicle issues, or knows how to find them through social media (like I did), the ACCC do not get involved.

Even on the rare event that the ACCC get involved, investigate, and find a truckload of evidence against the importer / dealer like they did with FCA, they simply put a "sanction" on the corporation, asking them to start looking after their customers.

In the case of Fiat Chrysler Automobiles Australia, the ACCC did not even request a list of unhappy customers, so have no way of confirming if FCA actually contacted all their customers and offered redress.

What's more, FCA took 55 of the 60 days to simply draft a letter and send to some (not all) of their affected customers. In this letter some customers were told they would have to wait until 2017 for "redress".

I read in the press that the ACCC fined a small business \$200,000 for using fake testimonials on their website. While I don't condone fake testimonials, a fake testimonial is much less serious than a business that misleads countless consumers on their rights to a replacement or refund, allows unsafe and unreliable vehicles to be driven on the road, causes consumers to be out of pocket for vehicles they can't even drive and the related stress, anxiety and worry that a lemon vehicle can cause... yet NO fine has ever been administered by the ACCC to FCA... it does make you wonder who's side the ACCC are really on.

We need the ACCC to stand up and be accountable for protecting consumers, as it seems they are leaving all of the groundwork to lobby groups such as ours.

I have asked numerous times for plan or timeline, only to be dismissed, I'm wondering if a plan actually exists, or if they have any intention of holding the automotive industry accountable. If the ACCC are not there to protect consumers and their rights, I'm sure the millions of dollars per year in government funding could be better spent elsewhere.

The Office of Fair Trading and the ACCC have been known to tell consumers that their only option will be to take the dealer/manufacturer to court.

This is obviously a very expensive exercise as we all know that the automotive industry has much deeper pockets than most hardworking Australians, so the consumer will eventually have to give up the fight.

There are small claims tribunals in Australia, however their monetary jurisdiction is different in each state. For example, in Queensland the QCAT only has jurisdiction to \$25,000 meaning that it's of no use to anyone with a vehicle of higher value to seek redress or a refund.

We need a tribunal/court system that enables everyday consumers to take the fight to court, without the exorbitant expense of lawyers.

We also need to ensure that the mediators and/or judges are well versed with the Australian Consumer law and motor vehicles in general, as the automotive industry are

experts at making the issue seem far more complex than it is, or they try to mislead the mediator with technical jargon instead of focussing on the major concern, an unreliable vehicle with major defects, or an unsafe vehicle which cannot be suitably repaired in a timely manner.

4. Emerging consumer policy issues:

There are fundamental flaws with ACL as it stands today.

We need clearer laws

We need education for dealers and manufacturers about their legal responsibility.

We need a court/tribunal system that consumers can rely on, and that can deal with vehicles of all price points (there are currently monetary limits in QCAT/NCAT etc)

We need education for consumers about their rights when faced with a lemon vehicle.

We require a register of all lemon vehicles, so that the second-hand automotive market (dealers) and consumers are protected from those vehicles entering the market.

We need an action plan, communicated and nationally adopted.

Any further points of clarification, evidence to backup my claims above or general communications can be directed to me.

Mr. Ashton Wood

Lemon Laws Advocate

Founder of Destroy My Jeep

Website: www.destroymyjeep.com

Email: ashton@ashtonwood.com.au

Ph: 0412 281 900