

**Mitsubishi Motors Australian Limited (MMAL) Exclusive Dealing Notification  
RN10000433.  
Interested Party Response – Objection to the Notification**

Email to: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

On behalf of Blue Toro Pty Ltd, I wish to submit our objection to this notification and request that the ACCC revoke this notification because this conduct has the purpose of substantially lessening competition and will result in consumer detriment – particularly choice and convenience.

### **SUMMARY**

These extended warranties are a **marketing tactic**, designed to encourage consumers to purchase a vehicle because they will have 'peace of mind' for the inevitable vehicle defects that occur with a new car purchase. The fact that car companies feel that they can sell 'peace of mind', or more accurately, 'conflict-free' warranty repairs is very concerning. Effectively the consumer already has the right to a repair, a refund or a remedy for a vehicle sold with defects, or if the vehicle is not fit for purpose, or does not fulfil the function as advertised. And yet for car owners, they are not certain they have these rights and they fear that legitimate claims will not be honoured and to have their rights honoured they may need to accept the conditions of the extended warranty that are certainly not in their interests.

Consumers can return their vehicle to the dealership for a repair if they reasonably would have expected that this component would have durability beyond the manufacturers three, five, seven or even ten-year warranty. A fuel pump for example – this component should last longer than 100,000 kilometres – and you should not need to replace a fuel pump before about six or seven years. Any fuel pump failure before that time is likely to be a manufacturer's defect. You should not need to have an extended warranty in order to claim that the manufacturers should replace this fuel pump, (particularly when you Google the North American market and discover that everywhere else in the world, this is a formal recall). But that does not happen in Australia. As revealed by the ACCC Market Study into New Car Retailing – warranty claims in Australia are hard and **full of conflict and rejection**. It took a great deal of time and intervention by the ACCC for Ford to admit the defect in the Ford Focus transmission. Until the ACCC intervention there were numerous accounts of warranty rejection including a statement to a female owner that the Ford transmission problem was her fault and she should learn to *drive like a man*. My point here is that consumers feel powerless against the car companies, they know that warranty claims are hard, they don't know that their statutory guarantees outlast the warranty and often the extended warranty. That is our lived experience in Australia. A well-documented and consistent industry failure to comply with Australian Consumer Law. Over 20% of the complaints to the ACCC relate to Vehicles.

The car manufacturers make it hard for consumers to claim warranty, there is a culture of continually denying system-wide issues until the critical mass and the negative publicity result in an ACCC Enforceable Undertaking. What is an affront to consumer rights is that the car companies trade on the lack of consumer power and fear by offering 'peace of mind' products. This 'peace of mind' offer comes at a price – the customer can only receive conflict free warranty claims on condition that they never visit an independent repairer for servicing and don't use any part that does not have a Mitsubishi brand name and a Mitsubishi price mark up. **This is an insidious cycle – make life very hard for consumers, and then**

**frighten them into an exclusive dealing arrangement and never inform them that they already had rights that the car manufacturer does not need to confer upon them.** Consumer rights should not be an add-on service or a marketing tool to increase car sales – they should be as of right. This insidious warranty culture in Australia is not a secret and is well known to the ACCC:

## **DRIVING REFORM IN THE AUTOMOTIVE MARKET**

**Speaker:** Mr Rod Sims, Chair

**Conference:** Autocare 2018, 4 May 2018

ACCC Chair Rod Sims, addresses the Australian automotive aftermarket, regarding the findings of the ACCC's new car retailing market study.

*In our market study we made many important findings and recommendations.*

*For example, we raised fundamental issues with the ability of consumers to have access to their consumer guarantee rights under the Australian Consumer Law.*

*The ACCC has seen numerous examples of practices by a number of car manufacturers that raise concerns. We found that there is a dominant 'culture of repair' underpinning systems and policies across the industry based mainly around the manufacturer's warranties, when enhanced remedies may be available under Australian Consumer Law.*

*As but one example, with Ford last week we saw that even where a new car has a known mechanical issue, consumers did not receive the ACL remedies they were entitled to. This can involve a consumer bringing their new car in to be repaired repeatedly, instead of being offered a replacement or refund. Many consumers felt their cars were unsafe.*

*In settling the proceedings against it, Ford has, by consent, admitted it engaged in unconscionable conduct and agreed to pay a \$10m penalty for the way its systems dealt with consumers. Ford has also agreed to a significant review of complaints from consumers with vehicles affected by the known mechanical issues, with a view to providing remedies, and will implement compliance measures.*

*These compliance measures are similar to those already offered by Holden and Hyundai in their court enforceable commitments to update their complaint handling systems to ensure consumer law is front and centre of relevant systems, policies and procedures.*

*Holden acknowledged that it misrepresented to some consumers that it had a discretion to decide whether the vehicle owner would be offered a refund, repair or replacement for a car with a manufacturing fault, and that any remedy was a goodwill gesture.*

*We remain committed to industry wide change and investigations into other car manufacturers continue. The motor vehicle industry is now on notice, from manufacturers to dealers, that consumer issues need to be considered individually and consumers must be provided their rights under the ACL, in addition to any warranty rights.*

### **Statements in logbooks and service manuals**

The ACCC is also concerned about misleading statements provided in logbooks and service manuals. *This includes statements that may mislead consumers that their new car must be*

**serviced only by an authorised dealer in order to maintain the warranty when no such condition exists.**

*The ACCC is reviewing logbook information and instances of misleading and deceptive conduct, or misrepresentations, will be targeted through action by the ACCC, including enforcement action where appropriate.*

## **OUR BACKGROUND**

Since 2006 Blue Toro has developed a reputation for delivering what vehicle owners want - good old-fashioned service. Our mechanics own their own business, and are incentivised to build long term loyalty, not the usual industry short term up-sells. That's why we have the most 5-star Google reviews. In our view we are Australia's most trusted and convenient dealership alternative.

As an active member of the Auto Aftermarket Industry we are extremely concerned about misleading statements made to consumers about their warranty rights as was made apparent in his address to the Autocare convention in 2018.

We are very active in providing our customers with good advice about their consumer rights and myth busting some of the most commonly held falsehoods about consumer choice. Here are some examples of our advice to our customers:

- Myth: You need to service your new car at a dealership to keep your warranty. **NOT TRUE**
- Myth: Only dealerships have the tools and knowledge to service your car. **NOT TRUE**
- Myth: Fixed price servicing saves money. **NOT TRUE**
- Myth: Capped price servicing saves money. **NOT TRUE**

If you're still unsure take a leaf from the largest vehicle servicing users - Government departments and fleet management companies. They're responsible for servicing and repairing hundreds of thousands of new cars every year. They often seek and actively promote dealership alternatives, even when vehicles are still under a new car warranty. This is because they know they have options and they want to ensure they're getting the best return on their investment. So, they shop around and ensure they provide their end customer with choice. Blue Toro services new vehicles of many Government Departments, large Public and Private companies. All without voiding any warranties

**All of this hard work to disengage dealer-only service from the warranty is clearly wasted if the ACCC approves this Exclusive Dealing notification.** In fact, any sanction of this behaviour will reinvigorate the myth that you need to service your new car at the dealership to keep your warranty.

Extended Warranty is a difficult concept to advise our customers because a 'free' extended warranty say from three to five years **seems like a no-brainer**. And yet, it is clear that many if not most, extended warranties effectively offer little or no value. Between years four and five in the life of a vehicle, precisely when extended warranties kick in, new cars usually start to experience mechanical problems. The extensive service that occurs at year five will require the purchase of additional wear and tear parts and the consumer will not be aware that these components will be replaced at a cost to them – these are not warranty parts. There is in fact very little transparency. Our understanding is that Extended Warranties generally kick in at the completion of the manufacturers' warranty. My understanding of this

warranty is that it is effectively a 5 plus 5 warranty. The first 5 years offers choice and the second five years requires dealer only servicing for the whole 10-year period. This is very confusing to a consumer to unlink or disaggregate what is the manufacturer's warranty, their statutory guarantee and the extended warranty. If this 10-year extended warranty is in place from the day of the vehicle purchase, is the message to consumers that the manufacturers' warranty expires at year 5?

## **CONCLUDING REMARKS**

**In our view this must stop – and this is the line in the sand.**

If you approve this notification you sanction this poor behaviour and the result will be a loss of benefit for consumers and a loss of innovation for our economy. Approving this notification is clearly in direct conflict with the ACCC findings in the new car retailing market study and is clearly in direct conflict with the recommendations made to Federal Government regarding choice of repair.

Australia has a poor record of supporting new car owners' consumer rights. It is treacherous that the car companies now use this poor record as a marketing tool. This Extended Warranty by Mitsubishi is, without doubt, the greatest affront. This exclusive dealing notification is effectively an attempt to sanction this anti-consumer poor behaviour.

Blue Toro provides choice to the consumer – even more so than traditional independent repairers because we come to the customer. Mobile logbook servicing is the fastest growing segment of the independent aftermarket because consumers and business owners are time-poor and often the loss of time without their vehicle equates to a loss of income. Our innovative service model is a direct result of a competitive and open market. As you are aware, innovation only occurs in markets that are not dominated by monopoly behaviour that Mitsubishi Australia is currently seeking to have sanctioned by the ACCC.

**Please do not do so.**