

Tuesday 17 October 2017

Australian Competition & Consumer Commission

Email: newcars@accc.gov.au

Dear ACCC,

RE: Supplementary submission to the ACCC's New Cars Market Study

I write regarding the ACCC's new cars market study. CHOICE has received a number of complaints from consumers struggling to resolve comparatively straightforward consumer guarantee problems with their new cars, particularly in relation to poor quality interiors being sold as premium 'leather' products:

- Martin¹ contacted CHOICE in July 2017. He had purchased a new camper trailer that was advertised as having 'luxurious leather upholstery', but after he started using the trailer he realised the upholstery was actually PVC, or some other 'form of bonded or bycast material with little leather content'. Martin is still pursuing a suitable remedy from the dealer.
- Paul contacted CHOICE in October 2016, to make a complaint about his 18 month old Volkswagen (VW) Cabriolet. He paid a premium for leather seats, but at the point that he contacted CHOICE they had degraded to a significant degree. Paul was broadly aware of the consumer guarantees, and the requirement that goods be of acceptable quality ('fit for use' in his terms), and he sought a repair from his VW dealership. Paul was told by his dealership that VW deemed the damage to be 'wear and tear' and therefore would not cover repair or replacement costs under the warranty (which was still valid). Paul was also told that the seats were advertised as 'leather appointed', rather than 'leather'. Paul was also asked to provide an expert's assessment of the damage to his seats in order to prove it was not caused by ordinary wear and tear. After

¹ All names have been changed.

CHOICE became involved in his case and spoke to the manufacturer, Paul's seats were repaired.

- Ben contacted CHOICE in November 2015, to make a complaint about a Mercedes he purchased in 2011. His luxury car's 'leather' seats had deteriorated substantially, splitting down the seams in several places. He raised this as a concern with his Mercedes dealership, and was told it was 'wear and tear' and Ben would have to pay for repairs. As Ben reasonably put it to the dealership, "simply sitting on my car seat is not, in my opinion, a "wear and tear issue". Seats in cars are basic components, and obviously should last longer than 4 1/2 years regardless of warranties". Following CHOICE intervention, Mercedes agreed to replace the faulty seats at no cost to Ben.
- Feroz contacted CHOICE in October 2015 regarding his Toyota Camry. When the car was around two years old, Feroz noticed the seats beginning to peel and tear. Feroz paid extra for what he was specifically told were leather seats, but when the seats started peeling he realised the material was actually bonded leather or some other product. The car was still under warranty when Feroz raised his concern with CHOICE, and he elected to approach the dealer to see if the problem could be fixed. Feroz did not tell CHOICE whether or not he was able to access a remedy, but noted that he felt misled by the dealer and would not have paid extra for the seats if he had known they were not leather.

In addition to the above complaints, CHOICE has received other complaints from consumers in relation to their new cars that follow a similar pattern of there being a clear, uncomplicated defect with their new car but they are denied a remedy until CHOICE becomes involved. Most recently:

- Joe contacted CHOICE in March of this year regarding his four year old VW Golf. The car had travelled 34,000km and been regularly serviced by his VW dealership. At its most recent service, he was told the coolant pump required replacing at a cost of \$800. Joe felt that this part should not require replacing when the car was only four years old and had driven a comparatively low

number of kilometres. After seeking help from CHOICE, Joe went back to his dealership and they offered to replace the pump at cost.

- Mary contacted CHOICE in February this year, because the radio in her one year old Mitsubishi had stopped working. When Mary initially complained to her Mitsubishi dealer, they denied there was a problem. After persisting with her complaint, the dealer acknowledged there was an issue and attempted to fix it. The fix was unsuccessful, and Mary lodged a complaint with her local office of Fair Trading (NSW), who contacted Mitsubishi to tell them to replace the radio. Mitsubishi agreed to do this, but never contacted Mary and would not initially respond to her phone calls. Eventually, Mary was able to get in contact with Mitsubishi who offered to apply a software patch to the radio, if Mary brought the car in for a service with the dealership. The patch failed, and Mitsubishi finally agreed to order a replacement radio after Mary told them that she had spoken to CHOICE. It appears that the radio issue was one that was known to Mitsubishi, given the attempted use of the patch and an acknowledgement from the dealership that at least two other cars had needed to be fitted with replacement radios. Mary told CHOICE “I have no idea whether or not [the Mitsubishi dealership] would have been as willing to address the problem had I not mentioned that Choice was interested in monitoring progress”.
- David contacted CHOICE in September 2017, to make a complaint about his VW Passat, purchased new in 2014. The GPS in David’s car intermittently provided directions in an unintelligible manner. David raised this issue at the car’s first scheduled service, and was told the GPS software had been reloaded. The issue persisted, and David raised the problem again at the second scheduled service. The service report stated ‘sat nav speaks German at times please check for software update’. The following service report also noted the issue, after David again requested it be fixed. After this, David contacted the dealership and was told the problem was a manufacturing fault and the dealership could not provide a remedy. As far as CHOICE is aware, David’s issue has not been resolved.

Cars are comparatively complicated products, with the potential to be faulty in a range of ways that an ordinary consumer cannot specifically diagnose without assistance. If consumers with straightforward, easy-to-understand issues like ripped upholstery, broken radios and GPS's that speak German cannot access their consumer guarantee rights to remedies without lodging numerous complaints and seeking assistance from bodies like CHOICE and their local consumer law regulator, then what hope does a consumer with a legitimate, but more complex issue have? In CHOICE's view, the problem is not unreasonable consumer expectations, or impossible to understand technical issues. The problem is one of attitude. Dealerships and manufacturers are not treating their customers fairly, and the recommendations made in the ACCC's New Car Retailing Industry Draft Report will help change this.

For further information please contact CHOICE on sagar@choice.com.au.

Yours sincerely,

Sarah Agar
Acting Head of Campaigns and Policy