



Mazda Australia Pty Ltd - 7 September 2017

Response to “New Car Retailing Industry – a market study by the ACCC” draft report August 2017

Mazda Australia Pty Limited (**Mazda Australia**) welcomes the opportunity to provide comments on the ACCC's draft report entitled "*New Car Retailing Industry – a market study by the ACCC*" dated August 2017 (**Draft Report**).

Mazda Australia is at all times concerned to ensure that its customer experience and the safety of its vehicles is paramount. It is committed to continuous improvement in all aspects of its business. Mazda Australia and its dealers take very seriously our obligations to comply with the law and we pride ourselves on delivering new car purchase and maintenance services which go above and beyond those requirements. To this end, in providing these comments Mazda Australia wishes to state its willingness to work with the ACCC to discuss matters identified in the Draft Report. Our response is not intended to address every matter in detail, but rather, an overall commitment that Mazda Australia is keen to work with the ACCC and industry. It looks forward to doing so to ensure that the interests of all parties in the new car retailing supply chain are appropriately considered.

A The ACCC's draft recommendations

Mazda Australia provides the following comments on each of the draft recommendations contained in the Draft Report.

1.

Draft recommendation 3.1

The ACCC supports the amendments proposed by CAANZ in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees. Of particular relevance to issues arising in this study, the ACCC supports proposals 1, 2 and 3 in the final report on the ACL Review:

Proposal 1: *Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a ‘major failure’.*

Proposal 2: *Clarify that multiple non-major failures can amount to a major failure.*

Proposal 3: *Enhance disclosure in relation to extended warranties by requiring:*

- *agreements for extended warranties to be clear and in writing*
- *additional information in writing about what the ACL offers in comparison to the extended warranties*
- *a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing.*

Mazda Australia is supportive of the need to gain greater clarity into the way the consumer guarantee legislation applies to the car industry, especially those provisions relating to what constitutes a "major failure" and the time period in which the assessment as to whether a failure (whether major or otherwise) has occurred, is to be made.

The natural starting point would be to add further guidance to the 2013 ACCC issued guidelines. Mazda Australia is keen to provide specific industry knowledge and experience. Common sense and pragmatism is what will drive further initiative in this area. Otherwise we may be left with the untenable and uncommercial issue (ultimately for customers as well as manufacturers) that a motor vehicle is expected to operate indefinitely without any deduction for use in Australia, particularly if the ACL is applied without regard to the fact that a motor vehicle remedy needs to consider things that would not be considered in the same way as a failure of a small consumer item.

Proposal 1: *Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a "major failure".*

Mazda Australia supports the ACCC's further clarification on this issue. Mazda Australia appreciates that a customer may lose trust and confidence in their vehicle if it is immobilised for a period shortly after purchase and such immobilisation substantially inconveniences the customer. However, a distinction should be made between immobilisation which impacts the ability of the car to properly drive (as its primary purpose) versus a defect which may be rectified readily and efficiently with minimal customer inconvenience.

Proposal 2: *Clarify that multiple non-major failures can amount to a major failure.*

Mazda Australia supports the ACCC's further clarification on this issue. Again, a key consideration for Mazda Australia is whether the nature of the issues experienced by a customer is such to amount to a major failure. If further examining this issue, consideration should be given to the following:

- Clarify whether it is the same part that has to fail before the obligation is triggered? For example, will non-major faults with three completely different and not associated parts result in a major failure?
- What time period must the failures occur within – i.e. 7 minor failures in 1 year should be distinguished from 7 minor failures over a significant period of time.
- The extent to which a minor failure may be repaired and the inconvenience (if any) the customer may incur. A distinction between something which can be repaired without any inconvenience at (e.g. during a routine service) versus something which cannot be repaired without inconvenience to the customer.

Proposal 3: *Enhance disclosure in relation to extended warranties by requiring:*

- *agreements for extended warranties to be clear and in writing*

- *additional information in writing about what the ACL offers in comparison to the extended warranties*
- *a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing.*

Mazda Australia is open to any suggestion that further clarity can be provided by enhanced disclosure in relation to extended warranties to reduce the possibility of misunderstanding by consumers.

Other Considerations

As noted, Mazda Australia is supportive of the need to gain greater clarity into the way the consumer guarantee legislation applies to the car industry and interested to progress discussions on the ACCC recommendations.

Mazda Australia is keen to provide input, so that we may achieve an industry-wide directive which will provide a level playing field for all manufacturers and suppliers, rather than the ad hoc process which develops when one manufacturer or retailer agrees to apply an interpretation of the legislation which is judicially untested.

Certainly, a specified time period in which any type of manufacturing failure occurs, has the potential to assist both consumers and car manufacturers and retailers by introducing some certainty into this area of law, particularly in respect of a major failure. Although not directly addressed in the Draft Report, consideration should also be given to the following:

- Failures which are not caused by manufacturing defects e.g. those caused by consumer misuse of the vehicle or negligence. This is not about attempting to apportion blame to the customer absolutely, it is simply about identifying whether it is a “manufacturing defect” which has caused the issue or whether it has been caused by other factors.
- Clarify what the “good” is that is being referred to? In particular, is it a part, or is it the entire vehicle? In which case would the obligation be on the manufacturer or retailer to repair or replace the part, or replace the entire vehicle?
- The customer's use of the vehicle prior to such failures arising - how long the customer has had trouble free use of the vehicle.

B. ACCC proposed action points

1.

ACCC action on consumer understanding of their rights

ACCC action 3.1

The ACCC will work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantees and their interaction with warranties, which should, as industry best practice, be provided to consumers at the point of sale of a new car.

Mazda Australia welcomes any discussions with the ACCC to better understand how this may apply in the car industry and broader retail environment.

2.

ACCC action on consumer understanding of their rights

ACCC action 3.2

To assist consumers better understand their rights when it comes to new car defects and failures, the ACCC will work with other ACL regulators to publish an updated version of *Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law* (August 2013)¹ to ensure that this publication addresses the issues identified in this study, including specific guidance on criteria for determining a 'major failure'. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

As noted above, Mazda Australia welcomes the opportunity to review this updated publication and provide specific industry input to the ACCC in creating something that can provide further clarity in the law.

3.

ACCC action 3.3

Instances of misleading or deceptive conduct, or misrepresentations, in relation to the use of independent repairers or non-OE spare parts will be targeted through action by the ACCC, including enforcement action where appropriate.

Mazda Australia supports the ACCC's view that customers should not be misled regarding their right to use independent repairs or purchase non-OE parts.

Mazda Australia maintains that while the use of independent repairers and non OE-parts may not void the consumer guarantees, any such work and parts purchased which do not meet specifications may be excluded from Mazda Australia/Mazda dealer liability and that making this known to consumers will not constitute misleading or deceptive conduct or misrepresentation.

2.

Draft recommendations on access to technical information for new cars
Draft recommendation 4.1

Mazda Australia submits that it is fully compliant with the FCAI Voluntary Code of Conduct for Access to Independent Repairs, but welcomes the opportunity to work with the ACCC to discuss any further review of this issue.

3.

Draft recommendations and actions on parts

Draft recommendation 5.1

OE manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms.

Car manufacturers should develop policies which clearly outline any parts subject to restricted access on security-related grounds. These policies should be publicly available.

The FCAI is well-placed to work with manufacturers to examine whether there is benefit in agreeing a standard definition and detailed classification system for 'security-related' parts to provide certainty to parts customers.

Mazda Australia makes all parts and accessories available to any consumer to purchase via the authorised Mazda dealer network.

Mazda Australia does not restrict sale of parts for security reasons.

4.

Draft recommendations on fuel consumption and CO2 emissions claims

Draft recommendation 6.1

Changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. Introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.

Mazda Australia complies with the relevant requirements relating to fuel consumption testing as it stands and is supportive of further discussion in respect of changes in the testing regime that may be appropriate.

5.

Draft recommendations on the fuel consumption and emissions discrepancy

Draft recommendation 6.2

The ACCC supports measures to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the replacement of the current fuel consumption and emissions testing regime with the new Worldwide Harmonised Light Vehicles Test Procedure, a more realistic laboratory test, and the introduction of an on-road 'real driving emissions' test.

Mazda Australia welcomes discussions with the ACCC in this area.

6.

Draft recommendation on telematics

Draft recommendation 7.1

The ACCC supports the Productivity Commission's recommendations in its final report on Data Availability and Use for a comprehensive right for consumers to access digitally held data about themselves, including to direct data custodians to copy that data to a nominated third party which may address some of the concerns that were raised about the impacts of telematics technology on new car purchasers.

Mazda Australia supports the ACCC's statement that customers should be entitled to their vehicle data in accordance with the requirements of the Privacy Act and the National Privacy Principles.

For all Mazda vehicles, diagnostic data is available by diagnostic tool and this information may be accessed by third parties using a non-OE diagnostic tool.

Mazda does not currently have telematics technology on its cars. However, if and when Mazda adopts such technology, in Mazda's view, such information should be provided to the customer for the customer to use and disclose as they see fit, including forwarding the information to their preferred third party without involvement of the car retailer/importer.

C. Other Key Issues identified in Draft Report

In consideration of other issues arising out of the Draft Report generally, we respond to the relevant subject matters as follows:

1. Manufacturers' focus on warranty obligations to the exclusion of their consumer guarantee obligations

Mazda Australia considers each claim in the context of an overall assessment and that warranty is one question in light of the overall assessment of the claim including the rights of the customer under the consumer guarantees.

2. Manufacturers' responses to "major failures"

Mazda Australia welcomes the opportunity to work with the ACCC to explore how durable a motor vehicle should be in order to meet the reasonable consumer test. Mazda Australia also submits that such exploration should take into account the threshold issue that the failure must be a manufacturing defect and not caused by other unrelated causes, and that consideration must be given to balancing the rights of the reasonable consumer in the case of a major failure with the period of any preceding trouble free use of the vehicle and the consequent depreciation in the value of the vehicle.

3. The widespread use of non-disclosure agreements by manufacturers when resolving complaints

Mazda Australia does not request or attempt to enforce a signing of any separate confidentiality agreement in settlement claims with customers as a condition of resolving a dispute.

In limited cases, Mazda Australia has recorded the details of a settlement in a release form. As would be expected, it is simply standard practice to agree terms of any settlement so as to not leave things open to interpretation, particularly in cases where the remedy may be quite significant or unique (e.g. changeover of vehicle which may be a different model etc.).

In any case, Mazda Australia has formed the view that a confidentiality provision is no longer required in any release form in light of the concerns raised by the ACCC.

4. The lack of effective independent dispute resolution options for consumers

It is in the interest of Mazda Australia to resolve matters as quickly as possible and with minimal inconvenience to the customer. The option to pursue dispute resolution is one which should be a last resort because ultimately it means that negotiations to resolve a customer issue have failed. In situations where Mazda Australia or its dealer contests a matter using the dispute resolution mechanisms available in Australia, in Mazda's view, the law is correctly applied according to the facts.

5. Particular features of the commercial arrangements between manufacturers and dealers

The relationship between Mazda Australia and its dealers is supportive and collaborative. Mazda Australia provides Mazda dealerships with extensive support in training and ensuring that claims are expedited to ensure the customer is back on the road as quickly as possible. Dealers are encouraged to exceed customer expectations at all stages of the journey with the brand. Mazda Australia supports dealers by covering all costs associated with the resolution of an issue where a fault or defect is covered by a Mazda Australia warranty or is a manufacturer's responsibility under the consumer guarantees.

In the first instance, Mazda dealers are primarily responsible for addressing the needs of Mazda customers, and this includes identifying and remedying any issues with Mazda vehicles, including faults or defects in components. In particular, Mazda dealerships have the expertise to inspect receipted vehicles, diagnosing the causes of issues and providing appropriate resolutions. The vast majority of issues are resolved by the dealer.

6. Refusals by car manufacturers to supply security-related parts for repair and service will be monitored and addressed through action by the ACCC, including enforcement action where appropriate

Mazda Australia does not refuse supply of security related parts and welcomes the opportunity for further discussion with the ACCC.

7. The ACCC seeks further information regarding the transparency of part prices

Mazda Australia sets competitive and transparent pricing on its genuine parts. There is substantial competition within the Australian repair industry and Mazda and its Dealers remain committed to supporting sustainable, ongoing competition with high-quality parts. The Mazda focus is not just on the initial purchase, but the overall ownership experience and the cost of ownership (including servicing, maintenance and replacement parts costs) is value driven to ensure lifetime satisfaction for the customer.

D Conclusion

We trust that we have addressed many of the issues identified in your Draft Report.

Again, it is important to highlight that it is not in the interest of Mazda Australia to merely meet customer expectations and legal standards, but rather, it is our aim to exceed them. Mazda Australia's objective is to provide the ultimate customer experience and provide critical review to its processes with customer interactions in order to keep its competitive advantage. This is not to say that improvements cannot be made. To the contrary, Mazda Australia challenges its people to create better solutions each and every day to ensure we continue on a path of providing the ultimate customer experience at all cycles of their journey with Mazda. We are therefore keen to work at any proposed developments which may create greater clarity, certainty and consistency in the industry.

If you have any queries or require any clarification or elaboration to your letter, please contact me. Mazda Australia welcomes the opportunity to address these matters in further.

Yours sincerely,

A handwritten signature in black ink that reads "Vinesh Bhindi". The signature is written in a cursive style with a large, stylized initial 'V'.

Vinesh Bhindi