New Car Retailing Industry

a market study by the ACCC

# A submission by Erich Kannen Principal

# Car Solutions Motor Vehicle Consultants

About Car Solutions Motor Vehicle Consultants

Car Solutions Motor Vehicle Consultants, hereafter called Car Solutions commenced operation under the direction of its Principal Erich Kannen in 1996. I, Erich Kannen joined the Australian motor vehicle industry first in late 1976 as a Fleet & Leasing Manager for a large Sydney metropolitan Ford dealership. I was promoted through the retail sales ranks to Dealer Principal of a large Sydney Toyota dealership belonging to the group I originally joined in 1976. For this dealership-group I also operated a BMW and Volvo franchise. I later established Sydney Mitsubishi in Glebe for a large international corporation before leaving in 1996 for my own company, Car Solutions. During a brief absence from the group I was the dealer principal of a Holden and Nissan dealership.

Car Solutions originally operated as a car broker. The end user in many cases were Trade and Credit Unions or their members. This business model lasted until 2006. With the advent of the internet, retailing changed and Car Solutions moved to providing pre-purchase inspection (mostly for used cars) and dispute resolution support to the consumer. This business model is still operating today. During this time, through Car Solutions I have provided regular support to consumers in their dispute with new car dealers and manufacturers.

Appendix D – List of Questions

Re Question 14.

Have consumers relied on consumer guarantee rights to seek a refund, repair or replacement for a new car that had a major fault and had been denied. Here is example one.

Example 1.

A consumer had bought a brand-new Mitsubishi Triton from a South Coast franchised Mitsubishi dealer at cost of over $45,000. When taking delivery some paint imperfections were noticed. He was persuaded to take delivery of the car and was promised the issues would be rectified at the first service. The problem was not rectified, at least to his satisfaction and the owner took the car to a independent panel shop to see what remedy would be required. To his surprise he was told the car had previous paint and panel repairs. The implication was that the car had been involved in an accident of some kind.

**Problem 1.**

The car was delivered to a consumer even though it was acknowledged by the dealer not be up to up to the required new car standard and required rectification work.

**Problem 2**.

The problem was not repaired to the satisfaction of the purchaser as had been promised. Rather than repainting the affected panels properly the dealer, to keep the cost down had taken a minimalist approach and tried to repair the affected panels using minimum resources, by buffing and polishing.

**Problem 3. (This relates to Question 18)**

The dealer, unless he has caused the problem himself, something he would be unlikely to admit, relies on a third party to pay for the repairs. Normally that would be the manufacturer if the problem was warranty related. It could be an insurance or transport company if an accident occurred during transport. In any case the consumers redress is to the dealer. The parties (manufacturer and dealer) to this application/claim at first acknowledged that a problem existed, although in their opinion it was a minor paint issue. They refused to acknowledged that a bigger issue existed until, given the evidence no other choice existed.

A representative from the manufacturer was present at the hearing to support the dealer and to protect the manufacturers interests i.e. minimise the financial impact of a negative determination by the Tribunal.

**Problem 4.**

Repairers, whether panel or mechanical shops do not want to get involved in disputes. They do not have the resources, skill, ability or willingness to be party to what they consider things that don’t concern them. Sometimes, if Insurers are involved, panel shops particularly cannot afford to upset the relationship with an insurer by taking sides with a consumer. Panel shops rely on insurers for future work.

This consumer found Car Solutions. A close inspection by Car Solutions found that the car had most likely been involved in a low speed accident after it had left the production line. A representative from the manufacturer rejected this conclusion and offered to repaint the affected panels properly, something that should have been done in the first place. The representative from the manufacturer even argued that under the Motor Dealer Act of NSW they could replace several panels, let alone just repaint them, and it would still be considered a new car. Consequently, he argued, no compensation should be awarded to the owner of the car. The consumer however was seeking compensation under the ACL. However, the Tribunal awarded an appropriate amount of compensation.

**Problem 5.**

Consumers find it difficult to find organisations that are willing and able to provide “Expert Opinions”.

**Solution:** Set up a register for Experts willing to provide Expert opinions.

A copy of the NSW Civil & Administrative Tribunals determination can be provided but has not been included to protect the confidentiality of the parties involved.

Re Question 16 and 18.

Question 16:

Are there examples of consumers being advised that rights to a repair, replacement or refund are limited because a vehicle is outside the manufacturer’s warranty? If so, does this arise when dealing with a dealer or a manufacturer?

Question 18:

Are dealers constrained in their ability to provide remedies to consumers by, for example contractual clauses requiring prior manufacturer’s approval to provide specific remedy or reliance on manufacturer’s expertise in diagnosing issues.

General:

In most cases the manufacturer provides the warranty rather than the dealer. The manufacturer reimburses the dealer for the work carried out at discounted rates (relative to retail pricing). Exact conditions and amounts vary from brand to brand. Normally dealers are authorised predetermined maximum amounts they are permitted to spend on warranty. These amounts can be a limit per vehicle, per month, or a combination of both. Specifics depend on the manufacturer and the dealerships standing with that manufacturer. Dealers normally have nothing to gain by not providing the best possible warranty service to the consumer. They are restrained however by the manufacturers policies, restrictions and limitations.

Naturally manufacturers try to keep warranty costs down. So, the first option is always the cheapest option. The cheapest option however does not always work. That is why it often takes several attempts to rectify what seems a relatively simple problem.

The argument that any mechanical fault can be rectified is correct. Mechanical faults can even be fixed the first time the car gets into the workshop were it not for the policies of the manufacturer that restrict a repairer from doing his job to the best of their ability. Lemon Laws are required to encourage the manufacturer to authorise the best solutions to a problem first up and not the cheapest.

**Problem:**

Whilst the manufacturer takes time to minimise costs, often requiring multiple attempts to rectify a problem, the burden is carried by the consumer. The consumer is without a car often for days on end, some-times weeks. The winner is the manufacturer – the loser is the consumer.

If a consumer buys a brand-new car, the consumer is entitled to expect it to be without faults. If a fault cannot be fixed by the second attempt it’s because the manufacturer is unwilling to commit the necessary resources to the problem. There is no incentive to do so. There is nothing that would prevent the manufacturer to replace a faulty (the problem) car with a new car. The cost to the manufacturer is relatively small. All Manufacturers run a fleet of cars for staff, for the press to test vehicles, as loan cars, cars for celebrities and so called ambassadors etc. A faulty car, once repaired could simply be placed in that fleet, used and disposed of with all other cars.

**A Lemon Law will benefit everybody.**

Consumers will have a higher regard for their chosen brand, more confidence in the product and are more likely to own another car of the same brand.

Dealers will have more leverage with the manufacturer to press for permission to apply the best practice, although not necessarily cheapest remedy to repair the car to the customer’s satisfaction. The happy customer is much more likely to return for future service work.

Factories would have an incentive to offer a disgruntled consumer a replacement car and if handled properly retain the customer for future repeat business at only a small additional cost.

Note: Dealers rely on the manufacturer to pay the warranty bill, a bill that can be substantial by the end of any given month.

**Solution:** The manufacturer requires an incentive to expedite non-routine warranty. Instead of allowing five attempts to rectify a problem, as it currently the case under ACL, the maximum should be changed. A brand-new car that cannot be repaired within five working days (40 or so working hours) should be declared a Lemon. Unavailability of parts etc. is not an excuse. If parts are not available, they should be.

Example 2.

A consumer had bought a brand-new Ford Falcon in 2008 and noticed rust appearing sometime after 2012. The manufacturer through the dealer at first denied responsibility, claiming industrial fall out being the cause. They also claimed the car was out of warranty, even though a closer look revealed it had in addition to the common 3 year warranty also a 6 year “Perforation Warranty” covering the body. Eventually the manufacturer agreed and accepted responsibility for the rust. By this time the rust had developed to a stage that the car was certified as unroadworthy. The manufacturer agreed to repair the car. The consumer argued the car should be replaced. The manufacturer through the dealer advised that that was not an option. The consumer contacted Car Solutions for assistance. Following our Expert report the matter was listed with NCAT’s predecessor the Small Claims Tribunal for a hearing. I, as Expert attended the hearing to provide Expert evidence. My Expert evidence was that, I concluded that the exact extent of the rust present was not known, but that the rust was extensive and would spread. Most importantly I concluded that the rust was present when the car was originally sold in 2008. The Tribunal accepted my evidence and its determination satisfied the consumer. A copy of the Expert report can be provided. The Tribunal’s determination is unfortunately not in Car Solutions possession.

Re Question 39, 40 and 41:

What is the purpose of a logbook? How is this communicated to consumers? What other uses are there for a logbook?

**Answer:**

The log book serves different people different purposes.

* An up to date logbook documenting servicing as recommended by the manufacturer adds value to the car benefitting the owner/seller.
* Many prospective buyers of, especially relatively new vehicles, value a well a car that is well maintained, and are willing to pay more for it.

**A logbook impacts on the value of a car.**

* Knowing the service provider also influences the value of the car. Most buyers of relatively new cars prefer a car serviced by a franchised dealer over a car serviced by an independent and often budget service provider.
* The logbook is used as a reference by the current owner to ascertain when the next service is due.
* A car that is well maintained is more reliable, i.e. less likely to break down.

To know the servicing dealer is important as it gives clues as to the likelihood that manufacturer’s field or recall campaigns have been acted upon. A car that was maintained by an independent service provider is not likely to have its manufacturers field campaigns acted upon.

It is essential that the integrity of the logbook, be it hard copy (most), online (Land Rover) or the cars on board computer system (BMW) is preserved.

**Important Note:**

The ideal logbooks would contain the first owners name - not all do (some BMW models)

The ideal logbooks would contain a section where the odometer reading is entered - not all do (Lexus)

Electronic logbook’s access should be secure so that only licenced repairers can update them and their name should be visible to all.

Electronic logbook’s past entries should be secure from being altered.

Electronic logbooks should allow read-only access to all.

The End