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## **'Lemon' Laws – An enquiry into Consumer Protections and Remedies for Buyers of Motor Vehicles**

### **The FCAI**

1. This submission is made by the Federal Chamber of Automotive Industries (FCAI) on its own behalf and on behalf of all of its members. The FCAI is the peak industry body representing the automotive industry in Australia. The FCAI's membership comprises the three Australian passenger motor vehicle manufacturers and the majority of the major international brands which import and market passenger, light commercial and four wheel drive vehicles and motor cycles in Australia.

### **What is a 'lemon'**

2. For the purposes of this submission, the FCAI adopts the definition of a 'lemon' which is referred to in the Committee's terms of reference:

*'a new motor vehicle 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'.*

### **The FCAI's submission**

3. There is no reason whatsoever for the Queensland Government to introduce laws to deal with lemons because:
  - the number of vehicles being sold in Queensland that could be categorised as lemons are insignificant;

- the current legislative regime is more than adequate to address issues to do with defects in vehicles generally and the insignificant number of lemons specifically;
  - the competitive nature of the new vehicle market will ensure that defects in vehicles are kept to a minimum and customer's concerns are properly dealt with;
  - the experience with 'lemon' laws in other jurisdictions has been inconclusive at best; and
  - any residual concerns relating to defective vehicles, including lemon, should properly be dealt with on a national basis and, if necessary can be examined as part of the review of the Australian Consumer Law (ACL) to be conducted by the Commonwealth Government in 2016.
4. Rather than seeking to amend the current regime, the FCAI suggests that there might be more value in educating consumers about their existing rights.
  5. Each of these matters is addressed in more detail below.

#### **The number of lemons sold in Queensland is insignificant**

6. As a general principle, any legislative change should only be made if, based on empirical evidence, there is a demonstrable need for the change and the proposed change will lead to improved outcomes for all. A few examples of what are alleged to be lemons is not enough, especially when some of those examples might be based on matters other than defects in the vehicle in question.
7. As far as the FCAI is aware, there are no meaningful statistics on the potential number of lemons sold in Queensland. However, in a number other jurisdictions some useful analysis has been done which demonstrates that the number of lemons sold in Queensland is likely to be insignificant. This include the following:
  - a. In the report of the Commonwealth Consumer Affairs Advisory Council in October 2009 on 'Consumer Rights – Reforming Statutory Implied Conditions and Warranties' (CCAAC Report)<sup>1</sup> it is noted that:

'Submissions from the motor vehicle industry suggest that the number of new vehicles sold in Australia which might be called lemons has declined significantly since that time. As the Motor Trades Association of Australia (MTAA) notes, *'Approximately 1,000,000 new motor vehicles are sold in Australia every year. Of those, approximately one third are sold in New South Wales: a jurisdiction that, through the operation of its Consumer Trader and Tenancy Tribunal (CTTT), is able to make a determination on a vehicle in terms of its being of 'merchantable quality' or as being 'fit for purpose' ...*

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<sup>1</sup> at page 92

*In the period from 2004/2005 to 2007/2008, some 410 applications were made to the CTTT with respect to seeking a determination as to the 'merchantable quality / fit for purpose' nature of new motor vehicles sold in NSW ... Of that 410, only three vehicles — or 0.0003 per cent of all vehicles sold in that period — were deemed by the CTTT to not be of merchantable quality.'*

Of course, these figures may not definitively represent the incidence of the supply of lemon vehicles in NSW. Not every consumer sold a lemon will go to the CTTT, and any number of lemon claims may be settled to the consumer's satisfaction before they reach any tribunal.

However, the fact that such a small number of vehicles are ultimately the subject of a finding of unmerchantable quality by a tribunal may indicate both that the number of lemons supplied to consumers is small, and that the law is operating effectively by providing appropriate incentives for retailers and manufacturers to address consumer concerns in relation to faulty motor vehicles.'

- b. In Canada there is a national dispute resolution program for disputes with vehicle manufacturers called the Canadian Motor Vehicle Arbitration Plan (CAMVAP). In 2013 the CAMVAP statistics revealed that out of 4,692 initial enquiries, 746 applications were sent to eligible consumers, 341 applications were returned and 278 cases were arbitrated, conciliated or a consent award issued.<sup>2</sup>

Assuming that the number of returned applications (341) is a reasonable reflection of the number of consumers who felt that their vehicle was defective, this represents approximately 0.02% of the vehicles sold during that time.<sup>3</sup>

- c. In New Zealand there is a Specialist Motor Vehicle Disputes Tribunal (MVDT). For the period 1 July 2013 to 30 June 2014, 222 applications were filed with the MVDT and 149 were heard by the MVDT (which includes some carried over from 2012/2013). Assuming the 222 applications all related to alleged defects in motor vehicles, this represents approximately 0.1% of the number of new and ex-overseas vehicles sold in New Zealand in this period<sup>4</sup>.

8. The figures referred to for Canada and New Zealand are likely to very significantly overstate the potential number of lemons sold in those countries. Merely because a claim was made does not mean it was substantiated and, if it was, it does not mean that the vehicle in question was a lemon.

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<sup>2</sup>CAMVAP, 2012 and 2013 Annual Report available at: <http://www.camvap.ca/annual-reports/2012-2013-annual-reports/>.

<sup>3</sup> Based on a new vehicle sales of 1.7 million

<sup>4</sup> Approximately 200,000 New Zealand Motor Vehicle Registration Statistics, New Zealand Transport Agency

9. As stated in the CCAAC Report:

*There is little empirical evidence to suggest that 'lemons' are a common feature of the market for motor vehicles or any other market in Australia<sup>5</sup>*

#### **The current legislative regime is more than adequate**

10. As stated in the CCAAC Report *'even the most enthusiastic supporters of lemon laws acknowledge that the current laws in respect of implied terms cover the supply to consumers of motor vehicle lemons<sup>6</sup>.*
11. Since 2011, the ACL, through its consumer guarantee provisions, has provided a comprehensive regime for consumers to seek redress for alleged defects in vehicles from manufacturers, importers and retailers.
12. There is little point in detailing the existing provisions of the ACL as they will be well known to the Committee. It is perhaps sufficient to quote from the departmental information brief prepared for the Committee:

*'The ACL applies to the purchase of new vehicles since 1 January 2011. It is arguable the Statutory Consumer Guarantees, in effect provide, lemon laws for new vehicles.*

*Although the ACL protections do not prescribe the number of attempts to repair a vehicle or define a repair period, the ACL provides broad and general protections where a vehicle cannot, easily and within a reasonable time, be remedied to make it fit for purpose. Where a Court finds that there has been a major failure, the consumer is able to obtain a refund or replacement. '*

13. The FCAI agrees, with one exception. It is not 'arguable' that the Statutory Consumer Guarantees provide lemon laws for new vehicles, it is clearly the case.
14. The only, relatively minor, 'tweak' the FCAI suggests, is for the Queensland Parliament to consider increasing the current monetary limit on claims made through the Queensland Civil and Administrative Tribunal. The current limit of \$25,000 could be increased to \$40,000 to align with other states.
15. In addition to the robust statutory rights available, a motor vehicle purchaser also has recourse to manufacturers' express warranties. These warranties are comprehensive and cover the vehicle for 3 and sometimes 5 years.

#### **The competitive nature of the motor vehicle market in Queensland**

16. Generally, Governments are only required to legislate where there is a need to redress an imbalance or where there is a commercial advantage for one party to act in a way which

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<sup>5</sup> At page 92

<sup>6</sup> At page 98

detrimentally affects another party. Selling new motor vehicles to consumers is not one of those situations. The interests of consumers are aligned with those of the vehicle manufacturers, importers and dealers.

17. Motor vehicle manufacturers spend many millions of dollars (globally many hundreds of millions of dollars) creating and building their brand. The manufacturers, importers and their dealers are acutely aware that their brand can be damaged by defective or unreliable vehicles and by poor, unresponsive after sales service. The old adage that 'one bad experience leads to ten lost sales' is true.
18. Consequently, manufacturers spend substantial amounts of money ensuring that their motor vehicles are as reliable as possible. They also spend significant amounts of money on after sales service and on trying to satisfy those few customers who are not happy with their purchase.
19. It is simply in the commercial interests of the manufacturers, importers and dealers for the customers to be satisfied. The introduction of another layer of legislation will not alter this fact.

**The overseas experience is by no means conclusive**

20. Often, much is made of lemon laws in the USA. There were enacted in the late 1950's, largely because, at that time, consumers were offered little protection by way of legislation or manufacturers' express warranties.
21. It is however, by no means clear that motor vehicle customers have obtained any significant increase in protection by virtue of the lemon laws in the USA. In this respect, the Issues Paper prepared by Consumer Affairs Victoria on lemon laws concluded that *'there is no conclusive evidence about what has driven [the improvement in the quality of motor vehicles in the US since lemon laws were introduced]'*.<sup>7</sup> The Report further stated that *'there does not appear to be any conclusive qualitative studies'* and accordingly that *'it is difficult to say exactly what impact the introduction of lemon laws had in changing the behaviour of the industry in dealing with customer complaints'*.<sup>8</sup>
22. The FCAI holds that when considering point 4 within the terms of reference for this inquiry (the experience of other international jurisdictions) the Committee note that the introduction of Lemon Laws in other jurisdictions has not provided improved consumer outcomes compared to those available under the Australian Consumer Laws.

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<sup>7</sup> Victorian Report, p. 8.

<sup>8</sup> Victorian Report, 8.

### **Any necessary amendments should be at a national level**

23. For the reasons referred to above, the FCAI is strongly of the view that there is no case for making any legislative amendments to incorporate lemon laws. However, if it was ultimately determined that additional protection was needed for consumers of motor vehicles, this should be done at a national level. The FCAI notes that the Consumer Affairs Forum Joint Communique of 12 June 2015 advises that the State and Territory Consumer Affairs Ministers have agreed to the terms of reference for the 2016 review of the Australian Consumer Law. The Communique also notes that any consideration of lemon laws is more properly considered within the context of this review. The FCAI understands this review will commence early in 2016.
24. This approach aligns with the FCAI members views that Australian consumer laws have only recently been made uniform and for Queensland to introduce its own lemon laws would defeat the objectives of uniformity across the country.

### **Educating Consumers**

25. The reality is that if consumers have concerns about their vehicles, the existing legislative regime gives them access to remedies which are adequate and appropriate. The FCAI suspects that some of the frustrations expressed by some motor vehicle purchasers are due to them not being aware of the extent of their existing rights<sup>9</sup>. Accordingly, rather than providing another layer of unnecessary legislation, a better response might be to better educate consumers so that they are fully aware of their existing rights.
26. The publication "Motor Vehicle Sales and Repairs – Industry Guide to the Australian Consumer Law" was jointly produced by the ACCC and the state and territory consumer affairs organisations and provides a good reference point for consumers. This document is available through the following link:

[http://www.consumerlaw.gov.au/content/accl\\_resources/downloads/industry\\_guides/motor\\_vehicle\\_sales.pdf](http://www.consumerlaw.gov.au/content/accl_resources/downloads/industry_guides/motor_vehicle_sales.pdf)

27. Please feel free to contact me on 02 6229 8212 if you have any questions on the above.

Yours sincerely,



Tony Weber

Chief Executive

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<sup>9</sup> FCAI is also of the view that some of the frustration could be due to the purchases in question having been made prior to the ACL coming into effect. As such, the complaints are not reflective of existing consumer rights.