

SUBMISSIONS IN SUPPORT

These submissions have been prepared in support of the Notification lodged by Mitsubishi Motors Australia Limited (“MMAL”) in respect of the proposed 10-year warranty program.

The writer wishes to be kept anonymous by reason of his capacity as a solicitor in the legal profession.

Background

MMAL intends to offer a warranty program on relevant products upon the following basis:

- (a) Purchasers will continue to remain entitled to a five year Warranty for their new Mitsubishi Vehicle when they service their vehicle in accordance with MMAL's service schedules and associated documentation (regardless of whether they service their new Mitsubishi Vehicles with an MMAL Dealer or Service Centre).*
- (b) In addition to the above five year Warranty, purchasers will be entitled to a 10 year Warranty where (in addition to complying with MMAL's service schedules and associated documentation) they exclusively service their new Mitsubishi Vehicle with an MMAL Dealer or Service Centre.*
- (c) Where a purchaser chooses to service their new Mitsubishi Vehicle with a non-MMAL Dealer or Service Centre, they will lose the benefit of the ten year Warranty prospectively (but will retain the benefit of the five year Warranty).*

That is, the proposal is for an extension of the standard warranty in circumstances where the product is serviced by MMAL dealerships. It is not a proposal to entirely remove the existing warranty, but to rather offer consumers further guarantees and assurances.

The objects of the Competition and Consumer Act 2010 (Cth) (“the Act”) is defined by section 2:

“The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection”

That is, in considering such notifications and proposals, the overall object of the Act should be given effect in order to:

1. Promote competition and fair trading; and
2. Provide consumer protection.

Competition & Fair Trading

The term “competition” is broadly defined and is expressed in inclusive terms. As such, all aspects of competition must be considered.

Having reviewed earlier submissions made by the public and industry, it is apparent that the primary argument against allowing the proposed program to continue is based on the premise that small business automotive mechanics and related industry will suffer as a result of the requirement to have MMAL vehicles services at the dealership for the 10 year duration, thereby reducing their business and trade opportunity.

However, such arguments fail to consider that the program is an extended warranty program. The standard 5 year warranty will continue to apply for all vehicles serviced outside of the MMAL network.

In fact, many consumers may determine that the added costs of servicing with a dealership may not be beneficial when compared to the extended warranty offered.

There is no term which dictates that a consumer must service the vehicle through the MMAL network, only that it is required in order to obtain the extended component of the warranty.

Therefore, if industry is to navigate such programs, they too will be required to remain competitive in the pricing of the services offered; ultimately benefiting consumers.

The concern about a theoretical restriction of trade as a result of the terms of the extended warranty program, therefore, must not be the primary consideration in these circumstances given that consumers still have the option and choice of servicing outside of the dealer network.

Furthermore, on the subject of competition, the automotive industry is fuelled by competition among numerous and varying brands and dealerships. The automotive industry pitches sales through offering the best products for the best price in order to attract the sale to consumers. Warranties have long been a strong offering in order to attract such customers, and increasingly competitive warranties are a result of such increasing competition; ultimately for the benefit of the consumer (as will be addressed below).

That is, the proposed extended warranty program is the result of increasing competition in the marketplace; not merely an attempt to reduce competition as other industry or submissions may suggest out of self-interest.

Therefore, allowing the program to proceed will foster further competition in the marketplace between manufacturers and dealerships for the greater benefit of consumers.

Consumer Protection

The object of the Act in providing consumer protection is self-explanatory in this instance; a longer prospective warranty period for consumers provides additional reassurance as to the quality of the product, and allows recourse should the product not meet relevant standards during the warranty period.

The Australian Consumer Law (as contained in Schedule 2 of the Act), and the Trade Practices Act before that, has long provided for the minimum standards of consumer protection.

Often disputes concerning warranties arise as a result of manufacturers not providing adequate warranties, and therefore violating the minimum standards and guarantees established by the Act (and the accompanying Australian Consumer Law).

In this instance, however, we see a manufacturer extending a warranty program to be one of the most generous in the Australian marketplace and extending beyond the mere minimum standards that consumers have often come to expect.

It would be counterproductive, and against the object of the Act in providing consumer protection, to prevent a manufacturer in these circumstances to extend their warranty on the basis proposed here by MMAL.

The subject warranty program being proposed is one which is fuelled by competition for the benefit of consumers. This is the very system sought to be perpetuated by the legislation and relevant statutory schemes, one which fosters greater competition for the benefit of consumers. No other rational conclusion can be drawn when weighing those factors against any other objections made.