

# **Mazda submission in response to the Interim Report of Consumer Affairs Australia and New Zealand on the Australian Consumer Law Review**

Mazda Australia Pty Limited (**MA**) welcomes the opportunity to make this submission in response to the Interim Report of Consumer Affairs Australia and New Zealand (**CAANZ**) on the Australian Consumer Law Review (**Interim Report**).

## **Introduction**

MA is a subsidiary of Mazda Motor Corporation of Japan (**MC**), the manufacturer of Mazda branded vehicles. MA distributes new Mazda vehicles and parts in Australia, a role it has fulfilled since 1986.

From mid-1970s to mid 1980's, Mazda sales averaged 35-40,000 cars per annum. This number dropped to 13,000 units in 1986 when MA was formed. Following a rationalisation of the Dealer network, sales were built back to 25-30,000 units by the early 1990s and remained flat through the next 10 years until 2002. Since 2002, MA has built a solid Mazda Brand operation together with a stable Mazda Dealer network to record 114,000 units of sales in 2015. This growth has been built on a consistent high quality product strategy built on distinctive design, exceptional performance and handling and a strong customer focused business ethos throughout its Dealer network.

Such a strong performance would not have been possible without a strong partnership with our retail Dealer network and a single view of our customer to ensure the best possible purchase and ownership experience. This high level of customer experience has been consistently confirmed by industry and independent surveys of customer satisfaction at purchase as well as 1<sup>st</sup> and 3<sup>rd</sup> year service milestones. The interest of customer purchase satisfaction, service retention and re-purchase are at the heart of MA's and MC's business model.

It is against this background that MA acknowledges the very important role that consumer protection laws, and the Australian Consumer Law (**ACL**), in particular, play in ensuring that consumers' interests are protected. It also recognises that, if such laws are to be effective they must provide an appropriate balance which secures and protects consumers' interests while ensuring the legitimate needs of manufacturers and distributors to continue production and sale are not stifled.

MA is willing to work with any genuine industry/regulator initiative which seeks to help improve the ease or transparency for new car buyers with their purchase and ownership experience. In this spirit, MA provides the following responses to selected issues raised in the Interim Report. MA also refers CAANZ to its submission and that of the Federal Chamber of Automotive Industries (FCAI), of which it is a member, to the recent ACCC investigation into the new car retail market in Australia. A copy of the MA submission is attachment A to this submission.

### **Section 1.2.4 Who is protected under the ACL?**

MA agrees that the differing definitions of consumer under the ACL can give rise to unnecessary complexity. It also agrees that the arbitrary monetary threshold of \$40,000 can create more issues than it resolves, as the submissions from Allens, Australian Industry Group and the Law Council of Australia's Competition and Consumer Committee referred to on page 26 of the Interim Report demonstrate. MA does not support an increase in the monetary threshold and considers that, for purchasers of vehicles, reliance on the current definition that a consumer is:

- (a) a person who acquires goods of a kind which are ordinarily acquired for personal, domestic or household consumption; or
- (b) a person who acquires a vehicle or trailer acquired for use principally in the transport of goods on public roads;

is alone sufficient to capture those which it is in the spirit of the ACL to protect. MA also notes that reliance on this definition offers protection for vehicle purchases for those small businesses who use those vehicles to transport their goods.

## **Section 2.1 Consumer Guarantees**

MA provides new car owners with comprehensive manufacturer's warranties which are in addition to the consumer guarantees under the ACL. Details of the applicable warranty, together with the mandatory wording required to inform consumers of the existence of rights under the ACL are included in the "Service & Warranty Booklet" provided with every new Mazda vehicle, as well as on the Mazda website.

MA takes its obligations as a manufacturer under the ACL very seriously and endeavours to ensure that all of its dealers understand and comply with their respective obligations as suppliers of Mazda vehicles. It is the dealers who have the primary interaction with consumers regarding the consumer's consumer guarantee rights, the manufacturer's warranty and, if offered by the dealer, the dealer's extended warranty. However, where a dealer seeks the assistance of MA with an issue which involves a claim under a consumer guarantee, MA and the dealer will frequently manage the claim jointly. In many instances, such claims are not clear cut and it can be difficult to determine whether a consumer guarantee applies. A common example is where the cause of the defect can be attributable to environmental and other non-manufacturing related issues (such as road debris, damaged road surfaces, inadvertent contact with obstacles and other extraneous events). In all instances, MA approaches such issues with a view to providing the consumer with some assistance (as a matter of customer service and to ensure a good customer experience) and will frequently offer a remedy even though it is not legally bound to do so.

MA submits that the application of the consumer guarantees under the ACL is not always clear cut which, in turn, leads to confusion and uncertainty. In particular, and by way of example only, that uncertainty arises in determining:

- the duration for which the consumer guarantees apply to a particular vehicle;
- what constitutes a "major failure", particularly in the case of a motor vehicle which contains numerous components;
- whether, and if so, when, multiple non-major failures will constitute a major failure;
- where a defect is itself minor and/or can be easily rectified but a consumer claims that he or she would not have purchased the vehicle had he or she known of the defect;
- where responsibility lies where a consumer has carried out individual specification of a vehicle without the knowledge or participation of the manufacturer or retailer, which has impacted on the performance of other components;
- when a replacement vehicle or a refund is required to be provided, particularly in circumstances where a consumer has had use of the vehicle for an extended period;
- who should bear the additional costs associated with provision of a refund or replacement, including insurance costs, dealer margins on sale, financing costs, to name a few, particularly in circumstances where the manufacturer or dealer may have no input into, or knowledge of those costs.

MA would welcome clarity in the legislation on the duration for which the consumer guarantees of acceptable quality and fitness for purpose should last and what constitutes a major failure in the context of motor vehicles, rather than leaving these issues to the ad hoc and sometimes inconsistent approach of retailers, manufacturers, regulators and Courts/tribunals. Prior to such matters becoming enshrined in the legislation, particularly if there is seen to be a need to introduce “lemon laws” (which MA considers to be unnecessary, including for the reasons quoted on pages 58 and 59 of the Interim Report from the submissions of the Australian Automotive Dealers Association, the Motor Trade Association of South Australia, the Motor Trade Association of Western Australia and the Victorian Automobile Chamber of Commerce), MA would welcome the opportunity for it, and other car companies to provide detailed input into the factors which should be taken into account in determining the same. It considers that it is not possible, or advisable for these issues to be addressed by way of voluntary responses to the Interim Report but should be done in a more specific and detailed context.

MA also submits that the consumer guarantees, as drafted are unnecessarily complex, especially when it comes to the distinctions between the obligations of retailers and manufacturers. It is difficult for retailers and manufacturers to understand these complexities, particularly when it comes to a consumer’s right to a refund, much less to explain or discuss these matters with a consumer. The mandatory wording which is required to be inserted whenever a warranty as to defects is given pursuant to regulation 90 of the *Competition and Consumer Regulations 2010* (Cth) (“Our goods come with...”) does nothing to assist and is, itself confusing, given that it refers only to goods but the guarantees apply also to services. This not only disadvantages consumers who do not have their own legal advice about their rights, but also raises a real risk of retailers and manufacturers being accused of having misled or deceived consumers about their rights if they fail to give detailed advice on every right and obligation imposed on all parties under the ACL. As noted above, MA frequently offers consumers remedies of buyback or replacement of their vehicle, even though, as a deemed manufacturer under the ACL, it has no obligation to do so. Such offers, which are designed to ensure that the consumer receives an appropriate remedy which is commensurate with the standard of customer service with which the Mazda brand is associated, should not expose it to allegations of misleading a consumer.

In some situations, including where there has been a threat of legal action, a resolution of an issue raised by a consumer will involve the entry into an agreement which contains a release of liability for MA and a requirement to keep the settlement confidential. Such agreements are common where there has been a dispute between parties. They are never used to coerce a party into accepting a settlement and, if requested, are only sought after the parties have reached agreement on the solution to be provided (which commonly is a solution which the ACL does not require the manufacturer to provide). As such, their use in this context could not be considered an unfair contract term (as some submissions have suggested (Interim Report, page 131)). MA also rejects the assertion that there is a power imbalance between consumers and traders when it comes to consumers talking about their problems and sharing their knowledge (Interim report, page 51). One only has to look at social media such as Facebook and various consumer blogs to see that consumers regularly talk about such issues and do not hesitate to disparage traders and brands, whether justified or not. It would be a strange distortion of rights, and, MA submits, against public policy, if a vehicle manufacturer and a consumer were not able to settle a dispute which included an obligation of confidentiality. Such a distortion would not achieve the desirable outcome of keeping disputes

out of the courts and enabling parties to reach resolution of their disputes without recourse to litigation.

## **Section 2.2 Product safety**

MA considers that the current system for managing product recalls is robust and works well for both consumers and manufacturers.

### **Conclusion**

In conclusion, MA submits that the ACL, and, in particular, the consumer guarantee provisions are in urgent need of amendment to:

- take into account the complexity of motor vehicle products and the diverse operating conditions for these cars;
- remove the uncertainty and complexity governing manufacturers' and retailers' obligations, and consumers' rights, as they apply to motor vehicles by, among other things, providing clearer guidance as to the duration of the application of the guarantees and the circumstances in which a major failure occurs; and
- allow for the making of offers to consumers to resolve issues without the risk of a manufacturer or retailer being regarded as misleading or deceiving consumers.

MA welcomes the opportunity to participate in further constructive discussions to facilitate these objectives.