

## Background Brief - November 2023

### KEY POINTS

- When a car dealer sells a defective car (a lemon), it devastates the consumer's life and wellbeing.
- Barriers to justice at VCAT, including the cost of mechanical expert evidence reports, make it nearly impossible for people facing financial disadvantage to take on car dealers who flog lemon cars.
- Victorians need an affordable, quick, and simple forum to resolve disputes with car dealers: an independent Ombudsman Scheme.

### Lemon cars are ruining lives and livelihoods

Victorians rely on our cars as part of daily life: to get to work, school and the shops. Cars can be part of a safety plan – a way to flee family violence or a means to evacuate during bushfires and extreme weather events. In Victoria's regional and rural areas without public transportation, including our rural Koori communities, cars are essential.

A car will be the most expensive and important purchase of many Victorians' lives.

When a car doesn't work as reasonably expected after purchase, Victorians are protected by the Australian Consumer Law (ACL).

The ACL includes consumer guarantees—that we have a right to durable, safe, and fit-for-purpose cars that are free from major and minor failures.

But far too often, Victorians cannot enforce these rights when sold a lemon car because seeking remedies through the Victorian Civil and Administrative Tribunal (VCAT) is *costly, time consuming, and inaccessible*.

Car dealers know how difficult it is for people to enforce their rights at VCAT, so often refuse to offer refunds or repairs when a customer complains.

The current system accentuates this power imbalance,

leaving many Victorians stuck with a lemon car, drastically diminishing their economic and social participation and wellbeing.

### Quantifying the impact

We estimate thousands of Victorian lives and livelihoods are shattered because we don't have an effective and accessible dispute resolution scheme to get Victorians moving again.

Approximately **25–30%** of calls about consumer guarantees to Consumer Action's legal advice lines relate to defective cars (around 130 per year).

The Productivity Commission estimates that motor vehicle sales are the top consumer guarantee complaint received across state and territory regulators, with Consumer Affairs Victoria receiving more than **3000** vehicle consumer guarantee complaints per year.<sup>i</sup>

CHOICE data indicates that **14%** of new cars had a major issue within the first five years<sup>ii</sup> – that number would certainly be higher for used cars, which are also protected under the ACL consumer guarantees (dealer sales).

### The solution

We need a specialist free alternative dispute resolution scheme for motor vehicles that is:

- **accessible** – so that all Victorians can access justice, no matter their background or circumstances
- **affordable** – so that people don't need to find \$1-2k for an expert report, which is beyond the means of most, particularly with the rising cost-of-living
- **timely** – so that people can access justice, recover financially and get back on the road in weeks, not years

To meet these criteria, independent mechanical expert evidence reports must be provided free-of-charge.

The independent scheme could be funded by industry, like other **industry ombudsman schemes** such as the Energy and Water Ombudsman and the Australian Financial Complaints Authority (AFCA). The established progressive user-pays funding model at EWOV and AFCA incentivises companies to resolve complaints quickly, and rewards companies that

don't create consumer problems in the first place.

Car dealers are already licenced by the Government, it is an easy step to ensure they participate in an ombudsman service that will enhance trust in the sector and keep Victorians on the road.

The scheme must be culturally safe and accessible for our Victorian Koori communities and for our culturally and linguistically diverse communities.

## Further information

The following reports and submissions, including further detail and case studies, are available on our website.

- Consumer Action Law Centre, [Lemon cars campaign page](#)
- [Detours and Roadblocks: The consumer experience of faulty cars in Victoria](#) (Report, 2023)
- [Victorian pre-Budget Submission 2023-24](#)
- [Lemon-Aid](#) (Report, 2018)
- [Response to the Right to Repair Inquiry Draft Report](#) (Submission to the Productivity Commission, 2021)

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<sup>i</sup> Productivity Commission, *Inquiry into the Right to Repair 'Draft Report'* (2021) 94, available at: <https://www.pc.gov.au/inquiries/completed/repair/draft/data> provided by Consumer Affairs Victoria.

<sup>ii</sup> CHOICE, "Turning lemons into lemonade: Consumer experiences in the new car market" (2016) <https://www.choice.com.au/transport/cars/general/articles/lemon-cars-and-consumer-law#report>.

## 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 legally represented 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.*