

Sydney 19 October 2016

Mr Simon Cohen Chair Consumer Affairs Australia and New Zealand

Dear Mr Cohen,

Submission on Australian Law Review – Interim Report

(Through Australian Consumer Law website)

I thank you for the opportunity to further contribute to this very important review.

I refer to section 2.1 and 3.2 of the Interim report, specifically to the issue of “lemon laws” and current levels of consumer protection for motor vehicles.

My personal experience has involved a brand new purchased at and serviced at

In the current framework;

- There is no limit on the number and frequency of “minor failures” that can occur to a car before the failure is considered “major”. Theoretically, a dealer can offer the car owner to repair a reoccurring fault every week for any given length of time without ever having to offer a refund, even in the case that the car was purchased brand new. In my specific case, my brand new was repaired 4 times in 7 months by , causing a substantial disruption to my personal and professional life (referred to as “cycle of failed repairs” in the interim report, page 55).
- The financial and logistic onus of proving that the car has a major fault remains with the owner, even when the manufacturer has failed multiple times to repair any fault and, therefore, the fault is obviously difficult to diagnose (referred to as “evidentiary issues” in the interim report, page 51).
- When manufacturers or dealers refuse to offer anything other than constant repairs, pursuing these matters through the courts is inefficient, expensive and not economical. NCAT is designed to offer legal resolutions without the assistance of a lawyer, but it is impossible to satisfy its technical requirement for any lay person (the Judge themselves asked me to resort to legal advice). However, recurring to legal assistance is expensive and not economical, as legal costs are greater than the value of the car and they often cannot be recuperated, at least through NCAT. Finding any lawyer that is willing to accept a case of lemon car can also be a challenge (as in my case).

Therefore, I do fully support the need for a “lemon law” provision, covering the following:

- what is the definition of a lemon car – how many major/minor fault grant the definitions

- mandatory time and repair limits before a reoccurring failure is considered major and entitles the owner to a refund
- clarity on when a repair, refund or replacement of a motor vehicle is granted, and who should be liable for it (the supplier or manufacturer).
- what is the role played by repairers endorsed by the manufacturer. Currently, the dealer, manufacturer and repairers shift responsibility amongst themselves and play on legal technicalities to avoid responsibility
- who should be responsible for any expenses for legal fees or technical assessment costs in relation to the matter.
- I support the ACL been given powers to seek for and, above all, enforce inexpensive conciliations out of court

To Further question 14 I answer:

No. The automotive industry needs specific regulations due to the cost of goods and the dangers inherent driving an unsafe car

To Further question 15 I answer:

Definition of major failure that entitles the consumer to a refund, and building the framework that allows to enforce these rules outside the courts

To Further question 16 I answer:

Major failure should be defined as a set number (e.g. 3) of minor failures reoccurring within a set period of time (e.g. 6 months) and should allow automatic access to a refund. It should not be under discretion of the courts.

To Further questions 40, 64 and 65 I answer:

The ACL should be given powers to resolve and, above all, enforce inexpensive conciliations out of court, comprising those where punitive and commensurate monetary resolutions are imposed

Thank you again for the opportunity

Anonymous consumer