

PLEASE COULD I ASK FOR MY NAME AND MY EMAIL ADDRESS NOT TO BE PUBLISHED ON THE WEBSITE, WHILE I AUTHORIZE ALL OTHER INFORMATION TO BE PUBLISHED AND MY NAME TO BE USED FOR ANY PURPOSES OTHER THAN THE WEBSITE

The intent of this submission is to offer my story and my perspective on what I consider as a gross legislative gap in the “lemon car” legislation, the inadequacy of the ACL to protect consumer rights against malfunctioning vehicles and the interest of powerful corporations, the financial burden and emotional rollercoaster that a consumer has to go through when they pay perfectly good money for a faulty vehicle.

I would like to start with the short version of my story to give the commission context around my personal journey, and follow with a detailed memo of events.

I bought a brand new [REDACTED] from [REDACTED] in February 2013, for a cost just shy of \$ 58,000. After less than 2 years, the engine started leaking oil, causing constant intense odors and dark thick smoke invading the cabin. In the following 7 months, I brought the car back to [REDACTED] for repairs 4 times, always being returned a car that had similar (or worse) leaks than before.

I advised [REDACTED] about my health concerns relating to toxic smoke inhalation and potential engine fires, and I advised them of the disruptions to my professional and personal life that the need for continuous servicing was causing. I asked them before the 4th repair to keep the car for as long as needed to be tested thoroughly, as I did not wish to take it back for any further repairs.

I was invariably ignored.

When the 4th attempt did not resolve the problem, I escalated the matter to the ACCC, which advised that I had to attempt at obtaining a resolution through the seller, [REDACTED] failing which I would have to involve the NSW Office of Fair Trading. [REDACTED] merely offered an extension of warranty through [REDACTED] and further repairs. I questioned whether I would need to take the car back for repairs *ad infinitum*, as 4 attempts had not solved the issue. I escalated the matter to the NSW Office of Fair Trading which advised that they could only mediate further repairs, but suggested the New South Wales Civil and Administrative Tribunal (NCAT) as a better place for a definitive resolution. As advised, I lodged an application to the NCAT.

NCAT is portrayed as a tribunal that seeks rapid resolutions at contained costs, having a “no lawyer” policy. Despite this façade, I quickly learnt that the legal aspects involved in a dispute are simply too complex for a lay individual to understand and fulfil. At the first hearing, the judge advised me to seek legal help, in a system that is intrinsically flawed, as the NCAT does not have the jurisdiction to make orders for legal costs to whichever party loses the case. This left me with the onus of bearing all the costs for proving a fault which is obviously difficult to diagnose, as well as the legal costs that I could not recuperate through NCAT.

I retained a solicitor, who attempted further negotiations with [REDACTED], as advised by the member for the Parramatta NCAT. We gave [REDACTED] a 5th and final chance of repairing the car. The NCAT refused to adjourn the hearing to



Memo

- JUNE 2013: The Engine light alert started flashing twice when driving. I called Emergency roadside assistance, they advised to top up the oil as soon as reasonably possible. I did that.
- On 23/8/2013 the engine light came on again, I took the car at [REDACTED] and they topped up the engine oil again.
- On 15/6/2014 I topped up the engine oil again
- On 2/1/2015, during a scheduled service at [REDACTED] the engine rocker cover gasket and the vacuum pump were found leaking oil. The seals were replaced and the necessary repairs carried out.
- In April 2015 I noticed an intense diesel smell inside the car. On 7/5/2015 I took the car to [REDACTED] where the mechanics found another engine oil leak which again required replacement of the gasket.
- In July 2015 again I started perceiving the intense diesel smell inside the car. On 23/7/2015 the passenger compartment filled up with grey smoke and an intense burning smell while the car was static. I took the car to [REDACTED] and the mechanics found the engine rocker cover gasket having prematurely failed and replaced it again.
- The day after the car was returned (24/7/2015) I could perceive the diesel smell once more. I contacted the [REDACTED] customer service to express my frustration for the ongoing series of events and to find a permanent solution. [REDACTED] customer service advised that the only thing I could do was to take the car back to the [REDACTED] [REDACTED] On the same day I emailed [REDACTED] who advised that I had to let the oil residue burn off for a few days
- On 4/8/2015 the smell had not disappeared. I emailed [REDACTED] once more expressing my concerns for the events, for the health hazards and for the impact on my time. I also spoke to the manager of the service center at [REDACTED] I was asked to bring the car back again, and I agreed to do so warning them it was the very last time I would take the car for repairs. The mechanics found the engine rocker cover gasket leaking due to the part not adhering properly to the rocker cover. The part was replaced for the 4th time. I asked [REDACTED] to please test the car as thoroughly as possible and for as long as they felt was necessary because I was really frustrated with taking the car back and forth almost every week.
- On 6/8/2015 I called the ACCC. They explained the legislation and ran me through the possibility of a claim. They also advised that I had to write to the seller seeking an agreement, and that the seller was obliged to act as the intermediary between myself and [REDACTED] if they thought the claim had to be addressed by [REDACTED].
- The car was returned a week later (11/8/2015). While the car was being driven back for return, the engine light signaled a fault, and the car was returned to the repair center. It was returned to me later that day. The smell had not disappeared
- On 12/8/2015 I contacted the General Manager of [REDACTED] outlining the events with all appropriate documentation and asking for a full refund of the purchase price. On 14/8/2015 the [REDACTED] aftersales

manager rejected my claim offering an extension of warranty for engine oil leaks and service package until 15/2/2018 on [REDACTED] Australia's behalf. I confirmed I would place a claim with NSW Office of Fair Trading

- On the same day (14/8/2015). I placed a complaint with NSW Office of Fair Trading
- On 7/9/2015 the NSW office of Fair Trading replied advising that the claim was better placed with the NCAT. On 9/10/2015 I lodged an application against [REDACTED] to the NCAT.
- During the negotiations between my solicitor and [REDACTED] Australia, and as advised by the member for the Parramatta NCAT, we gave [REDACTED] a 5th and final chance of repairing the car. The car was repaired by [REDACTED] [REDACTED] bay on or about 23 December 2015. An oil consumption test was requested after 1000 Km of use. It was carried out on 2/2/2016 and returned normal results.
- During further negotiations, we proposed [REDACTED] to withdraw the NCAT claim on condition that they would offer a fully transferable extension of warranty and free servicing until 2018, and the reimbursement of minimal expenses for oil and fuel. I would also reserve the right to seek further remedies if the leak was to reoccur again
- The lawyer acting for [REDACTED] responded they would only agree to our request if I signed a deed of release. I declined the offer and counteroffered that [REDACTED] take the car back at no further cost to [REDACTED] or to myself (my contract with [REDACTED] finance states that I can return the car in February 2017 instead of a balloon payment)
- [REDACTED] rejected my offer and the matter was due for hearing at NCAT on 18 March 2016.
- On 16 March 2016, [REDACTED] lawyer lodged an application asking that I pay [REDACTED] costs of the proceedings under section 60(3) due to my claim having no proper legal basis
- That night, I detected a new small oil leak in the car. I decided to withdraw the claim (17 March 2016), reserving my right to commence further legal proceedings after having had the car inspected by an independent assessor. The independent assessment was carried out on 5 April 2016 and showed persistent traces of engine oil, recommending replacement of an engine part without certainty that this would address the problem.