

E: adjudication@accg.gov.au

ACCC Ref: RN10000433

Dear Sir/Madam,

**Mitsubishi Motors Australia Limited (MMAL) Exclusive Dealing.
Objection to this Notification**

Davies Craig Pty Ltd hereby responds to the Mitsubishi Motors Australia Limited (MMAL) Exclusive Dealing Notification to the ACCC. Davies Craig Pty Ltd requests the ACCC unequivocally rejects this Exclusive Dealing Notification submitted MMAL.

About Davies Craig...

Davies, Craig Pty Ltd, a 49-year-old Australian owned and operated company, commenced as a manufacturer in the automotive and air-conditioning condenser cooling fan industry sectors producing a range of innovative Thematic® Electric Fans. Davies, Craig has since developed a comprehensive range of evolutionary EWP® Electric Water Pumps, EBP® Electric Booster Pumps and Transmission Oil Coolers.

Davies, Craig Pty Ltd, is recognized as a world leader in auto cooling technologies, now offers an extensive range of Electric Water Pumps, EWP® Electric Booster Pumps EBP® along with an all-encompassing range of engine and air-conditioning Thematic® Electric Fans and Transmission Oil Coolers for the global automotive aftermarket industry.

In 1994 Davies Craig became a Quality Endorsed Company, reaching Australian Standards ISO 9002:1994 in production, installation, and servicing. This qualification was upgraded to ISO 9001:2008. The Electric Water Pumps, EWP® are produced under ISO 9001:2008 audit. All Davies Craig cooling products are offered with a two-year unconditional warranty.

Since 1999, Davies, Craig has manufactured in Australia and sold over 100,000 Electric Water Pumps world-wide. The company has since launched five other EWP® models in both lightweight Nylon and Alloy offering various flow and pressure specifications to suit a wide variety of internal combustion and electric engines.

Davies, Craig is active in OEM development programs globally, supplying EWP® units for prototype electric and internal combustion engines. Davies, Craig's 20-year experience in the design of automotive Electric Water Pumps and the world-wide patented LCD EWP/Fan Digital Controller has placed this small Australian-owned manufacturing company ahead of the field in automotive cooling innovation and can rightly boast supplying the world's best auto cooling.

Customer satisfaction and after-sales service are of the highest priority at Davies, Craig. The entire organisation teams together, working tirelessly to satisfy all automotive and industrial cooling needs globally. All Australian made Davies, Craig Products are backed by an unconditional two-year warranty.

Davies Craig Pty Ltd wishes to highlight concerns in relation to this specific "Mitsubishi Exclusive Dealing Notification"-

It is Davies, Craig's firm view the 'MMAL Exclusive Dealing Notification' is contrary to Regulations surrounding 'fair trade' and by its very nature is seen as a restraint of trade. There is an inference here in this 'Notification' that the customer must return the vehicle to the Mitsubishi dealership to qualify for the so-called, extended "10 Year Warranty". There is a broad perceived view by vehicle owners in this country, that dealership service centres by their very nature,

are over-priced with their high hourly rates and expensive service parts. Some owners, but not all unfortunately are savvy enough to conduct their own research through the various electronic/digital platforms and shop around to ensure they obtain a more competitive service and replacement parts deal. Or, they prefer to use a convenient independent auto repairer close to their home or work. There is a wide variety of very competent and professionally qualified automotive repairers who have the skills, expertise, access to service data and up-to-date service equipment to carry out all scheduled services in accordance with each manufacturer's Service Log Book along with other ancillary repairs at more attractive hourly rates. The "Choice of Repairer" must be Legislated as soon as possible then widely publicized, to allow consumers a broader selection of automotive outlets.

We all know Australia's climactic conditions are some of the hottest in the world. Subsequently, as a result, Davies Craig receives numerous calls weekly from a broad cross-section of vehicle owners who are experiencing or have had a bad experience with an overheating engine. They are seeking professional advice as to the best methods of reducing engine temperatures and minimizing the risk of premature engine failure by installing additional auto cooling products, be it a higher powered electric cooling fan, electric water pump and/or a transmission oil cooler kit. A good many of these inquiries are from vehicle owners whose vehicle is STILL within the warranty period and are not prepared to take the risk of driving their vehicle any further until other cooling components are installed in their vehicle. When they approach the manufacturer's dealership, they are told that any modifications/additions may void their warranty. Dealerships' workshops/service centres are reticent and indeed discouraged by their principals not to step outside the normal after-sales service guidelines, and common sense appears to be void when customers enter into discussions of this nature, with dealers fearing repercussions and/or exposing themselves to other costs. The consumer, in general does not know they can exercise a choice and use their discretion when selecting a workshop, to service their vehicle. When an extended warranty is 'free' there is greater potential for the consumer to be confused about the terms of their vehicle's warranty or misled in relation to their rights. There is a lack of transparency about whether the price of any 'extended warranty' is embedded in the price of the vehicle.

MMAL state there will be cost savings as an outcome of this "Exclusive Dealing" proposal. Really? Davies, Craig utterly rejects this proposition. It is the consumer's right to purchase a vehicle of choice. The vehicle manufacturer has a legal obligation to ensure this vehicle is free of defects and faulty components. Manufacturers' dealership servicing and after-market replacement parts are more expensive than the same components that can be purchased via the independent automotive aftermarket repair sector. While it is understandable each manufacturer would encourage the consumer to revisit/return their vehicle to their allotted dealership, by and large vehicle owners usually have to pay more for vehicle maintenance and in the majority of cases are unaware they have a free choice to take their vehicle to any authorised service centre OUTSIDE a dealership network.

The higher operating overheads which most dealerships contend with are proportionally passed on to their customers. The service being offered is no different to that offered by an authorised service centre outside the dealership network. Further, service parts, many of which have been 'badge engineered' and branded to appear to have been manufactured by the vehicle supplier, can differ quite substantially in price.

The following table highlights examples of the fan clutch assembly for two popular Mitsubishi models comparing with Vicious Fan Hub and a comparison with the Lancer Electric Fan with the equivalent Davies, Craig Thermatic Fan/s and Digital Thermatic Switch, both offering a superior air flow compared to the Mitsubishi units.

Prices are current at 7/10/20.

<u>Application</u>	<u>Product</u>	<u>Mitsubishi RRP</u>	<u>Davies Craig RRP</u>
Challenger/Triton 2014-	Fan Clutch Assy	\$557.00 +GST	\$214.27+GST
" "	Blade Assy	\$120.00 +GST	
Lancer CJ 2011-	Fan Motor (only)	\$452.00 +GST	2 x #0107 \$360.00+GST HP14"
" "	Blade (only)	\$68.00 +GST	
" "	Wiring Loom (required)	\$75.00 +GST	1 x #0444 \$99.00 +GST Switch
<u>Totals:</u>		<u>\$595.00 +GST</u>	<u>\$459.00 +GST</u>

Two points being made here: The Mitsubishi OEM Fan Clutch replacement is over double the price of a Davies, Craig unit which is factory-backed by the Davies, Craig 2-year written warranty. Should the Mitsubishi owner revert to the dealership they would be denied the opportunity to convert either of these vehicles to an updated more powerful electric cooling system. (FYI, the two (2) Davies, Craig Thermatic Electric Fans, (part #0107 complete Fan assembly) deliver a superior 1500 CFM ft³/min. They would replace one smaller OEM factory Electric fan)

In Conclusion

The ACCC must reject, unconditionally, this MMAL Notification which the automotive aftermarket industry sees as the 'thin edge of the wedge' which is almost certain to cause a 'flow on effect' as other car manufacturers will follow suit. In our view, this attempt by MMAL to introduce their 'Exclusive Dealing' is seen as another underhanded method of exercising greater control over the Mitsubishi customer base. Davies, Craig sees this 'MMAL Exclusive Dealing Notification' proposal scheme as a vastly broader public issue given such relationships are highly susceptible to abuses of power and can be seen a form of entrapment. Consumers in the automotive industry MUST be alerted to this and be given the CHOICE to take their vehicle to any one of the multitude of automotive repair and servicing workshops throughout Australia and not be browbeaten into the perception they must return their vehicle to the dealer. The perceived requirement given by (OEM) manufacturers like Mitsubishi to consumers to return to the dealership 'at all costs' is, at best, misguided, bordering on deceitful.

There has been a long, well documented history of vehicle manufacturers misinforming consumers and their dealers with the various indemnities and remedies available. On some occasions vital vehicle information is not passed on to the consumer and every endeavour is made by the Dealer to extract these repair costs from the consumer. In this specific 'MMAL Exclusive Dealing' request, the Mitsubishi owner is being asked to surrender their right to use a well-qualified independent repairer for what appears to be dubious benefit. One could argue that consumers are considerably worse off having this 'Exclusive Dealing' – but many will act out of fear of losing these so-called additional consumer rights for any warranty claim.

The Australian automotive repair and service industry in Australia is characterised by the dedication and commitment of a wide variety of small and medium sized Australian-owned and operated service centres that have similar and/or superior expertise to provide quality and price competitive repairs to all motorists. These service centres are well supported by numerous national highly professional networks of wholesale parts distributors along with many Australian owned automotive aftermarket manufacturers, suppliers such as Davies, Craig Pty Ltd. This gives the consumer an extremely broad selection of aftermarket parts suppliers thus offering motorists very competitively priced service parts that are either equivalent to, or of better quality than the original equipment parts.

Davies, Craig Pty Ltd respectfully requests the ACCC examines this "Exclusive Dealing Notification" for exactly what its title represents. Further, a 'Notification' of this nature is bordering on a restraint of trade which, as you would be aware, is a common law doctrine relating to the enforceability of contractual restrictions on a consumer's freedom of choice to take their business, in this case their vehicle, to the Repairer of their choice. It is a precursor of modern competition law which must carefully consider the rights and costs to the motorists in this proposal.

Kind Regards,

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