

24 August 2020

Policy and Strategy
BRD Department of Customer Service
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

By email: motordealersandrepairersact@customerservice.nsw.gov.au

Dear Sir/Madam,

Legal Aid NSW response to Statutory Review of the *Motor Dealers and Repairers Act 2013* discussion paper

Thank you for the opportunity to provide written comments in response to the statutory review of the *Motor Dealers and Repairers Act 2013* (the Act) discussion paper.

About the Civil Law Division

The Civil Law Division of Legal Aid NSW has an extensive casework practice focusing on every day legal problems experienced by disadvantaged and vulnerable clients, including consumer issues, housing, employment, social security and immigration.

Civil law services are provided in 25 metropolitan and regional offices across the State. Civil lawyers also provide outreach to regional and remote communities where there is no Legal Aid NSW office.

Consumer law is the largest single area of practice in the Civil Law Division. Our lawyers provide legal advice, minor assistance and ongoing casework services to NSW consumers in areas such as credit, debt, motor vehicles, essential services, insurance and mortgage hardship.

Civil law lawyers also frequently advise clients with issues they have experienced purchasing second-hand motor vehicles, including dealing with unlicensed dealers or problems with faulty vehicles.

Our clients, particularly those who live in regional and rural areas of NSW, heavily rely on motor vehicles for school, work, health and education purposes. It is often the most expensive purchase that our clients will make in their lifetimes.

It is therefore essential that motor vehicles purchased by NSW consumer from second-hand motor vehicle dealers are functional, safe and fit for purpose. It is also important for consumers to have access to quick and practical dispute resolution and appropriate remedies where there is a failure.

Complaints to NSW Fair Trading and disputes at NCAT remain the most effective means for our clients to access redress where there are issues with faulty motor vehicles.

Issues addressed in this response

We have addressed questions from the discussion paper where we have relevant casework to inform our response. We have provided responses to Questions 9 & 10.

Question 9: Are there other regulatory tools that could be considered to help enforce compliance with the Act? If so, please provide examples.

In Legal Aid's casework experience, very few of our clients with repair issues arising from the purchase of second-hand motor vehicles report having a NSWFT inspection conducted by a Motor Vehicle Inspector where a dispute has not been able to be resolved by mediation. This is particularly the case in regional areas of NSW.

Where a negotiation has failed, consumers are often left with no option but to pursue a motor dealer through NCAT, which can be a complicated and time-consuming process for consumers to navigate.

We recommend that NSWFT consider dedicating further resources to in-person motor vehicle inspections by Motor Vehicle Inspectors, particularly in regional areas, and the more widespread use of rectification orders in the case of a dispute.

This will help facilitate the early resolution of issues, preventing consumers from having to pursue remedies through NCAT.

Mechanisms to support consumers obtaining evidence in motor vehicle disputes

The casework experience of Legal Aid NSW is that despite the consumer protections that exist under the ACL and the Act, consumers with motor vehicle issues continue to face significant challenges enforcing these consumer rights. This is particularly pertinent when the consumer is required to provide expert evidence proving loss or damage at NCAT, having been unable to resolve the issue with the other party or through NSW Fair Trading.

In our casework experience we have identified that:

- There is a knowledge and power imbalance between consumers and mechanics or car dealers, meaning it can be difficult for consumers to resolve disputes with these parties directly;
- In proceedings before NCAT it can be difficult for consumers to articulate their car's mechanical issues and to obtain expert evidence in support of their claim;
- There is a shortage of mechanics willing or able to provide expert reports and participate at conciliations or appear at hearings to provide sworn evidence.

The Access to Justice Review by the Victorian Department of Justice¹ identified this problem in the Victorian context. The review recommended that Consumer Affairs Victoria be funded to provide a compulsory conciliation service and free technical assessment in respect of motor vehicle repair issues. Legal Aid NSW strongly supports the introduction of a similar approach in NSW.

Legal Aid NSW proposes that consideration is given to resourcing the establishment of a panel of experts to provide reports about, among other matters:

- Diagnosing defects in a motor vehicle;
- Identifying the cause of the defects;
- Identifying whether the defects are capable of repair and, if so, the cost of such repairs.

We consider that the benefits of resourcing a panel of experts outweighs the associated cost and will result in better consumer outcomes and quicker more efficient resolution of disputes. Legal Aid NSW would be pleased to consult further on how this scheme could be funded and operationalised.

Case study – Juliet

Juliet took her car to a mechanic in Bourke, NSW for a routine service. There were no noticeable problems with the car. The mechanic replaced the alternator, charging Juliet \$600 (\$300 for the alternator and \$300 for labour).

¹ Access to Justice Review, Volume Report and Recommendations, August 2016

The mechanic advised Juliet that he had test driven the car before it was returned to her. After collecting the car Juliet started driving to Cobar, NSW when the car broke down. Juliet took the car to a mechanic in Cobar who advised her that the heads were damaged and quoted \$3000 - \$4000 for the repair of the vehicle. Juliet wants the mechanic in Bourke to meet the cost of the repair of her car.

She believes he did not adequately service the car as if he had done so, the car would not have broken down so extensively, and the subsequent repairs would not have been necessary. Here, Juliet would need to provide comprehensive expert evidence to demonstrate that the mechanic in Bourke should have identified the problem with the heads in the first instance and that the failure to do so led to the subsequent and costly damage to the car.

They would also need to offer an expert opinion as to quantum of damage. In this case if Juliet had access to an expert panel of independent qualified mechanics who were available in regional NSW, she could obtain a suitable report for a set fee, rely on this report to negotiate in the first instance with the mechanic and if necessary take the matter to NCAT. As the dispute would be quite technical in nature the benefits of a specialist division of NCAT would be significant for Juliet as the self-represented consumer as well as for the other party.

Question 10: Should the dealer guarantees under the Act remain the same, or rely on the consumer guarantees under the ACL? Explain why.

Legal Aid NSW frequently assists consumers with disputes about second-hand vehicles. While these transactions are covered under the ACL, the specificity of the NSW dealer guarantees makes it a valuable consumer protection.

We propose that consideration be given to:

- Expanding coverage for used passenger vehicles from vehicles under 10 years, or with less than 160,000km to vehicles under 15 years or with less than 200,000km; and
- Increasing the time limit post-sale from 3 months or 5,000km to 6 months or 7,000km.

Motor Dealers and Repairers Compensation Fund

We note that the current time limit for applications to the Motor Dealers and Repairers Compensation Fund is 12 months after the loss is incurred.

We remain concerned that this time limit is too short, particularly as consumers are only eligible for compensation after they have exhausted all other means of redress.

The limitation period should be increased to account for the time that it takes a consumer to attempt to resolve the matter via other forums, like NCAT.

We propose that the time limit be amended as follows:

- 2 years from the consumer suffering the loss, or becoming aware of the loss; or
- 12 months from obtaining a judgment or order that remains unpaid.

For dealer-financed purchases, we recommend that the cooling off period be increased from one day to seven days. Consumers are often subject to pressure tactics when purchasing second-hand vehicles on finance, and consumers should therefore be given more time to consider their options post-sale with an extended cooling off period.

If you require any further information about the issues raised in this letter, please contact Findley Hipkin, Solicitor Consumer Law [REDACTED]

Yours sincerely

[REDACTED]
Brendan Thomas
Chief Executive Officer