

Clarification, simplification and modernisation of the consumer guarantee framework

Submission to the Treasury
April 23, 2018

Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to provide a submission on the proposed amendments to the Australian Consumer Law's (ACL) consumer guarantee provisions.

The Australian Chamber considers that the ACL is working well and provides an appropriate balance between the needs of consumers and business.

The Australian Chamber continues to believe significant changes should not be made to the ACL. Any proposed measures to strengthen consumer protections must take into account compliance costs and the current comprehensive regulatory provisions in place.

Additionally, the Australian Chamber considers that consumer laws should specify a minimum set of behaviours that would be expected from market participants in efficient and competitive markets. They should not be overly prescriptive or restrict mutually beneficial transactions between buyers and sellers.

Overly prescriptive and onerous protections will result in increased costs for businesses. This will increase prices for consumers and/or reduce choice as businesses leave unviable markets. The Australian Chamber supports the continuation of a principles based consumer guarantee framework to ensure it has the flexibility to adapt appropriately to transactions involving different goods and services.

ACL Consultation RIS - Proposals

(1) Increasing the threshold in the definition of 'consumer'

The Australian Chamber believes further investigation is required before any changes are made to the threshold in the definition of 'consumer'. The Australian Chamber does not have issue with, in principle, expanding the application of the protections afforded under the ACL. We note the reason to increase the current threshold amount from \$40,000 to \$100,000 is to account for inflation between 1986, when the threshold amount was first introduced, and now. However, precisely because the \$40,000 threshold amount has been used for such a long period of time, we caution against a sudden increase to \$100,000.

The Australian Chamber believes the following should be considered before an increase in the threshold is legislated:

- Whether significant consumer harm is occurring in relation to transactions above the current threshold.
- Whether alternative protections are available for such transactions under contract law.
- The impact on compliance costs for businesses if the threshold were to increase.

(2) Clarifying consumer guarantees remedies

The Australian Chamber has a number of concerns relating to the proposals in Chapter 2 of the Regulation Impact Statement (RIS). The proposed ACL amendment to specify that consumers can choose a refund or replacement, regardless of whether the failure is major, if the failure(s) occurred within a short period of time after purchase overlooks the significant cost this would impose on businesses and consumers. The Australian Chamber strongly supports the continuation of the status quo.

More often than not, a repair is sufficient to rectify a failure identified by a consumer. A repair is also often the most cost effective approach in rectifying non-major failures. Implementing a blanket rule to require businesses to replace or refund essentially new goods will significantly increase the cost of providing these goods to consumers. These increased costs will, in turn, increase the price of these goods for consumers.

The suggested provision, which provides consumers with the right to choose between receiving a refund or replacement, will encourage consumers to demand a replacement when a repair is most cost effective. The dominant use of cost effective solutions to remedying failures is currently reflected in the price of goods. If the selection of less cost effective solutions to failures became prevalent, prices for goods will increase.

Suppliers are familiar with their products and can objectively decide whether a refund, replacement or repair is the best option to remedy a failure. Suppliers' survival is dependent on consumer purchasing their goods. They do not benefit from goods that experience failures and also wish to rectify failures as quickly as possible. The proposed amendment creates a bias towards higher cost options (refund or replacement) in rectifying a failure and, overall, will not benefit consumers or businesses long term.

The proposed ACL amendment to specify the number of multiple non-major failures that amount to a major failure is overly prescriptive and creates unnecessary regulation. The Australian Chamber strongly opposes this proposal. As the ACL currently stands, which the RIS confirms, multiple non-major failures can be considered collectively as a major failure. As such, the Australian Chamber questions whether any legislative change is required to confirm what the ACL already prescribes.

The Australian Chamber recognises that uncertainty continues to exist around the concept of a 'major failure' under the ACL. However, this is inevitable given the consumer guarantee framework must be principles based so as to provide the necessary flexibility in transactions involving different goods and services. The Australian Chamber does not support ACL amendments that would unnecessarily detract from the current flexibility provided under the ACL, flexibility that benefits both consumers and businesses. ACL amendments that fail to accommodate market nuances in the provision of goods and services will negatively impact both consumers and businesses.

(3) Enhanced disclosure for extended warranties

The RIS identifies a concern that extended warranties do not always provide consumers with significant benefits over and above a consumer's existing rights, particularly rights provided under

the ACL. This, in turn, could make it difficult for consumers to determine whether extended warranties provide value for money.

The Australian Chamber supports, in the first instance, an education campaign that increases consumers' awareness and knowledge of their rights under existing regulatory provisions. Increased knowledge and awareness of consumer rights will help consumers better understand the additional protections provided under extended warranties, and whether it is worth the additional cost for them.

The Australian Chamber further echoes the NSW Business Chamber's concerns regarding the use of oral disclosures:

- Costs associated with retraining staff and ensuring compliance with requirements.
- Potential for incorrect advice to be given even where all reasonable steps are taken by suppliers to mitigate risks.
- Potential for disputes over whether oral advice was given.

Oral disclosures also do not help consumers that may feel 'pressured' to make a quick decision. If important information is to be disclosed to consumers, it should be confirmed in writing to overcome an uncertainty that may arise in the future.

(4) Access to consumer guarantees for goods sold at auctions

The reasons for selling goods at auction are varied. It could include, for example, auctioning lost and surrendered property by organisations and auctioning goods of bankrupted entities by liquidators. The extension of consumer guarantees for goods sold at auctions might make auctions unviable for many organisations, decreasing the opportunity for consumers to purchase goods that are generally significantly discounted because of the inability to inspect the goods when they are sold online.

The Australian Chamber questions whether the benefit of extending consumer guarantees to goods sold at auctions is worth the disadvantage of decreased auction listings.



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About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

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