

# **BUYING A CAR - PITFALLS FOR CONSUMERS**

**A CASESTUDY REPORT PREPARED BY  
CONSUMER LAW CENTRE VICTORIA  
FOR THE  
ROYAL AUTOMOBILE CLUB OF VICTORIA**

**Contact:** Anna Stewart  
Principal Solicitor  
Consumer Law Centre Victoria  
Level 9, 91 William Street  
Melbourne Vic 3000  
Email: [anna@clcv.net.au](mailto:anna@clcv.net.au)  
Telephone: 9629 6934 (Direct)  
Fax: 9629 6898

**October 2004**

## **1. Introduction**

This report has been prepared by the Consumer Law Centre Victoria (**CLCV**) for the Royal Automobile Club of Victoria (**RACV**). It has been prepared in the context of the current review of the *Motor Car Traders Act 1986* (Vic) being undertaken by Mr Noel Pullen M.P for the Victorian Minister for Consumer Affairs. The purpose of the report is to document, from a community based casework agency perspective, the difficulties faced by consumers when purchasing a new or used car from a motor car trader. Due to time and resource constraints this report is necessarily brief, however, the statistics and case studies<sup>1</sup> presented nevertheless provide a snapshot of the type of problems typically encountered by consumers. While the number of complaints with respect to car traders may appear to be relatively small, for resource constrained community agencies the resolution of such complaints are often very time and labour intensive. In our view, the statistics and case studies reflected in this report, may be just the ‘tip of the iceberg’. Many consumers may be unaware of their legal rights and so do not complain, while others may wish to complain, but are not sure of who to complain to.

### **1.1 About the CLCV**

The CLCV is Australia’s second largest and fastest growing consumer organisation. The CLCV undertakes research, policy development, advocacy and education. The CLCV also operates a large consumer legal practice assisting thousands of low-income consumers each year with free legal advice and representation. The CLCV’s work is focussed on advancing the interests of low-income and vulnerable consumers. The CLCV is currently working on a range of issues that affect the consumer interest, including utilities, competition and consumer protection policies, financial services, telecommunications, exploitative credit, and access to justice.

---

<sup>1</sup> The case studies provided in the report were collated by the CLCV together with a number of community agencies and consumer organisations. In particular, the CLCV would like to thank the Consumer Credit Legal Service, Consumer Affairs (Mallee) Mildura, Peninsula Community Legal Centre and Anglicare Gippsland. In all of the case studies documented in this report, names have been changed to protect privacy.

## **2. Extent of problems experienced by consumers in buying new or used cars**

For many households, cars are an essential household item, providing transport to and from both work and school. Cars are often also necessary to undertake shopping for food and other necessities and to attend medical and other required appointments.

When a consumer purchases a car, whether new or used, it is often the second most expensive essential purchase that he or she will ever make. When problems arise with the purchase, especially mechanical problems, the financial and personal ramifications can be significant. In the course of our casework practice, the CLCV has identified certain systemic problems experienced by consumers when purchasing new or used cars from motor car traders. These problems include misleading and deceptive conduct by motor car traders, unconscionable conduct and problems with car finance and insurance. Complaints frequently relate to the condition of the car and as most community workers do not have a detailed knowledge of car mechanics, much time can be spent trying to understand what is actually wrong with the car before even attempting to resolve the dispute itself. In such situations, expert evidence is often required. Expert evidence is usually difficult to access without significant costs to clients, most of whom cannot afford to pay for expert reports. All of these problems are exacerbated in the case of low-income consumers and other vulnerable consumers, such as young consumers, who tend to lack awareness of their contractual rights and obligations.

For the purposes of this report, the CLCV analysed its complaints data for the period 1 September 2003 – 30 September 2004. The CLCV's complaints data is based on the numbers of complaints made to the CLCV via its telephone advice service, which provides consumers with free legal advice and assistance in relation to consumer law problems. By way of background, during this period the CLCV received over 1,257 calls from consumers seeking legal advice in relation to a range of consumer law problems.

In addition, the CLCV also communicated with other consumer organisations and community agencies as to their complaint statistics for the same period<sup>2</sup> Principally, the CLCV communicated with the following organisations:

- Consumer Credit Legal Service, an independent non-profit legal service specialising in the law applying to consumer credit;

---

<sup>2</sup> Due to time and resource constraints, the CLCV was not able to communicate with the wide range of community legal centres and consumer agencies that operate across Victoria. However, the client base of each of the organisations which provided complaints statistics and case studies for this report is representative of the population of Victoria, including rural and regional and indigenous Victorians.

- Consumer Affairs (Mallee) Mildura, a community-based agency contracted by Consumer Affairs Victoria;
- Peninsula Community Legal Centre, a community legal centre providing initial assistance and advice to the public on all legal matters; and
- Anglicare Gippsland, part of Anglicare Victoria, an Anglican agency providing services to children and families across Victoria. Anglicare Gippsland provides financial counselling services and a consumer and tenancy resource centre.

As noted above in the introduction, while the numbers of car purchase complaints received by each of the organisations may at first appear insignificant, in the context of the resource-constraints of each of these organisations, the numbers actually represent a significant proportion of the casework practice, given the factual complexity of many of the cases. Furthermore, not all complaints can be resolved through negotiation with the trader on behalf of the consumer. Often, the complaint can only be resolved by going to the Victorian Civil and Administrative Tribunal (VCAT), which is typically a very lengthy process.

## **2.1 Numbers of complaints in relation to motor car traders during 2003/2004**

### **Consumer Law Centre Victoria**

From 1 September 2003 – 30 September 2004, the CLCV received 104 complaints relating to the purchase of a new or used motor vehicle from a motor car trader. Large numbers of complaints were also received in relation to car repairers and hire car agreements, however, the data below only relates to motor car traders. These statistics are represented by the following complaint type:<sup>3</sup>

<b>Complaint type</b>	<b>No.</b>
Contract rescission	48
Withheld deposit	16
Warranty	12
Roadworthy certificate	2
Misleading and deceptive conduct/ Misrepresentation	4
Credit	20

<sup>3</sup> Each of the organisations that provided statistics for inclusion in this report categorise complaints according to their own data collection systems. Therefore, the statistics are categorised separately for each organisation.

Defective goods and services	2
<b>Total</b>	<b>104</b>

### **Consumer Credit Legal Service**

From 1 September 2003 – 30 September 2004, the Consumer Credit Legal Service received 49 complaints relating to the purchase of a new or used motor vehicle from a motor car trader.

<b>Complaint type</b>	<b>No</b>
Misrepresentation	19
Car not transferred into buyer's name	1
Inappropriate guarantee	2
Loan in partner's name on basis actual purchaser would not get a loan	5
Vehicle unroadworthy	2
Vehicle not in good mechanical order	5
Warranty insurance	1
Roadworthy certificate	1
Car given to purchaser before credit approved and then credit refused	1
Vehicle still had prior registered security interest	1
Over commitment and unconscionable	7
Refusing to return deposit upon rescission	1
Problem with broker and fraud in obtaining loan	2
Harassment	1
<b>Total</b>	<b>49</b>

### **Consumer Affairs (Mallee) Mildura**

From 1 July 2003 – 1 July 2004, Consumer Affairs (Mallee) Mildura received 57 complaints relating to the purchase of a new or used motor vehicle from a motor car trader.<sup>4</sup>

<b>Complaint type</b>	<b>No</b>
New motor car	17
Used motor car	40

<sup>4</sup> The statistics provided by Consumer Affairs (Mallee) Mildura relate to the period 1 July 2003 to 1 July 2004.

<b>Total</b>	<b>57</b>
--------------	-----------

### **Peninsula Community Legal Centre<sup>5</sup>**

From 1 September 2003 – 30 September 2004, the Peninsula Community Legal Centre received 61 complaints relating to the purchase of a new or used motor vehicle from a motor car trader.

**Table A - New motor cars**

<b>Complaint type</b>	<b>No</b>
Warranties	2
Misleading and deceptive conduct	1
Contract	6
Price	3
<b>Total</b>	<b>12</b>

**Table B - Used motor cars**

<b>Complaint type</b>	<b>No</b>
Credit	2
Contract	12
Miscellaneous conduct	3
Misleading and deceptive conduct	11
Price	1
Refunds	3
Quality	9
Sales method	1
Warranties	7
<b>Total</b>	<b>49</b>

### **Anglicare Gippsland**

From 1 September 2003 – 30 September 2004, Anglicare Gippsland received 163 complaints about motor car traders. Anglicare Gippsland was unable to provide a breakdown of its statistics in the timeframe for this project.

Of significance, a number of the complaints received by the CLCV, Consumer Credit Legal Service, Consumer Affairs (Mallee) Mildura, Peninsula Community Legal Centre and

---

<sup>5</sup> Peninsula Community Legal Centre also received 11 complaints for the same period in respect of private used motor car sales.

Anglicare Gippsland involved low-income and other vulnerable consumers, for example, young consumers, consumers with disabilities and consumers from a non-English speaking background.

### **3. Problems experienced by consumers in buying cars**

The complaints statistics provided by each of the consumer organisations and community agencies reveal that the following issues are significant for consumers in buying new and used vehicles:

- Misleading and deceptive conduct on the part of the trader.
- Unconscionable conduct on the part of the trader.
- Harassment and coercion.
- Car finance and/or insurance.
- Lack of consumer awareness of contractual rights and obligations, particularly in relation to cooling off rights, as well as warranties.

In the following paragraphs we discuss these issues further, providing case studies by way of illustration.

#### **3.1 Misleading and deceptive conduct**

Consumer protection legislation in Australia specifically prevents traders from engaging in misleading and deceptive conduct in the course of conducting their business, for example, making false statements about consumer rights or the quality of goods and services they are providing.

In the context of high pressure selling tactics, some traders have shown a tendency towards misleading and deceptive conduct<sup>6</sup>, with representations to the buyer ranging from comments such as ‘today’ is the only opportunity to purchase the vehicle at the offered price to blatant misrepresentations about the quality or history of a vehicle. Such conduct can lead to significant consumer detriment. The casework of consumer organisations and community agencies reveals that low-income and vulnerable consumers are particularly vulnerable to unscrupulous conduct by traders.

---

<sup>6</sup> In breach of section 9 and 10 of the *Fair Trading Act 1999* (Vic).

### **Marg and Peter<sup>7</sup>**

Marg and Peter, a low-income couple from rural Victoria, bought a used motor vehicle from a licensed motor car trader in December 2002. At the time Marg and Peter purchased the motor vehicle it was 11 years old. Marg, a casual worker employed in a nearby town, required the car to transport her to her place of employment as no public transport was available. The car was advertised at the trader's premises as coming with a 12 month warranty and the trader confirmed in discussions with Marg and Peter that a 12 month warranty applied to the vehicle. The couple never received any paperwork relating to the warranty. The statutory warranty did not apply because the car was more than 10 years old.<sup>8</sup>

Two weeks after purchasing the car it started to have serious mechanical problems and consequently required extensive repairs. As the motor car trader was closed for the Christmas period, the repairs were undertaken by another mechanic on the basis of the trader's agreement to cover the cost. However, when it came to paying for the repairs, the motor car trader denied that the car came with a warranty and would only pay a small portion of the repair bill. In the coming months, further problems arose with the car and from December 2002 until August 2003, Marg and Peter paid over \$5,000 for repairs. Throughout this period, Marg and Peter sought the assistance of the trader who continued to deny the existence of a warranty. The cost of the repairs caused considerable hardship for Marg and Peter, particularly as Peter's sole source of income was the disability support pension. In addition, Marg was not able to travel to work during the periods in which the car was being repaired and consequently missed a number of her shifts which as a casual worker, meant that she was not paid for time off work.

**Outcome:** With the assistance of Anglicare Gippsland, Marg and Peter instituted a claim in the Civil Claims List of VCAT and were successful in obtaining damages on the basis that they had been misled to believe that the car was purchased with a 12 month warranty. The trader was initially unwilling to comply with the order, however, after steps were taken to have the order enforced, the trader paid the damages award.

---

<sup>7</sup> Marg and Peter were clients of the Consumer and Tenancy Resource Team at Anglicare Gippsland.

<sup>8</sup> Under section 54 of the *Motor Car Traders Act 1986* (Vic), licensed motor car traders must provide a three-month statutory warranty for used cars where the car was manufactured not more than ten years before the date it was sold and has been driven less than 160,000kms.

In the following case study, a trader made misrepresentations on the contract for the sale of the car, allegedly to assist the young car buyer to obtain finance. The car later turned out to be a stolen vehicle.

#### **Carlo's story<sup>9</sup>**

Carlo, a nineteen year old, bought a motor vehicle from a licensed motor car trader. The contract of sale specified that there was a trade-in of \$3,000. In fact, Carlo never traded-in a car. The salesperson represented to him that with the alleged "trade-in", Carlo would more likely be successful in his application for finance.

**Outcome:** The car was later revealed to be a stolen vehicle and was seized by the police. Carlo resolved the matter by making a claim against the Motor Car Traders' Guarantee Fund.

Consumers are also being misled as to the quality and history of used cars, thereby affecting their ability to make an informed decision.

#### **John's story<sup>10</sup>**

John bought a motor vehicle from a licensed motor car trader which was represented to him as an imported 1995 motor vehicle. Within six months of purchase, the car began to break down regularly. When the head gasket blew, John was told that the engine needed to be rebuilt at a total cost of approximately \$8,000.

Several mechanics from whom John sought assistance specifically noted that the poor condition of the car was unusual given its ostensible age and kilometres travelled. As a result, John made various inquiries about the car with relevant agencies, including VicRoads, the Federal Office of Road Safety and the head office of the motor car trader, which revealed that the car was in fact not imported but was a 1995 Australian model. Following an insurance write-off in 1996/1997, it had been repaired using major components from an imported 1990 motor vehicle (imported for dismantling purposes only) and was re-registered. Apart from the VIN, the motor vehicle was constructed almost entirely of the 1990 imported vehicle and not the 1995 Australian vehicle.

---

<sup>9</sup> Carlo was a client of the CLCV's telephone advice service.

<sup>10</sup> John was an ongoing casework client of the CLCV.

**Outcome:** The CLCV assisted John to bring an application in VCAT for damages on the basis of misleading and deceptive conduct. The matter settled prior to hearing.

### **Paul's story<sup>11</sup>**

In late 2002, Paul, a young consumer, bought a used motor vehicle from a licensed motor car trader which was specifically represented to him as never having been in an accident. After six weeks, the car began to significantly discolour and erode. The car trader refused to discuss the problems or inspect the car. Paul then contacted the previous owner only to discover that the car had, contrary to explicit representations made to Paul at the time of the sale, previously been involved in an accident and had had substantial panel repairs.

After making further complaints to the dealer, it was revealed that the front half of the car had been resprayed due to damage by stone chips. The respray had been badly done causing gradual discolouration to half of the car.

**Outcome:** With the help of the CLCV, Paul was able to negotiate with the dealer who offered him \$1000 to pay for repairs and 12 months worth of service vouchers. However, Paul received quotes of around \$5,500 to repair the paint work and rust properly.

## **3.2 Unconscionable conduct**

Where a contract is entered into as a result of one party taking advantage of a vulnerable characteristic of the other, such as age, lack of business skill, intellectual disability or a culturally or linguistically diverse background, and the contract is disadvantageous to the vulnerable party, the contract will be unconscionable at law.

A trader's conduct could constitute unconscionable conduct in breach of the Victorian fair trading legislation<sup>12</sup> where it takes advantage of a consumer who because of, for example, their age, intellectual disability or culturally or linguistically diverse background, does not fully comprehend the nature of the agreement they are entering into. For example, there have been instances of consumers providing a guarantee for the car loan of a friend or relative without a proper and informed understanding of the nature of the agreement they have entered into.

---

<sup>11</sup> Paul was a client of the CLCV's telephone advice service.

<sup>12</sup> Section 8, *Fair Trading Act*.

### **Andrew's story<sup>13</sup>**

Andrew, a nineteen year old, assisted a friend who did not have a driver's licence to collect his newly purchased car from a licensed motor car trader. At the trader's premises, the salesperson told Andrew he needed to photocopy Andrew's licence before he could take possession of the vehicle for his friend. After Andrew's licence had been photocopied and returned, he was asked to sign a form acknowledging that he was driving the car home.

Approximately two years later, Andrew was served with a Magistrate's Court complaint demanding payment of \$20,000 plus costs to a finance company. Andrew immediately telephoned the solicitors for the finance company to make enquiries and was informed that he was being sued as guarantor for his friend's car loan.

**Outcome:** During negotiations undertaken on behalf of Andrew by the Consumer Credit Legal Service, it became apparent that the car trader had entered into the sale contract and arranged finance knowing that Andrew's friend did not have stable employment. According to the car trader, they had therefore arranged to take a guarantee against Andrew (who, at the time, was also only in casual work). Throughout negotiations, Andrew adamantly denied that he was guarantor for the loan and that he had signed any documents at the car yard other than an acknowledgment that he was driving the car away. Even if Andrew had agreed to be a guarantor for his friend, he was not advised of what such an obviously disadvantageous agreement would mean to him nor was he given any opportunity to obtain independent legal advice. Given Andrew's young age, inexperience and financial situation, the trader in this instance had clearly engaged in unconscionable conduct.

### **Priscilla's story<sup>14</sup>**

Priscilla, a low-income client whose only source of income was a parenting pension, signed an application for car finance on the basis that her partner, who had made the original application, had a bad credit rating. At the time of signing, the salesperson explicitly represented to Priscilla that her signature was only required to assist with approval of the loan application and she would not be responsible for the payments. When Priscilla later went to collect the vehicle on her partner's behalf, she noticed the contract of sale was in her name

---

<sup>13</sup> Andrew was a client of the Consumer Credit Legal Service.

<sup>14</sup> Priscilla was a client of Anglicare Gippsland's Financial Counselling service.

only. When she queried this, the salesperson told her that it was too late to change the documents and as it was his word against hers, she would be charged with fraud if she did not accept delivery. Priscilla was unaware of her rights so chose to accept to delivery. Some months later, Priscilla and her partner separated and her ex-partner then defaulted on the loan. Priscilla is now being sued for its repayment.

**Outcome:** Anglicare Gippsland is currently negotiating with the finance company in relation to Priscilla's situation.

### 3.3 Harassment and coercion

Where consumers seek to cancel a contract for new cars shortly after purchase, albeit sometimes in breach of the agreement, some traders have used harassing and coercive behaviour in response to the consumer's attempt to cancel. This behaviour can be particularly detrimental for vulnerable consumers who may not be aware of their rights vis-à-vis a breach of contract nor what action the trader may lawfully take to enforce the contract. In the following case study when the consumer, a disability pensioner, sought to terminate shortly after signing the contract, the trader threatened to take her house.

#### **Fiona's story<sup>15</sup>**

Fiona, a disability pensioner, signed a contract for the sale of a new car with a licensed motor car trader on an afternoon in August 2004. The finance for the car had been privately arranged shortly before Fiona agreed to purchase the car, but fell through almost immediately after Fiona signed the contract. Fiona was unable to obtain finance from her bank or other financial institutions as her sole source of income was a disability support pension and she already had a pre-existing mortgage. Fiona therefore contacted the trader the following day to inform them that her financial circumstances had changed and that she was no longer in a position to proceed with the sale. At the time she informed them of her request to cancel the sale contract, Fiona was aware that the trader was yet to order the vehicle as she had not settled on the colour the previous day.

In response to Fiona's request to terminate, an employee of trader informed her that they would sue her for the entire cost of the vehicle if she refused to go ahead. Fiona reiterated the

---

<sup>15</sup> Fiona was an ongoing casework client of the CLCV.

fact that she was not in a financial position to purchase the vehicle. In response, the employee made an implicit threat to take her house.

**Outcome:** On the basis of a letter which set out that the trader's conduct in response to Fiona's attempt to cancel was likely to be in breach of section 21(1) of the *Fair Trading Act 1999* (Vic), the trader agreed to settle the matter and return the deposit paid on the car.

Such conduct is likely to be in breach of section 21(1) of the *Fair Trading Act 1999* (Vic) which prohibits a person using undue harassment or coercion in connection with the supply or possible supply of goods or services. Without limitation, section 21(2) deems that making a misrepresentation to a debtor about the consequences of not paying a debt or about the method of recovering a debt, is a contravention of section 21(1) of the *Fair Trading Act*.

### 3.4 Car finance and insurance

Young car buyers and other vulnerable consumers are often more willing to agree to a trader's offer to arrange finance because they do not understand that trader arranged finance often comes at a much higher cost than might be obtained elsewhere.<sup>16</sup> Sometimes the consumer will also be encouraged to enter into a situation of financial over commitment. In arranging finance, the trader generally receives a commission on the deposit.<sup>17</sup> In our view, this creates a conflict of interest situation and can result in finance being recommended where it is clearly detrimental to the consumer.

#### **Robert and Andrea<sup>18</sup>**

Robert and Andrea agreed to purchase a used Ford sedan for \$19,800 on the basis of a trade-in, with the trader paying registration and stamp duty. During the negotiations for the vehicle, Robert and Andrea also insisted on two conditions: first, that the car be inspected by the RACV and second, that the contract be subject to Robert and Andrea obtaining finance which met their specific requirements as to the amount of monthly payments and the period of the loan. In relation to the finance, the trader indicated that it could refer them to a company that would be able to provide finance to meet their requirements. Consequently, Robert and Andrea signed the sale contract and paid a deposit of \$100.

<sup>16</sup> The trader often receives a commission for the referral which increases the cost of the finance.

<sup>17</sup> See generally the consumer publication by the Victorian Automobile Chamber of Commerce and Consumer Affairs Victoria, *Better Car Deals* (Consumer Affairs Victoria; 2001).

The finance company contacted them the next day but as it turned out, finance could not be obtained unless Robert and Andrea agreed to an agreement which incorporated a “balloon” payment, where one large payment was due at the end of the loan. Robert and Andrea made further enquiries about finance but were unable to find finance which met their requirements and financial situation. Still within the cooling-off period, Robert and Andrea tried to cancel the agreement completing a termination notice pursuant to section 43 of the *Motor Car Traders Act* (Vic). The trader insisted on a cancellation fee of 5% of the contract price despite not being entitled to more than \$100 or 1% pursuant to the *Motor Car Traders Act* (Vic).<sup>19</sup>

**Outcome:** The Peninsula Community Legal Centre wrote a letter to the trader on behalf of Robert and Andrea outlining their right to cancel in the cooling-off period. At this stage, no further action has been taken by the trader.

There have been instances where traders have encouraged low-income and vulnerable consumers to exaggerate the amount of their income and the period for which they have been employed in order to guarantee approval of the trader-arranged finance.<sup>20</sup> In this situation, the consumer often lacks a proper understanding of the possible consequences of their actions. This type of conduct by the trader clearly constitutes misleading and deceptive conduct.

Low-income and vulnerable consumers are also often unaware of their rights vis-à-vis car insurance. For this reason, the Australian Securities and Investments Commission’s publication, *Top 10 Finance Tips for Young Adults*, specifically warns young consumers that finance companies or motor car traders may represent that the approval of finance is dependent on the consumer taking out loan insurance, in circumstances where there is no obligation on the purchaser to have such insurance.<sup>21</sup> The casework experience of the community agencies contributing to this report reveals a level of consumer confusion surrounding rights in relation to insurance.

---

<sup>18</sup> Robert and Andrea are clients of the Peninsula Community Legal Centre.

<sup>19</sup> Section 43(4)(a)(i) provides that where a contract is cancelled by a purchaser within the cooling off period, the vendor must pay to the purchaser all money received by the vendor under the agreement, less the sum of \$100 or 1% of the purchase price (whichever is the greater).

<sup>20</sup> Based on the casework experience of the CLCV.

<sup>21</sup> For further information go to [www.fido.asic.gov.au/fido/fido.nsf/byheadline/Top+10+finance+tips](http://www.fido.asic.gov.au/fido/fido.nsf/byheadline/Top+10+finance+tips)

### **Gerald's story**<sup>22</sup>

Gerald, a consumer with a low level of proficiency in the English language and limited financial means, bought a used car from a dealer who insisted that he take out warranty insurance - the vehicle was not covered by the statutory warranty under the *Motor Car Traders Act*. The purchase price of the car was approximately \$4000. The warranty insurance was \$2000. Both the purchase price and insurance costs were financed.

With his limited English skills, Gerald could not read the terms and conditions of the contract for the sale of the car nor the finance contract. Gerard also did not understand the limitations of the warranty insurance.

Approximately six weeks after the purchase, major mechanical problems arose requiring repairs at a cost almost as much as the purchase price of the car. The expensive warranty that Gerald had taken out was very limited and did not cover the repairs.

**Outcome:** Gerald subsequently sought legal advice from the Consumer Credit Legal Service in relation to his rights. Specifically, Gerald was advised about the possibility of unconscionable conduct in respect of the finance arranged for the purchase and warranty. However, due to Gerard's cultural, social and financial background, he declined to take further action. By the time Gerald pays out his loan and covers the cost of the repairs, he will have paid over \$10,000 plus interest for the car.

### **Max's story**<sup>23</sup>

Max, a casual employee, agreed to purchase a used vehicle from a licensed motor car trader. The contract of sale included comprehensive and "gap" insurance. Max thought the "gap" insurance applied because the statutory warranty did not apply to the vehicle.

Within a week of taking possession of the car, a number of problems arose including the interior filling up with fumes, the engine leaking oil and making strange noises. Max took the car back to the trader who sent the car to their mechanic. Some repairs were undertaken but three days after picking up the car it broke down again, this time with serious problems. Max took the car back to the trader a second time for repairs.

---

<sup>22</sup> Gerald was a client of the Consumer Credit Legal Service.

<sup>23</sup> Max was a client of the Consumer Credit Legal Service.

After three weeks passed with Max hearing nothing, he telephoned the mechanic who informed him that the engine was being re-built. However, a short time after taking possession of the car again, the engine blew up completely. The car was returned a third time. Several weeks then passed and Max called the trader to inquire what was happening with his car, only to be informed that the car had been repossessed as Max had failed to make any repayments.

**Outcome:** Subsequently, Max sought legal advice from the Consumer Credit Legal Service and an examination of his contract revealed that he had not been sold insurance for his vehicle but had actually been sold life and death insurance, disablement, trauma and critical illness insurance to the value of \$1060. The “gap” insurance, which cost \$580, did not provide a mechanical warranty, as Max had thought, but simply added to the price of vehicle. The finance that had been arranged showed that Max, who only had casual employment, was so over committed that he could not afford the repayments under the loan agreement even without the vehicle’s repeated mechanical failure.

### **3.5 Lack of awareness of contractual rights and obligations**

The casework experience of the community agencies contributing to this report reveals that where consumers are unaware of their contractual rights and obligations, significant detriment can arise. Most commonly, consumers tend to be unaware of their rights in relation to cooling-off periods under the *Motor Car Traders Act*, as well as their rights in relation to warranties and insurance.

#### **Ivan’s Story<sup>24</sup>**

In 2004, Ivan bought a new motor vehicle from a licensed motor car trader. Ivan felt under pressure to sign the contract as the trader only had two of the model and type in stock. As Ivan was not totally prepared to go ahead he asked, prior to signing the contract, what rights he would have should he change his mind about going ahead. The employee of the trader with whom he was negotiating specifically stated to Ivan that the trader would retain 1% of the total purchase price. Ivan calculated this to be a few hundred dollars and decided to risk the money to hold the car. When Ivan decided not to go ahead, due to financial reasons, he

---

<sup>24</sup> Ivan was a client of the CLCV’s telephone advice service.

was told he could not cancel the contract and that he would be sued if he did not go ahead with the contract.

**Outcome:** The CLCV advised Ivan that the representation by the trader either amounted to a collateral contract or a misrepresentation upon which Ivan was entitled to rescind the contract. Ivan was advised as to the content of the letter he needed to write to formally rescind the agreement on this basis.

In situations where they are unaware of their rights, young and inexperienced consumers can be particularly vulnerable to high pressure sales tactics employed by some motor car traders.

### **Simone's story**<sup>25</sup>

Simone, a consumer in her early twenties, visited a series of car dealerships to shop around for a new vehicle to establish which model car to buy and the best price. One of the traders with whom she made inquiries suggested that Simone test drive a vehicle. Simone specifically informed the dealer that she was not ready to purchase a vehicle and was just shopping around. After returning from the test drive, Simone requested a quote for the vehicle. The salesperson made specific enquiries about her financial status and then informed her that they could give a quote on the spot, including a trade-in. Simone was intending to leave at this point when the salesperson offered to include some extras at no further cost on the provision that she sign immediately. Simone signed the contract, not realising there was no cooling-off period, nor that the terms and conditions were on the back of the contract. Simone used her credit card for the deposit.

Shortly afterwards, Simone was contacted by the first trader she had visited with a quote which was better than expected and suited her financially and subsequently sought to cancel the agreement she had already signed. The trader refused her request to terminate.

**Outcome:** Simone sought assistance from the Peninsula Community Legal Centre who attempted to negotiate with the trader on Simone's behalf. The trader refused to cancel the contract.

---

<sup>25</sup> Simone was a client of the Peninsula Community Legal Centre.

### 3.6 Vulnerable consumers

Vulnerable consumers, including young persons, persons with disabilities and persons with limited English or low literacy levels are particularly susceptible to unscrupulous or illegal practices of some car traders. In the following case study, the licensed motor car trader sold a vehicle to a 16 year old with only a Learner's Permit, in circumstances where the consumer had showed his Learner's Permit when negotiating for the contract.

#### **Jason's story<sup>26</sup>**

Jason, a sixteen year old apprentice, bought a 1994 Commodore Sedan from a licensed motor car trader in early 2004. During negotiations for the contract of sale, Jason showed the motor car trader his Learner's Permit which clearly stated his birth date, revealing that he was only sixteen years of age. Jason's parents were not present at the time of the sale.

After Jason purchased the car, he drove it home illegally (unaccompanied by a driver with a full license) and was involved in minor accident. Jason was subsequently charged by the police.

**Outcome:** On the basis of the CLCV's advice, subsequent negotiations between the car trader and Jason's father resulted in the car being returned and a full refund of the money given.

#### **Sonny's story<sup>27</sup>**

Sonny, a young consumer, went to a car yard with a friend who assisted him to negotiate for a used car. The advertised price was \$8,000, however, Sonny negotiated to buy it for \$7,500. No contract was signed at the time.

The following day, Sonny and his father attended the car yard and when the motor car trader brought out the contract for the sale of the case, the purchase price was stated to be \$8,000, not \$7,500. However Sonny signed the contract and paid over the \$100 deposit. Sonny's father then checked the contract and queried the price discrepancy, whereupon the trader refused to go ahead for \$7,500, initially denying that the price had been negotiated and then

<sup>26</sup> Jason was a client of the CLCV's telephone advice service.

<sup>27</sup> Sonny was a client of the CLCV's telephone advice service.

stating that at the time the negotiations had taken place, the car was not registered and as it had since been registered the higher price applied.

**Outcome:** Sonny exercised his cooling-off right and cancelled the contract but the trader retained the \$100 deposit.

### **3.7 Emerging issue: Rent-to-buy contracts**

An emerging issue that the CLCV has seen in its casework practice is the use of rent-to-buy contracts for the purchase of motor cars. Under this type of contract, the consumer agrees to pay the seller in instalments to rent a motor vehicle for a certain period of time at the end of which ownership is transferred to the consumer. The consumer may also be responsible for the cost of repairs and maintenance, registration fees or insurance costs during the contract period.

A rent-to-buy arrangement can provide an alternative method of finance for the purchase of a motor car, particularly for low income consumers and consumers with poor credit ratings. However, the price of the car may be over-inflated by the seller or incorporate hidden fees or interest. In addition, the consumer may not be covered by the protections contained in the *Uniform Consumer Credit Code*, such as a right to vary a loan contract in circumstances of financial hardship, or to the rights under the *Motor Car Traders Act*. Examples of such contracts have also revealed the use of unfair contract terms that are strongly biased towards the interests of the seller, for example the use of unfair penalties for breach or termination of the contract. If the purchaser is late with a payment they may risk losing the car and all of the payments made under the contract. Such contracts can lead to significant consumer detriment.

#### **Wendy's story<sup>28</sup>**

Wendy signed a rent-to-buy contract for a motor car. She paid \$600 as a deposit and agreed to pay 39 fortnightly payments of \$185. The motor car was worth around \$2,000 but the total payments would have added up to \$7,815. The contract stipulated that ownership of the vehicle would be transferred to the hirer if, at the expiry of the rental term, all payments had been made on time and there was no money owing to the seller. It also stated that all transfer costs, including the cost of a roadworthy certificate were to be paid by the hirer. The contract also included a term that stated that if the payments were more than two days late, penalty

interest would accrue and the vehicle would have to be returned to the seller. In such circumstances, no money paid under the contract to date would be refunded.

Within the first two weeks, Wendy started to experience problems starting the car. The seller told Wendy that the battery had gone flat and put a new battery in the car. Wendy nevertheless sought advice from a mechanic and learned that there was a significant mechanical problem. As a result, Wendy decided that she no longer wanted to go ahead with the contract.

**Outcome:** After a consumer support worker negotiated on Wendy's behalf, the seller agreed to take back the car and terminate the contract but he refused to return the money she had already paid, including the deposit of \$600 and the first payment of \$185.

### **Diane and Michael<sup>29</sup>**

Diane and Michael, a low-income couple with three children, purchased a 1991 Ford Sedan on a rent-to-buy deal from a motor car trader. The cost of the vehicle was originally \$5,000, however, the parties agreed to an additional \$1,000 for further mechanical work to be undertaken on the vehicle. The contract of sale included a 12-month warranty and registration. An initial deposit of \$100 was paid with agreement that a further \$1,400 would be paid within a two-week period and thereafter weekly payments of \$100 until the contract price was paid in full.

Before they took possession of the vehicle, Diane and Michael noticed that the stereo system was missing, with the plastic casing broken. It appeared that the vehicle had been broken into whilst the car was in the car yard. Initially the trader refused to replace the system, however, an agreement was eventually reached to have the system replaced. Two weeks after signing the contract, Diane and Michael collected the vehicle but the trader failed to provide the roadworthy certificate.

Over a period of months Diane and Michael tried to get the trader to provide the roadworthy certificate in order to have the car transferred. He informed them they had to obtain it themselves. When the vehicle was taken to a mechanic, however, a number of unroadworthy items were identified which they could not afford to have repaired already having fallen

---

<sup>28</sup> Wendy was a client of the CLCV's telephone advice service.

<sup>29</sup> Diane and Michael were clients of the Peninsula Community Legal Centre.

behind in the re-payments. Michael was forced to continue to drive the vehicle or face losing his job, even though the registration had been suspended.

**Outcome:** The Peninsula Community Legal Centre negotiated with the trader on behalf of Diane and Michael and as a result, the trader agreed to complete the repairs and provide the roadworthy certificate and deducted an amount of \$200 from the final purchase price.

## 5. Recommendations

The casework experience of the CLCV, the Consumer Credit Legal Service, Consumer Affairs (Mallee) Mildura, the Peninsula Community Legal Centre and Anglicare Gippsland reveals the significance of the problems experienced by low-income and other vulnerable and disadvantaged consumers when it comes to the purchase of new or used motor vehicles.

On the basis of the problems which we have identified, we make the following broad recommendations:

- In relation to used cars, the sale contract should include a bold statement which sets out the consumer's cooling-off right and the consumer's obligations in the event the cooling-off right is exercised (rather than simply relying on Form 7A). A cancellation schedule should also be provided together with the contract, in line with the requirements for contact sales agreements under the *Fair Trading Act*.<sup>30</sup>
- In relation to new cars, we agree with the RACV in its submission to the *Motor Car Traders Act* review that the fact that there is no cooling off right for new cars (other than those sold 'off premises') leads to considerable consumer confusion. We see no reason why the cooling off right should not be extended to purchasers of new cars. At the very least, for all new cars, the absence of a cooling-off period should be highlighted in the contract. This could be done in a similar way to the notification of a cooling-off period in a contract for the sale of a used car. We also agree with the RACV that private purchasers of commercial vehicles should have a cooling off right.
- In relation to warranties, the details of the warranty should be included in all used car sale contracts. We agree that used motorcycles and commercial vehicles purchased by private buyers should also be covered by the statutory warranty under section 54 of the *Motor Car Traders Act*.

---

<sup>30</sup> Part 4, Division 2, *Fair Trading Act 1999*.

- A standard form contract that complies with the unfair contract terms provisions in Part 2B of the *Fair Trading Act 1999* should be developed for mandatory use by motor car traders. This has been done, for example, in the telecommunications industry.
- There should be research undertaken into the viability of an independent industry dispute resolution scheme to cover complaints against motor car traders and, potentially, repairers. In our experience, industry-based Ombudsman schemes, such as those currently operating in the banking and utilities sectors, are welcomed by industry and consumers alike. They provide free, fast resolution of complaints and identification of recurrent or system-wide problems. In the current system, complaints are dealt with on an individual basis and as such, systemic issues are often not picked up early enough to reduce the prospect of widespread consumer detriment. In addition, it is simply not cost-effective for the government, through Consumer Affairs Victoria and funded community agencies and VCAT, to continue to foot the bill for resolving complaints against motor car traders. It is time for the industry to wear the burden of this cost.