



A WORD ON 3RD PARTY LOG BOOK SERVICING & WARRANTIES

By Professor Allan Fels, Former Chairman of the Australian Competition & Consumer Commission.

“A common concern for new car buyers is their right to have someone, other than the dealer, service the car without putting warranties at risk. Judging by the large number of calls received by the ACCC many buyers are uncertain. To put the record straight, dealers cannot declare a warranty void if the buyer has the vehicle serviced by someone else. The buyer, however, has an obligation to ensure that the selected service centre employs qualified staff, that servicing matches manufacturer’s specifications and only genuine or appropriate quality parts are used. If the centre implies that it can perform genuine servicing but falls below expectations then the customer has rights and remedies against it regardless of staff qualifications.

Where a problem arises (other than in servicing) and it is covered by the warranty, the vehicle should be taken to the dealer for repair. Under the Trade Practices Act dealers cannot limit their warranty obligations or claim the warranty is void if the vehicle is serviced by someone other than the dealer or its agent. The statutory warranty applies to new and second hand cars. A consumer expects a second hand car to run effectively without repairs although, depending on price and age, it may not be expected to last as long as, or perform to the same standard as a new car. The warranty does not apply to cars sold for spare parts or one bought at an auction. At auctions the seller’s DO YOU KNOW only obligation is to give clear title with no legal restriction on ownership. The Act prohibits anti-competitive exclusive dealing which can involve a business attaching conditions to the sale of goods thereby restricting the buyer’s freedom to choose who they deal with; in the case of a vehicle, who will service it.

One particular type of exclusive dealing is third line forcing when the supply of a good is conditional on the purchaser acquiring other goods from a third party. In the motor trade an example would be the car dealer directing a customer to a particular finance company to raise the purchase price. Third line forcing is unlawful. A dealer may offer consumers “express” warranties as a way to attract sales by showing that they stand by their vehicles. Express warranties do not override statutory warranties in any way. They may be given on the basis of “money back, no questions asked” or there may be conditions attached such as regular servicing or time limits on claims. A consumer may void an express warranty if, for example, the car is fitted with non-genuine parts. This is something to check before purchase. If a manufacturer, retailer or service provider chooses to give a voluntary express warranty then the law requires that they honor it.

The car industry is not the only part of commerce where there is some confusion about warranties and refunds. There is widespread misunderstanding by both buyers and sellers of the real nature of warranties and the difference between statutory and extended warranties. The statutory warranties entitles the purchaser to seek a refund, compensation, repair or replacement if the goods are faulty, fail to do the job intended or do not match the sample shown or have hidden defects. Some retailers encourage consumers to buy an extended warranty offering additional benefits for extra cost. Consumers should check that the protection offered is more than that available under the statutory warranty. Remember you are not entitled to a refund if you change your mind or discover the product is cheaper elsewhere”.