



# **MODERNISING THE AUSTRALIAN CONSUMER LAW**

**SUBMISSION TO THE TREASURY ON THE CONSULTATION  
REGULATION IMPACT STATEMENT**



Australian  
Automobile  
Association

**April 2018**



# Australian Consumer Law Review

## Overview

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Every day across Australia, two thirds of Australians, or more than 6 million people, travel to work by car<sup>1</sup>. When a car is inoperable, the ability to work and meet family obligations can be seriously impacted and cause significant financial and emotional strain.

The existing Australian Consumer Law (ACL) framework puts consumers at a disadvantage in asserting their rights when problems occur, as it does not clearly define major and minor failures. The changes to the ACL proposed in the Consultation Regulation Impact Statement (Consultation RIS) go some way in clarifying, simplifying and modernising the consumer guarantee framework. Clarity within the law will help ensure that ordinary motorists are able to more efficiently assert their rights, thereby reducing time-consuming disputes and associated costs to all parties involved.

The AAA has previously expressed support for the ACCC's recent court enforceable undertaking with Holden and supports the ACCC's assessment that the undertaking is consistent with best practice ACL compliance. As such, the AAA would support the introduction of a 60- day policy for a refund or replacement vehicles without the need to prove a 'major failure' where the failure causes the vehicle to become immobile and no longer driveable, noting that this policy was developed in anticipation of the proposed reform to the ACL. Such a policy provides increased certainty for consumers in asserting their rights and allows for disputes to be resolved earlier, avoiding the potential for consumers to become trapped in a cycle of failed repairs.

To inform input to the Consultation RIS, the AAA surveyed affected vehicle buyers using an online survey to better understand the direct costs incurred by consumers when they are trying to convince dealers and manufacturers to provide them with remedies to major and minor failures.

Responses to the AAA survey provide evidence that a consumer's chance of receiving a refund or replacement can largely depend on how determined they are in pursuing their rights under the ACL. The AAA's member motoring clubs often cite examples where manufacturers or dealers have provided favourable outcomes only where a third party, such as the consumer's motoring club, has advocated on their behalf. Often by this stage, significant resources have already been expended by the consumer and a resolution has still not been forthcoming.

## AAA Recommendation Summary

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The AAA recommends that:

- Consumers should be entitled to a refund or replacement if a vehicle experiences a failure in a short period of time, (i.e. 60 days), without having to prove a major failure;
- The consumer law should be clarified to indicate that multiple minor failures can amount to a major failure;
- A disclosure regime should be introduced for the sale of extended warranties; and
- The threshold for the definition of 'consumer' be raised from \$40,000 to \$100,000. The definition should also be indexed periodically (i.e. 5 yearly).

The AAA supports Holden's recent undertaking to the ACCC which specifies a 60 day time period for a consumer to claim a refund or replacement without having to prove a major failure.

<sup>1</sup> According to the Census, transport by car continues to be the most reported method of travel to work. Almost two thirds (65.5%) of employed persons aged 15 years and over reported that they travelled to work by car (either as driver or a passenger)

## AAA Lemon Survey

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The AAA conducted an online survey to better understand consumer experiences when dealing with minor and major failures. The data from the survey and the case studies collected, provide evidence that there is an urgent need to amend the ACL. The ACL needs to make it expressly clear that consumers are entitled to their choice of remedy if a product experiences failure in a short period of time, or multiple minor failures over a specified period of time.

The survey attracted 306 responses from vehicle owners across Australia. The survey was conducted from 16 to 23 April 2018 and sought to understand costs incurred when consumers had problems with their vehicles, rather than understand the prevalence of the problem across the industry. While the AAA acknowledges that the survey has limitations, the data collected provides important information about costs involved, time associated with seeking a resolution, and what type of failures arise, including where consumers have experienced both major failures and/or a series of minor failures.

In total, survey respondents reported spending more than half a million dollars in associated costs, and more than 2 years in lost work hours trying to resolve issues with faulty vehicles.

Overwhelmingly, consumers reported being dissatisfied with the final remedy with 88 per cent of survey respondents stating that their fault was not satisfactorily resolved. This clearly indicates that their preferred remedy i.e. refund, repair or replacement was not forthcoming.

### Key survey findings

**\$1,970** was incurred, on average, in associated costs while seeking a remedy for their faulty car;

**45 hours** on average was lost trying to fix issues;

**56%** experienced a problem less than 60 days after purchasing the vehicle.

**>70%** of faults were major failures, involving mechanical and electric faults, transmission issues and engine failure, while 24 per cent of car owners reported a series of non-major failures.

Only two survey respondents reported that they received a replacement vehicle.

# Answers to relevant consultation questions

## 1. Have you experienced issues with a trader not agreeing to a refund when you have had a failure with a good within a short period of time after purchase?

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The AAA Lemon Survey found that 56 per cent of respondents reported experiencing a problem within the first 60 days of owning the vehicle. When looking at all 306 survey respondents only two people reported that they were provided with a replacement. This clearly indicates that refunds where a vehicle fails in a short period of time are not forthcoming and are often avoided at significant cost to the consumer.

The proposed changes to the ACL will give affected consumers clarity when seeking a refund or replacement in the future where a vehicle fails in a short period of time after purchase.



### Case Study - Joanne

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*Joanne experienced a major fault with the transmission of her vehicle less than 30 days after she purchased the car new. Instead of being offered a refund or replacement, Joanne was left \$4,000 out of pocket and spent 30 hours away from work trying to seek a remedy through the court system. The matter was eventually resolved with the court ordering a refund after the car was deemed unsafe.*

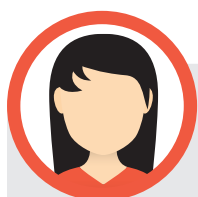
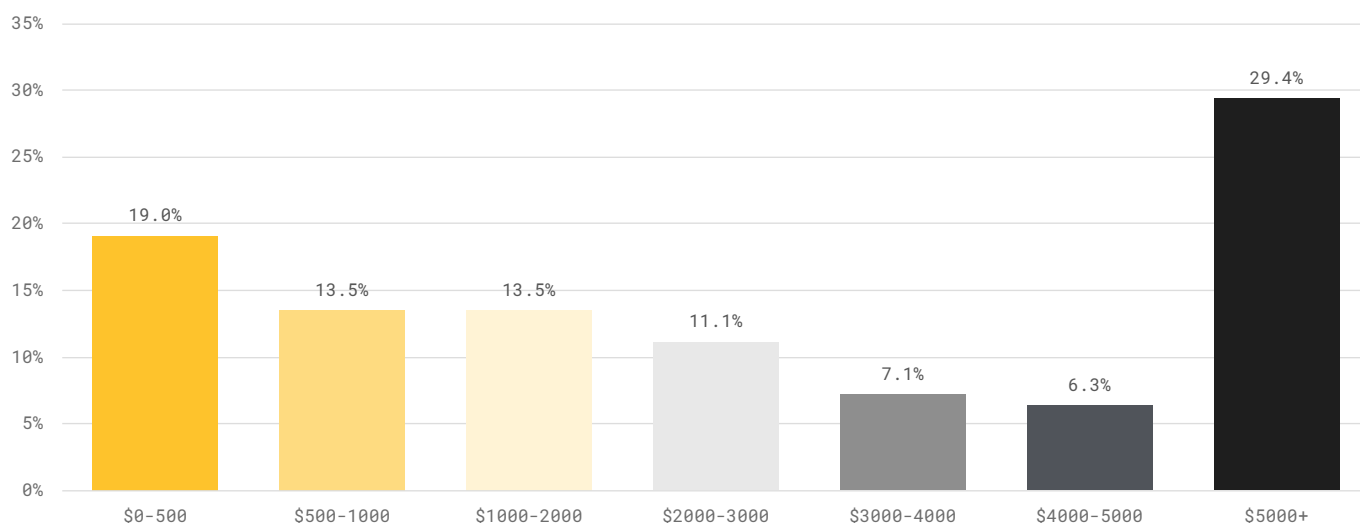


## 2. What direct financial costs did you incur during the period the good was being repaired (for instance, visiting the retailer, or hiring a replacement for the good)?

The AAA Lemon Survey found that consumers reported being out of pocket, on average, around \$1,970 due to the associated costs incurred with seeking a resolution. Where a consumer reported missing work, these hours away averaged at 45 hours. These figures clearly demonstrate that when disputes become protracted and involve many third parties, costs can quickly escalate.

Hire cars can also cost consumers many hundreds and even thousands of dollars. Where a consumer has been forced to trade in their car, these costs can amount to tens of thousands of dollars.

Estimate of associated costs



### Case Study – Shantell

*Shantell experienced multiple failures within 60 days of purchasing a new demonstrator car. The first fault was discovered before the car was due for its 3000km service. According to Shantell, the dealership did not rectify the issue. Following this, Shantell experienced an additional eight faults, which caused her on many occasions to be without a car. Shantell was required to hire a car for more than three months, experienced loss of business, fell behind on finance due to strains on the cost of living, loss of registration for the car, and required tow trucks on multiple occasions when her vehicle experienced faults on the road. In addition, Shantell suffered emotionally from the stress. Unfortunately, the manufacturer has failed to offer a satisfactory remedy, leaving Shantell out of pocket tens of thousands of dollars.*

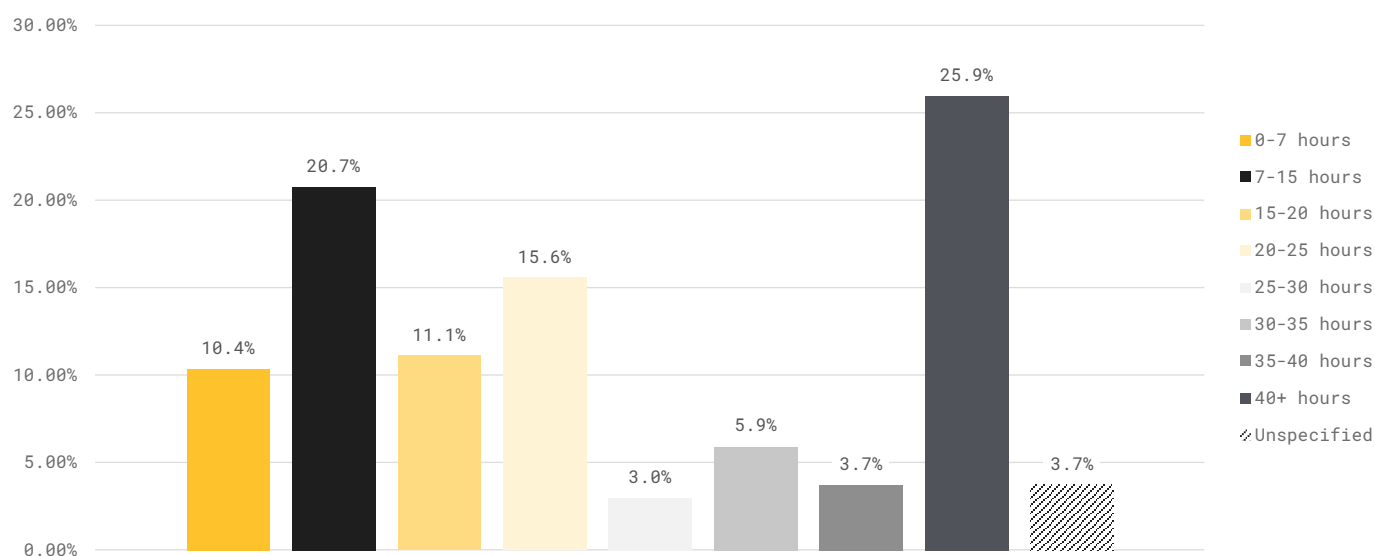


### 3. How much time did you spend collecting the repaired good and/or negotiating with the retailer?

The AAA Lemon Survey found that, where a consumer reported that they missed work, they missed on average 45 hours of work when trying to seek a remedy under the ACL. Work hours are usually lost to additional travel (i.e. travelling to and from dealerships for repairs),

longer commutes due to accessing alternative modes of transport, attending courts and tribunals, seeking third party advice, writing emails and letters as well as engaging in face-to-face and telephone conversations.

**Estimate of number of work hours missed**



#### Case Study - Timothy

Timothy bought a new car and after 60 days it had multiple faults and the engine had failed. The car has spent almost eight weeks in the workshop in less than a year. Faults have included a failed clutch, wheel bearing failure, oil seal problems and cracking of the thermostat housing. Timothy had to go to Fair Trading to try and find a resolution and estimates that he has lost over 560 hours or 11 weeks of work time as he needs his vehicle for work.

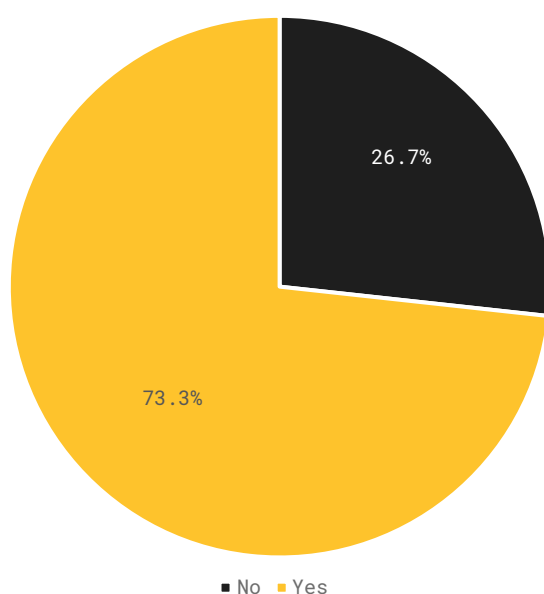
#### 4. What is your preferred remedy when there has been a failure to meet the guarantees within a short period of time – a refund, replacement or repair?

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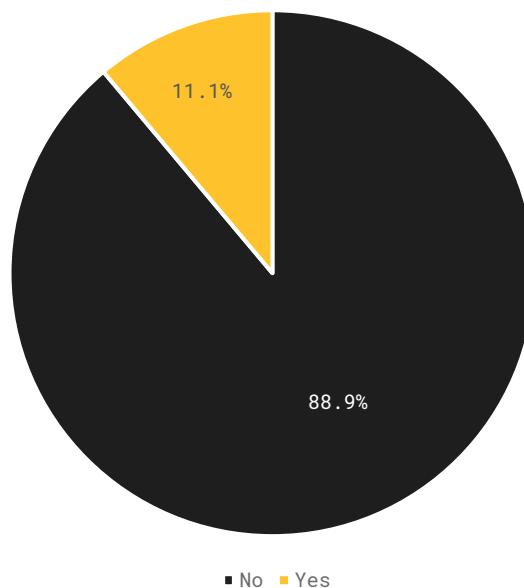
The AAA Lemon Survey found that even where a refund or replacement is preferred consumers reported that a repair is the only remedy offered. This is clearly evident by the fact that out of 306 respondents only two were offered a replacement vehicle.

Further, where a refund is offered, it is often less than the purchase price, or alternatively a discount on a new model vehicle is offered. Overall, consumers were extremely disappointed with the remedy provided with 88 per cent of survey respondents reported being dissatisfied.

**Percentage of repairs made to vehicles with faults identified in less than 30 days**



**Replacements offered to vehicles with faults identified in less than 30 days**



#### Case Study – Olivia

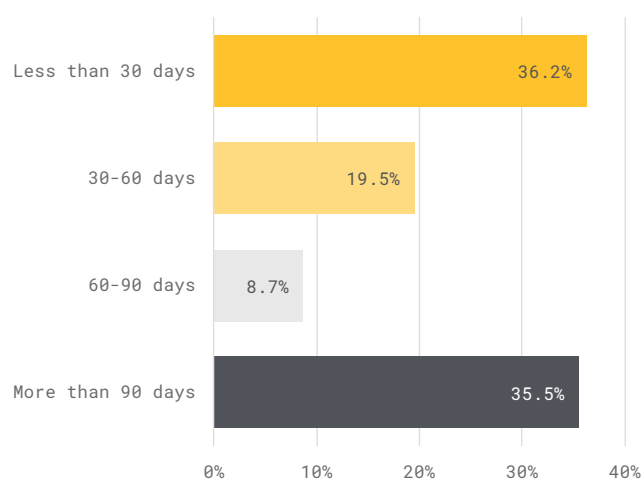
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Olivia purchase a new car and before 60 days it experienced a major mechanical fault. Although repairs were made under warranty, the problem was never resolved. “Due to the warranty expiring I have not been able to have the transmission changed again without having to pay an excessive amount. The car shudders when accelerating, makes a strange crunching noise when it tries to change gears. Due to these issues, I have not been able to sell the car nor get a refund or replacement. I am stuck with a lemon.”

5. What is your preferred approach to the time period in Option 2? Should another time period be considered?

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**How long after purchase was the fault first identified?**



The AAA supports the court enforceable undertaking with Holden which specifies a 60 day time period for a consumer to claim a refund or replacement. The AAA Lemon Survey shows that 56 per cent of respondents reported experiencing an issue with their vehicle in the first 60 days of ownership. This shows that a significant number of consumers would benefit from the proposed amendments to the ACL.





## 6. Are there any benefits or costs to consumers that have not been acknowledged?

The AAA Lemon Survey found that, on average, respondents reported that they incurred \$1,970 in associated costs while trying to seek a remedy. This clearly demonstrates that the ACL is not providing adequate protection to car buyers.

On the low-end, repair costs were covered either by insurance or warranty, however time away from work or hire car costs were still incurred by the consumer. In the high-end scenarios, owners incurred the cost of repair, vehicle inspections, legal fees, hiring a vehicle and depreciation costs from selling the faulty vehicle. In some of the cases reported, owners had no other choice but to purchase a new vehicle or trade their vehicle in at a significant loss.

The Final RIS will need to make special reference to the significant costs that can arise when consumers seek remedy for a faulty motor vehicle. Compared to other household goods and services, the costs associated can be extreme.



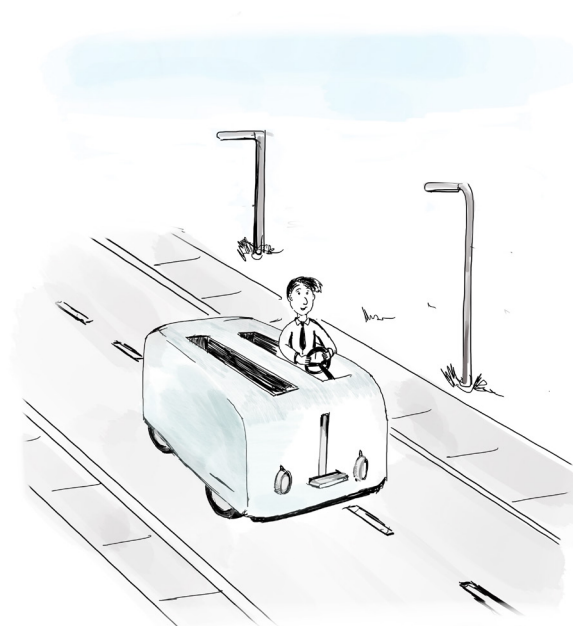
### Case Study - Sonia

Sonia purchased a new vehicle that encountered a major mechanical failure. Rather than a refund or a replacement the manufacturer offered a trade-in or buy-back. Sonia was asked to sign a confidentiality agreement after she had surrendered her old faulty vehicle and had paid the trade-in difference and had signed the contract. The manufacturer 'should have offered immediate and total refunds to all its customers as well as compensation for the ongoing stress and inconvenience of having to negotiate their way out of driving a 100% unsafe vehicle.'

## 7. Are there any products that should be exempt from a short specified period? (for example, by industry, type of good, value of good)

The AAA strongly objects to a situation where motor vehicles are given less protection than other lower value goods and remain subject to status quo arrangements. Sellers of higher value goods, like motor vehicles, should be held to an even higher standard in providing remedies when issues arise given the costs incurred by consumers to purchase these goods.

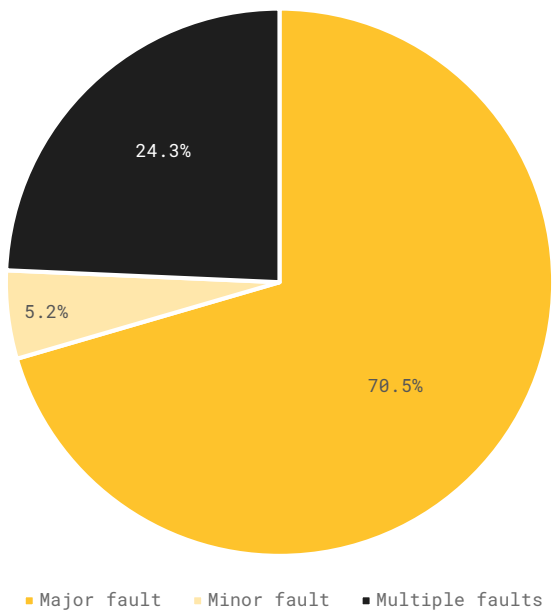
The purchase of a vehicle is one of the biggest financial investments a consumer will make, yet the protection is often less than that afforded to the purchase of a toaster. For example, a faulty toaster or white good is highly unlikely to be subjected to repeated rounds of repair. The consumer is unlikely to need to hire a replacement toaster or white good while the original product is being repaired or replaced. The consumer is also unlikely to need to acquire third party advice as to the likely source of a problem. However, the laws and protections afforded to consumers with a faulty toaster or white good are the same as afforded to the consumer with a faulty car. The proposed reforms must seek to improve the significant imbalance between consumers who purchase low value goods and those that purchase high value goods, providing consumers with additional protection where possible.



8. What would be an appropriate value threshold for Option 3 ‘high value goods’?

The AAA would only support applying a value threshold for ‘high value’ goods where additional protections were afforded to the purchase of these goods i.e. 60 day period instead of 30 day period for a failure in a short period of time. The AAA notes that the cheapest new car sold in 2017 was a Suzuki Celerio at \$10,700<sup>2</sup>. A threshold of around \$10,000 may be appropriate for determining a ‘high value’ good.

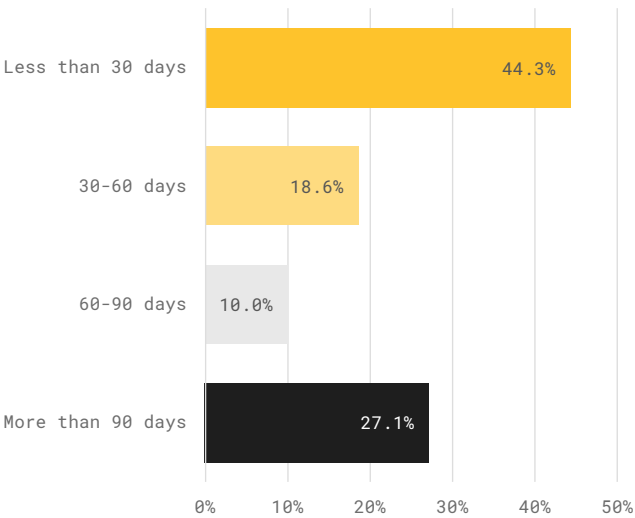
How would you describe the fault?



9. Have you experienced issues with a trader not agreeing to a refund when you have had multiple non-major failures with a good?

The AAA Lemon Survey found that 24.3 per cent of respondents reported encountering multiple issues with their vehicle. Where multiple issues were reported 44 per cent encountered them in the first 30 days while 19 per cent encountered them between 30 to 60 days.

How long after purchase was the fault first identified (multiple faults)



Case Study – Monika

Monika bought a new car which has needed three replacement clutch/transmissions after 53,000km. She has sought a refund or replacement with the manufacturer and the dealer with no success. The manufacturer “wants to give me another repair, I’ve asked for a refund or replacement. Was offered \$11,200 last week for a buy-back. I paid \$20,000 on purchase in March 2014. Declined the offer as it’s not a refund or a replacement. Waiting for the dealership to now negotiate hopefully an acceptable outcome”.

10. Would you be more confident negotiating a refund with greater clarification about whether multiple non-major failures can amount to a major failure?

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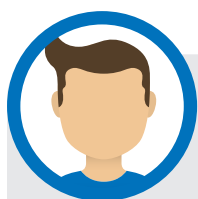
The AAA strongly believes that clarifying that multiple non-major failures can amount to a major failure under the ACL will empower consumers to uphold their rights under the law.

11. Are there any product types that would benefit from a set number of non-major failures that would amount to a major failure (as described in Option 3)?

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The AAA is concerned that defining a set number of non-major failures may take some of the flexibility out of applying the ACL to vehicles. However, if a set number of non-major failures was preferred, the case studies analysed as part of the AAA Lemon Survey indicate that three non-major failures generally triggers the consumer seeking a refund or replacement.

Option 2 would involve a legislative amendment to clarify that multiple non-major failures can amount to a major failure without being prescriptive as to the number of non-major failures. Although, it would be left to courts and tribunals to determine the amount of non-major failures required, the greater certainty provided by this inclusion in legislation alone will empower consumers to uphold their rights to a greater extent than allowed previously.



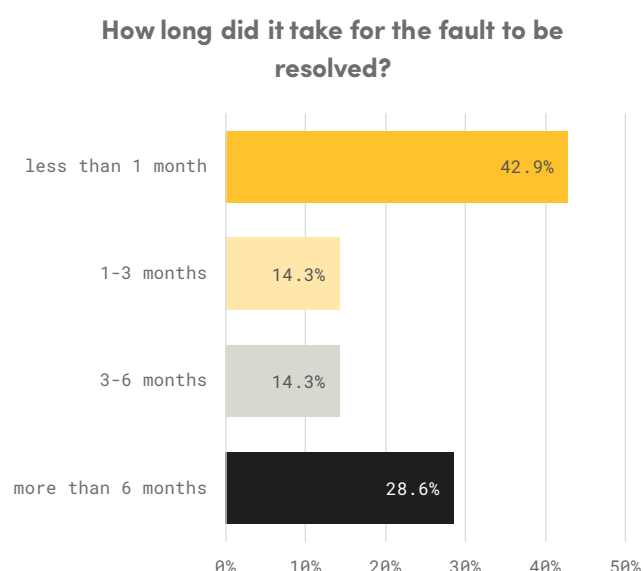
#### Case Study - Gary

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Gary's new car has experienced multiple faults after purchasing it new. He asked the trader for a refund on many occasions, but his request was rejected. "Apart from refund requests I also have had over 40 problems with my car yet all government departments do is take notes....it is OUR choice for repair, replace or refund not theirs."

12. Where a good you have returned has been repaired what has been the typical time taken for the good to be repaired?

Respondents to the AAA Lemon Survey reported that around 43 per cent of repairs were made within one month, while 28.6 per cent of repairs took six months or more. The AAA strongly believes that 6 months is a completely unacceptable timeframe for a fault to be resolved.



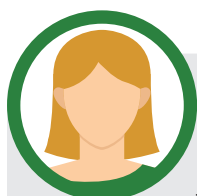
13. Where you have had to have a good repaired, on average how many more times have you needed to have that good repaired for other non-major failures?

The AAA Lemon Survey found that consumers were often faced with multiple non-major problems with their vehicle after it had been initially repaired. This was clearly evident by the fact that 24 per cent of car buyers reported having multiple faults with their vehicle.



#### Case Study - Catherine

Catherine purchased a new car but after only 30 days she began experiencing a series of non-major problems. The car had an oil leak that took over four years to be resolved. On top of the ongoing issue of leaking oil, the car needed its air conditioning repaired and replaced and the infotainment unit replaced. The car also had a broken door handle and the back windscreen wiper would spontaneously come on.



#### Case Study - Jess

Jess purchased a new car and in less than 30 days it had a major mechanical fault which meant that the car often wouldn't start. The car was eventually replaced but was in the service department for more than 6 months. While some of the hire car costs were covered, Jess was paying insurance and repayments on a car she didn't have. "They had the car for a number of months trying to fix it. In the meantime they lost my set of proximity keys which they had to replace. They kept refusing to replace the car or give me what I paid for the car." Jess spent over 12 months seeking a remedy for her faulty car and had a significant amount of time off work. She also experienced time periods where she was without a car and had limited access to public transport. In the end Jess was given a brand new replacement car but sold it shortly after receiving it at a loss on the list price as she had lost faith in the car and the manufacturer.





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