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## Victorian pre-Budget submission 2022-23

Consumer Action Law Centre (**Consumer Action**), Victorian Aboriginal Legal Service (**VALS**), WEstjustice and Hume Riverina Community Legal Service welcome the opportunity to make this submission to the Department of Treasury and Finance during the 2022-23 Pre-Budget period.

We have focused this submission on a service where budget action could make an immediate and discernible difference to the lives of Victorians on low and middle incomes, and those experiencing acute vulnerability.

# Victoria needs a specialist dispute service to assist people sold defective motor vehicles

A specialist service to help resolve disputes when a defective car (a 'lemon') is purchased, along with the provision of a free, independent expert report, would solve a critical problem that hurts people and communities, and is a drain on productivity. The service would provide everyday justice to thousands of Victorians.

## The problem

Under the Australian Consumer Law (ACL) consumer guarantees, people have a right to a durable, safe, and fit-for-purpose purchase that is free from major and minor failures. But far too often, people cannot enforce these rights when they're sold a lemon car because seeking remedies through the Victorian Civil and Administrative Tribunal (VCAT) is costly, time consuming, and inaccessible.

Almost one third of calls about consumer guarantees to Consumer Action's legal advice lines relate to car matters (for example, 30.2% from January – November 2020). This is significantly more than any other type of consumer good or service we receive calls about.

The Productivity Commission recently estimated that motor vehicle sales are the top consumer guarantee complaint received across state and territory regulators.<sup>1</sup> However, Victoria's current dispute resolution system for cars is inaccessible and unaffordable – particularly so for people facing financial disadvantage or experiencing other vulnerable circumstances.

This leaves many stuck with a lemon car, drastically diminishing their economic and social participation and wellbeing. Having no access to your car can be inconvenient at best, and dangerous at worst. For victim survivors fleeing family violence, a working car is vital. This is compounded when the lemon car is the sole family car or in regional and rural communities without access to public transport, such as regional Aboriginal communities. It is also worsened when a person is stuck repaying the car loan, insurance and registration for a car that doesn't work.

## CASE STUDY: Scarlett's story

*Scarlett lives in a rural township and solely relies on the Disability Support Pension. Scarlett relies on a scooter for mobility.*

*In 2015, Scarlett purchased a new 4WD vehicle for about \$60,000. She had disclosed to the salesperson she needed a vehicle to be modified with a scooter hoist. This modification was covered by one-off NDIS funding.*

*Just 64,000 km later and less than 10 months out of the three-year manufacturer's warranty period, the car broke down. It had been regularly serviced and had already had a few repairs while it was still in warranty.*

*Scarlett had the vehicle towed and enquired about repairs but was asked to pay thousands for repairs that weren't guaranteed to fix the issue. She couldn't afford this so was effectively housebound without being able to transport her mobility scooter.*

*With our assistance, Scarlett applied to the Victorian Civil and Administrative Tribunal (VCAT) for a 'major failure' of her consumer guarantees. Consumer Action covered the approximate \$3,000 cost for evidence from an expert mechanic (and towing to the assessment).*

*Scarlett's priority was having a working vehicle so she could be mobile again. We were able to negotiate a settlement for Scarlett around the time of the VCAT hearing. Without community legal support, Scarlett may have been stuck at home with a broken-down expensive car that was four years old.*

**Case study provided by Consumer Action**

<sup>1</sup> Productivity Commission, *Inquiry into the Right to Repair 'Draft Report'* (2021) 94, available at: <https://www.pc.gov.au/inquiries/current/repair/draft>.

The COVID-19 crisis has significantly increased the burden on VCAT, leaving many Victorians in limbo while they await the outcome of their dispute. This not only affects lemon car owners, but others waiting for have their matters heard.

The need for a solution was highlighted in recent media coverage, with *The Age*<sup>2</sup> and *A Current Affair*<sup>3</sup> reporting cases of Victorians being left stranded by one of the state's largest independent car dealers accused of selling 'lemons'.

With demand for and prices of used cars reaching an all-time high due to a global supply shortage of new cars,<sup>4</sup> we are likely to see a continued stream, if not an increase, of Victorians needing to resolve motor vehicle disputes. As we begin the long path towards economic recovery, access to a working car will be more essential than ever for those wanting to return to work, study or volunteering.

## The solution

According to a 2018 poll, Victorians almost unanimously (92.3%) agreed it should be easy to get a refund or repair from a car dealer if they are sold a defective car.<sup>5</sup> We need a specialist no- or low-cost alternative dispute resolution scheme for motor vehicles that is accessible, affordable, and timely.

In Australia, the industry-based ombudsman model is well-established and highly effective. An independent scheme, funded by industry, would be similar to other industry ombudsman schemes such as the Energy and Water Ombudsman Victoria (**EWOV**), the Telecommunications Industry Ombudsman (**TIO**) and the Australian Financial Complaints Authority (**AFCA**).

*It is critical that independent expert evidence reports are provided free-of-charge as part of this scheme.*

An expert evidence report, which is generally required for lemon car disputes in VCAT, can cost anywhere between \$800 to \$2000, as a conservative estimate. For many Victorians, particularly those who have temporarily lost their means of travelling to work, this cost is out of reach and makes it almost impossible for them to seek justice.

This solution would also alleviate pressure on VCAT, where motor vehicle disputes can take anywhere between six months to two years to resolve. In comparison, the Australian Financial Complaints Authority (**AFCA**), the ombudsman dispute resolution scheme for financial complaints, currently resolves 50% of complaints within an average of 31 days. Seventy per cent of AFCA's complaints are resolved within 90 days, and 90% are handled within 180 days. The average time to finalise a complaint is 88 days.<sup>6</sup> Similarly, the majority of complaints to EWOV are resolved in 28 days.<sup>7</sup>

Lemon car issues are also prevalent in Victorian Aboriginal communities and recently arrived migrant communities, who may be the target of underhanded sales tactics, so the scheme must also be culturally safe and accessible for those communities.

As with VCAT, urgent matters involving critical repairs, family violence, or extreme hardship should be prioritised.

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<sup>2</sup> Victoria's largest independent car dealer accused of selling lemons, *The Age*, 29 May 2021, available at:

<https://www.theage.com.au/national/victoria/victorias-largest-independent-car-dealer-accused-of-selling-lemons-20210528-p57vy7.html>

<sup>3</sup> Why legal experts are calling for 'lemon cars' dispute alternatives, *A Current Affair*, available at:

<https://9now.nine.com.au/a-current-affair/consumer-action-law-centre-legal-experts-call-for-dispute-resolution-alternatives/cda5ba2f-3214-48fa-8bd9-114e36655c40>

<sup>4</sup> COVID drives up demand for cars, leads to long waitlists, soaring prices, *ABC News*, 1 July 2021, available at: <https://www.abc.net.au/news/2021-07-01/car-shortages-new-and-used-vehicle-prices-increase-waiting-times/100256070>

<sup>5</sup> <sup>22</sup> ReachTel conducted a survey of 1,124 residents across the state of Victoria (29 January 2018)

<sup>6</sup> Australian Financial Complaints Authority Annual Review 2020-21, Published October 2021

<sup>7</sup> See: ewov.com.au

## How will it be delivered?

As noted above, free, fair, and expedited specialist dispute resolution already exists through industry ombudsman schemes for disputes about phones, utility bills, and loans.

This ombudsman model could also be adapted to motor vehicles. Ombudsman schemes are underpinned by Government benchmarks relating to<sup>8</sup> accessibility; independence; fairness; accountability; efficiency and effectiveness. Industry ombudsman schemes operate transparently and consider not just the letter of the law, but also principles of fairness when resolving disputes. Ombudsman schemes also have an important focus on systemic issues, which means systemic non-compliance by traders can be effectively escalated to regulators to rectify issues 'at their core' and reduce further harm to consumers. Similar to EWOV, an ombudsman scheme for motor vehicles would offer fair, accessible, affordable and timely resolution to disputes that cannot be resolved between Victorians and traders directly.

Creating a new dispute resolution service here in Victoria is not without recent precedent. The Domestic Building Dispute Resolution Victoria (**DBDRV**), established in April 2016, received over 1,000 complaints in its first month of operation,<sup>9</sup> revealing that when a free, fair, and accessible service is available, people are empowered to pursue their rights.

The DBDRV, a business unit of the Department of Justice and Regulation that operates as an independent agency, provides for compulsory conciliation and can make binding dispute resolution orders, while the organisational structure of DBDRV comprises a Chief Dispute Resolution Officer, Dispute Resolution Officers, Building Assessors and a Legal Team.<sup>10</sup> This is an alternative model for consideration.

## The investment

The motor vehicle trader sector aligns easily to a cost-recovery or industry model of dispute resolution, such as an ombudsman scheme, as all traders are required to be licensed and appear on the motor car traders register.

A progressive levy charged based on the size of the trader would help cover wages and administrative costs. In 2019-20, 2,007 traders were on the register.<sup>11</sup> As a condition of licensing, traders would be required to contribute to the dispute resolution service through an annual fee. If traders were charged an average levy of \$3000<sup>12</sup> per licence per year, plus additional user charge and complaint handling fees, at least \$6 million a year would be available for the running of the service. However, seed funding from Government of \$1 million per year over at least 4 years, adjusted for CPI, would cover establishment costs, investigation of systemic issues and compliance.<sup>13</sup>

The Ombudsman fee model, which relies on industry participants paying membership fees plus fees for complaint handling, creates incentives to industry to resolve disputes quickly and efficiently. According to the Productivity Commission, in the context of the broader civil justice system, ombudsman models resolve a large volume of complaints at a low cost. Taking into account systemic work which can reduce the potential for complaints to arise, the Productivity Commission has stated that "ombudsman represent even better value for money".

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<sup>8</sup> Benchmarks for Industry-Based Customer Dispute Resolution, Australian Government, The Treasury, Benchmarks for Industry Customer Dispute Resolution (February 2015), available at: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-disputeresolution/>.

<sup>9</sup> Victorian Parliament, Public Accounts and Estimates Committee (31 May 2017) *Inquiry into Budget Estimates 2017-18*, available at: [https://www.parliament.vic.gov.au/images/stories/committees/paec/2017-18\\_Budget\\_Estimates/transcripts/Verified\\_Kairouz\\_-\\_Consumer\\_Affairs\\_etc\\_2017-18\\_BEH.pdf](https://www.parliament.vic.gov.au/images/stories/committees/paec/2017-18_Budget_Estimates/transcripts/Verified_Kairouz_-_Consumer_Affairs_etc_2017-18_BEH.pdf)

<sup>10</sup> Domestic Building Dispute Resolution Victoria (accessed on 20 February 2018) *About Us*, available at: <https://www.dbdrv.vic.gov.au/about-us>

<sup>11</sup> Consumer Affairs Victoria (2020) Annual Report 2019-20

<sup>12</sup> For example, EWOV annual membership fees for licenced retailers and distributors are between \$2,000 and \$20,000 depending on customer numbers. <https://memport.ewov.com.au/joining-ewov/>

<sup>13</sup> By comparison, the Federal Government provided provide \$4.3 million to the Australian Securities and Investments Commission (ASIC) over four years from 2017-18, including capital of \$0.9 million in 2017-18 to assist with the transition and set up of AFCA: <https://archive.budget.gov.au/2017-18/bp2/bp2.pdf>

Budget bid	What the funding delivers	2022 outcomes	Benefits and value
<i>An affordable, accessible and timely alternative dispute resolution scheme for motor vehicle owners that includes free access to independent expert evidence reports.</i>	<ul style="list-style-type: none"> <li>Improved access to justice, particularly for people experiencing vulnerability</li> <li>Reduces capacity constraints on VCAT and frees it up to hear other matters</li> <li>Meets critical unmet need improved motor vehicle disputes resolution</li> <li>Faster outcomes for consumers and small businesses involved in motor vehicle disputes</li> </ul>	<p>Approximately 3000<sup>14</sup> people provided with an accessible and affordable avenue to resolve their motor vehicle dispute.</p> <p>Approximately \$2.4m<sup>15</sup> in avoided costs for people requiring an expert evidence report.</p>	<p>A \$3.4m package to establish an alternative car dispute resolution scheme would aid in Victoria's economic recovery by allowing people who require access to a motor vehicle to meaningfully participate in our economy (i.e. commute to work or school, access shopping centres, travel to appointments etc.) Currently, some matters are sitting in VCAT for up to two years, leaving people without a motor vehicle or a means to get around.</p> <p>It would also be in line the Victorian Government's priority of supporting victim survivors of family violence, as a working motor vehicle is often essential to the safety of someone escaping an abusive relationship.</p> <p>It will results in cost savings for VCAT<sup>16</sup> and help establish a more responsive and accessible avenue to justice for people sold faulty motor vehicles.</p>

The second investment relates to the expert technical report on a defective lemon car. In Consumer Action's experience, an independent, expert report can cost a consumer between \$800 and \$2,000. With in-house staff, or a tendering process leveraging for scale, it is assumed that the cost would be closer to \$800. We suggest the Victorian Government fund the cost of these expert reports, to prevent potential or perceived conflicts of interest between car dealers and independent experts. Based on CAV complaints data,<sup>17</sup> we estimate that approximately 3,000 Victorians would use the dispute resolution service annually, and require an expert report. We therefore estimate the expert reports would cost approximately \$2.4 million per year.

<sup>14</sup> According to data from Consumer Affairs Victoria, there were 3,045 complaints made in the 2020-2021 financial year relating to major or minor vehicle defects.

<sup>15</sup> A conservative estimates places the cost of an independent expert report at a minimum of \$800, which costs a total of \$2,456,000 per financial year based on the number of motor vehicle complaints to CAV in 2020-21.

<sup>16</sup> E.g. the Final Report of the Access to Justice Review states that motor vehicle disputes accounted for 9% of all applications to VCAT's Civil Claims List in 2014-15; Access to Justice Review: Report and Recommendations, Department of Justice & Regulation (August 2016), available at: <https://engage.vic.gov.au/accesstojustice>.

<sup>17</sup> Above n 11.

Investment (\$ million) – forward estimates<sup>18</sup>

ITEM	2022-23	2023-24	2024-25	2025-26
Motor Vehicle Dispute Resolution Victoria	\$3,400,000	\$3,502,000	\$3,607,060	\$3,715,271

### CASE STUDY: Lily's story

*Lily (name changed) lives in a regional area. She has experienced significant health conditions and severe financial hardship and periods of homelessness. Lily approached a car dealer in 2014 to buy a car that could travel long distances and tow a caravan in the bush. Lily also needed the car to get to her medical appointments.*

*The car dealer directed Lily to a vehicle described as 'new' with additional features for approximately \$27,800 purchase price. The car dealer assisted Lily to complete a loan application (for which the car dealer was paid a commission by the finance provider) to enable Lily to purchase the vehicle. We consider that the loan was unaffordable for her.*

*Within about three months of purchase, the vehicle broke down. The car also required multiple other additional repairs throughout the year. The following year, the vehicle broke down at least twice, and again the year after, despite repairs. Eventually, after a further breakdown, Lily arranged for the vehicle to be towed to the car dealer to determine the faults with Lily receiving no replacement, repair or refund. Living without a car was difficult for Lily and exacerbated her health conditions.*

*Lily filed in VCAT but was unable to attend hearings herself due to her ill health so the matter was withdrawn with a right of reinstatement. She was not represented at this time and did not have access to an expert report.*

*Lily's local community legal centre was not able to assist with the VCAT matter as they did not have the funding or expertise for this forum; however, they told us they would likely have been able to assist her in a more accessible alternative dispute resolution scheme such as an Ombudsman service. They referred Lily to Consumer Action.*

*Consumer Action was able to assist Lily in having the matter reinstated, and represented Lily at VCAT against the car dealer. Consumer Action was able to use disbursement funds to pay for an expert to assess the car,, which was undertaken at the car dealer's premises, which would have been otherwise unaffordable for Lily.*

*Despite representation, the process continued to be difficult. For example, VCAT provided different conference details to Lily, Consumer Action as her representative and the car dealer, leading to the parties attending the wrong conference. This and the process added stress for Lily, which was not good for her with her underlying health conditions.*

*Eventually, with representation, the matter with the car dealer was resolved.*

**Case study provided by Consumer Action**

<sup>18</sup> Assuming CPI increase of 3.0% each financial year.

## Benefits to Victorians

### *Economic recovery*

Our case studies reveal that the financial and emotional cost of being saddled with a 'lemon' is often greatest and most disruptive when it's the family car. Families rely on their car to drive children to school, attend work and run basic errands, meaning the impact of owning a useless lemon car is significant. While this is an observable outcome of our casework, the real economic disadvantage for families who do not have access to a car is also well documented in social policy research.

A specialist motor vehicle dispute resolution scheme would help:

- support Victorians to attend work, study or volunteering, and access health and government services;
- improve confidence and trust in the motor vehicle trade;
- reduce the time and money spent by consumers and car dealers in disputes through VCAT and
- empower consumers to enforce their consumer guarantees.

### *Access to justice*

For many people, tribunal filing fees and evidence costs are another roadblock in the access to justice. These barriers were noted in the Access to Justice Report,<sup>19</sup> released in 2016, yet the issues remain.

The cost, time, and complexity of the process for the consumer, deters many from seeking justice. Many people simply cannot afford to get through the doors of the tribunal to argue their case of major failure, for which they may be entitled to a refund or replacement under law – a problem highlighted in the Productivity Commission's recent 'Right to Repair' Draft Report.<sup>20</sup>

Our centres have heard from people who, after finding out the exorbitant costs and time associated with filing a matter with VCAT, have decided to simply live with the loss and ongoing stress of paying for a faulty car. The complexity of the law in this area can also be a barrier to accessing justice for many.

An effective and affordable motor vehicle dispute resolution scheme would increase access to justice to Victorians sold a 'lemon'. It would also free up motor car traders involved in disputes and reduce any losses that would previously be accrued as a result of a lengthy and costly tribunal process.

### **CASE STUDY: Sarah's car**

*Sarah is a proud Aboriginal woman from a small regional town in Victoria. She is a single parent, lives in community housing, and her sole source of income is Centrelink benefits. She saved up over a long period of time in order to buy a car. She wanted a reliable car and because of this, decided to purchase a car from a car dealership as she thought she could trust that the car she would buy from a dealership would work well.*

*She went ahead with the purchase of a car for about \$9,000. However, within only a couple of weeks of purchase, she noticed significant issues with the car. She took the car to a local mechanic who advised her not to drive the car until the issues were fixed. She contacted the car dealership on numerous occasions and asked them to either fix the issues or provide her with a refund. They refused to do either and not being able to afford the cost of repairs herself, felt she was left with no option but to file with VCAT.*

*It has been about a year since she filed her claim, and due to the long wait times, her matter is yet to be heard. In that time, she hasn't had a car. She also needs to obtain an expert report but cannot afford to pay for one. Because of this, she is concerned she won't have enough evidence to win her case.*

**Case study provided by Victorian Aboriginal Legal Service (VALS)**

<sup>19</sup> Access to Justice Review: Report and Recommendations, Department of Justice & Regulation (August 2016) p 263 & 287, available at: <https://engage.vic.gov.au/accesstojustice>

<sup>20</sup> Draft Report: Right to Repair, Productivity Commission, June 2021 at p7, 99 - 100. Available from: <https://www.pc.gov.au/inquiries/completed/repair/draft>

### ***Regional Victorian Aboriginal communities***

A working car is particularly essential in regional Aboriginal communities with less access to public transport or other means of private transportation such as rideshares. The Victorian Aboriginal Legal Service (**VALS**) have particularly seen an increase in this work, and currently have multiple clients experiencing issues with cars they have recently purchased.

Since June 2021, VALS have received a total of eight inquiries relating to the purchase of defective vehicles – of these inquiries, six related to purchases from car dealerships, and two from private sellers.

### ***Impact on victim survivors of family violence***

The impact of being saddled with a faulty car for someone fleeing family violence could very well be the difference between life and death. Through our casework we see clients who have relied on a car to escape an abusive relationship, in some cases the car has become the only source of shelter for the victim survivor and their children.

The financial and emotional toll of a lengthy tribunal process to resolve a car dispute, is one that many victim survivors cannot afford.

The purchase of a car is one of the big financial investments in our lives, and for many Victorians it is their most important asset. This warrants the establishment of a specialist service to resolve lemon car disputes.

Should you have any questions or require any further information, please contact **Alycia Gawthorne, Campaigns & Advocacy Adviser** on 03 9670 5088 or at [alycia@consumeraction.org.au](mailto:alycia@consumeraction.org.au)

Yours sincerely,

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**Melissa Hardham**

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## Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

## Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service Co-Operative Limited (**VALS**) was established as an Aboriginal Community Controlled Co-operative Society in 1973. VALS is the only dedicated, multidisciplinary legal and support service for Aboriginal and Torres Strait Islander peoples in the State of Victoria. VALS plays a vital role in supporting Aboriginal people in custody and providing referrals, advice/information, duty work and case work assistance across criminal, family, civil and strategic litigation matters.

In March 2019, Consumer Action and VALS embarked on an Integrated Practice Project (the IP Project or the Project) as one way of addressing some of the unmet consumer, credit and debt legal needs of Victorian Aboriginal communities. As part of the Project, VALS and Consumer Action work together to participate in regular community engagement sessions with Victorian Aboriginal communities. Community engagement sessions operate in partnership with local ACCOs and other key service providers. The sessions have served to connect these communities with legal advice services, financial counselling, policy work and legal education relating to consumer, credit and debt issues. They also provide a forum for the cross-promotion of services that can support the civil legal needs of Victorian Aboriginal communities.

## Hume Riverina Community Legal Service

We provide free legal assistance to people living in North East Victoria and the Southern Riverina of NSW across 17 local government areas. Our service helps people who are disadvantaged or vulnerable, and would not otherwise be able to get legal assistance, particularly those living in regional and remote areas. We prioritise:

- people experiencing family violence
- children and youth
- Aboriginal and Torres Strait Islander peoples
- people with a disability or mental illness
- the elderly
- low income earners
- people from non-English speaking backgrounds.

Our service provides legal assistance on family law, family violence, separation and divorce, youth law, motor vehicle accidents, credit and debt issues, discrimination, consumer complaints, traffic offences, fines, seniors' issues and other everyday legal problems.

## WEstjustice

WEstjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.