

28 August 2016

**SUBMISSION ON PRODUCTIVITY COMMISSION ISSUES PAPER
ON CONSUMER LAW ENFORCEMENT AND ADMINISTRATION**

BACKGROUND

The Queensland Consumers' Association (the Association) is a non-profit organisation which exists to advance the interests of Queensland consumers.

The Association's members work in a voluntary capacity and specialise in particular policy areas.

The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups.

Members represent the Association or other consumer organisations on the advisory/liason committees etc. of several federal and state bodies which deal with consumer issues/complaints for a wide range of industries including: food, building/construction, finance, energy, and health.

The Association made a submission on Australian Consumer Law Review Issues Paper and welcomes the opportunity to make this submission.

The contact person for this submission is: Ian Jarratt.

GENERAL COMMENTS

This study is a very important addition and complement to the review of the ACL and the Association supports the study being undertaken and its terms of reference.

Due to the large number and frequent complexity of products (goods and services) available to, and bought by, consumers and the numerous regulatory and other bodies involved in consumer issues, the Association considers it is essential that:

- Bodies have clear responsibilities and roles and that there is minimum overlap and duplication.
- There is effective and efficient communication, liaison and exchange of information between relevant bodies.
- Bodies fully understand the roles etc. of other bodies and assist consumers to contact the most appropriate body.
- Informing and educating consumers about where to get help with problems is a high priority and is adequately resourced.
- There is the maximum possible regular consolidation and public release of information about consumer problems/complaints.

In this regard the Association considers that government consumer bodies should do more to involve, and use the experiences of, consumer/community organisation in their work and that where likely to be beneficial this should involve multiple regulators.

For example, as suggested by the Association, a Consumers and Regulators Forum has been meeting twice a year in Queensland for several years to exchange information and ideas on a range of consumer issues, especially those involving credit, misleading and deceptive conduct, fraud, scams, etc. The Forum is convened by ASIC and attended by the ACCC, Queensland Office of Fair Trading, Queensland Police Department, Legal Aid Queensland, and representatives of a range of consumer and community organisations, including legal centres. The Forum has been very successful.

Therefore, the Association recommends that a multi agency approach to consultation/liaison on consumer issues with consumer/community organisations be considered by other agencies and in other locations.

Also, the Association emphasises that safety issues should not be considered in isolation in terms of agency responsibilities or the provision of assistance, information, and advice for consumers. This is because safety problems reported by consumers may turn out to be, or may reveal, other consumer issues such as fitness for purpose, acceptable quality, misleading and deceptive conduct, warranties, consumer guarantees, etc.

Therefore, the Association recommends that bodies responsible for only safety issues fully understand the importance of other consumer issues and liaise with bodies with these responsibilities and assist consumers to contact them.

The Association considers there is a great need and scope to improve the amount and quality of information made public about consumer complaints/issues. Wherever possible and relevant this should include aggregation of data from various sources including from external dispute resolution schemes.

Therefore, the Association recommends that improving the amount and quality of information made public about consumer complaints/issues should be given higher priority as a public policy issue.

The Association is concerned that some bodies do not provide sufficient feedback to consumers about progress with, or the outcome of, their complaints. This may reflect legal considerations.

However, the Association recommends that improving feedback to consumers about their complaint/problem should be a high priority for all bodies.

SPECIFIC COMMENTS

The Association provides the following case study of a member's problem with a motor vehicle's engine to illustrate major deficiencies with the current system for dealing with motor vehicle safety and related consumer issues.

Motor Vehicle Case Study

The vehicle was bought new in October 2007, had been fully serviced by the manufacturer's dealers. In November 2013 and when out of manufacturer's warranty, after it had travelled only 77,000 km. the engine suddenly and without warning stopped

working when being driven on a very busy road. The driver considered this was a major safety risk.

The cause was identified as a broken internal part which had also resulted in other damage to the engine and as a result repairs would cost at least \$3000.

The owner then advised the manufacturer that even though the problem had occurred outside the manufacturer's warranty period the manufacturer still had legal responsibilities if, as argued by the owner, the vehicle was not of merchantable quality or fit for purpose. The owner also requested that the manufacturer pay the full cost of the repairs and also indicated that the owner had spend several hundred dollars on towing, diagnosis, and unavoidable car hire costs.

The manufacturer offered to repair the vehicle if the owner was prepared to make a significant contribution towards the costs. To get the car back on the road quickly the owner agreed to do this and the car was repaired.

The owner subsequently learned from a variety of sources that:

- The problem was quite common and had occurred with some vehicles after only about 20,000 km.
- The problem was due to a design/manufacturing fault.
- The part has been changed in later models and when the problem occurs all the parts in the engine are replaced with the new part.
- The manufacturer had issued agents with a Service Procedure about the problem.
- The manufacturer had not recalled vehicles that might be susceptible to the problem or had not advised owners about the potential problem.

Therefore, the owner subsequently:

- Requested the manufacturer to refund the contribution made towards the cost of the repairs on the grounds that the products sold was not fit for purpose. (The manufacturer rejected the claim.)
- Made enquiries about all aspects of the matter, including safety and fitness for purpose aspects, with several agencies including the ACCC and the Queensland Office of Fair Trading and learned that vehicle safety matters were handed by the federal Department of Infrastructure.
- Contacted the Department of Infrastructure.
- Wrote to the Minister and in December 214 was advised by the Minister that "the Department has concluded that there is no evidence to suggest that this is a systemic safety issue....." and that "The Department has not received any similar complaints to yours...".

During 2015 the owner was contacted by the ACCC for more information about the problem. And, in December 2015, only a year after the Department had advised the owner that it had not received any similar complaints, a safety recall by the manufacturer of vehicles with this diesel engine due to potential for rocker bearing failure was posted on the ACCC's product safety website. It then became apparent to the owner that many other owners had experienced the problem and had also contacted the ACCC about it.

Although the recall notice advised that the manufacturer would contact owners, the owner was not contacted. So, over two months later the owner made a claim to the manufacturer for a refund of the owner's contribution made to the cost of the repairs and

for some associated costs. The manufacturer agreed to this request. The manufacturer has yet to advise the owner that that vehicle has been recalled due to the problem with the engine part.

The Association **considers** that this engine problem, which became apparent several years earlier, should have resulted in a recall much earlier than December 2015 on either safety or quality grounds. This would have greatly reduced the considerable detriment experienced by many owners who experienced the problem prior to the December 2015 safety recall due to the manufacturer until then not being prepared to pay for any repair costs or paying for only some costs. It would have also reduced the extent to which affected owners who are unaware of the recall remain out of pocket and unaware owners of vehicles still fitted with the problem parts are at risk of having the problem occur.

The Association also **considers** that this case study indicates that fundamental improvements are needed to the recall system for motor vehicles for safety and other reasons including:

- Clear regulatory responsibilities for safety and other types of recalls.
- Requirements for industry to advise regulators of safety and other problems reported by customers or which they become aware of by other means.
- Effective liaison between any regulatory agency responsible only for safety issues and any responsible for other issues, such as quality problems that might warrant a recall.
- Better guidelines on what constitutes a safety problem and the circumstances that that might justify a recall for safety or other reasons.
- Effective integration, sharing and analysis of information about consumer complaints, etc. between regulatory bodies (such as the Department of Infrastructure, the ACCC, and state and territory Offices of Fair Trading) and between other important sources of complaint and other information, such as consumer motoring organisations.
- Effective and monitored implementation of safety and other recalls.
- Effective communication of information to consumers.

The Association also **considers** that this case study indicates clearly the need to ensure that all agencies are fully aware of, and deal effectively and efficiently with, non-safety consumer issues such as fitness for purpose, acceptable quality, misleading and deceptive conduct, warranties, consumer guarantees, etc.

The Association understands that as a result of a recent review of the Motor Vehicle Standards Act the government is investigating options to improve the vehicle safety recall arrangements, including the provision in the Act of safety recall provisions similar to those in the Australian Consumer Law. The Association understands that this would allow the Minister responsible for the Act to issue recalls for vehicles on safety grounds and for non compliance with design rules. However, responsibility for other types of recalls and for dealing with other types of problems experienced by consumers would remain with the ACCC.