

## Australia's ACCC Alarmed at Increasing Issues Arising from Consumer Guarantees

### IN SHORT

**The Situation:** The Australian Competition and Consumer Commission ("ACCC") has identified a 39 percent increase in consumer guarantee reports in 2017 as compared with 2016.

**The Response:** The ACCC has indicated that it considers this a major concern, and companies should be on notice that they face a significant risk of litigation if they fall foul of the consumer guarantee laws.

**Looking Ahead:** Businesses should understand that complaints made in 2017 still leave them open to challenge. A preemptory conciliatory approach to the ACCC may be the only way of avoiding litigation.

Australia is tightening its enforcement of "consumer guarantees" under the Australian Consumer Law ("ACL") (contained in the *Competition and Consumer Act 2010*). The ACL provides statutory guarantees and warranties for any goods or services provided to consumers in Australia. These obligations are created by the statute and cannot be limited, amended or removed at all by the retailer, service provider, or manufacturer. These obligations are independent and unrelated to any warranty offered by the retailer, service provider, or manufacturer.

These obligations are increasingly a focus for the ACCC. In its first official publication of 2018, the ACCC has identified a 39 percent increase in consumer guarantee complaints to the ACCC's complaints hotline in the past year, from 21,000 in 2016 to 29,000. Businesses (including those based out of Australia but that have Australian sales) should be aware that it may not be sufficient to alter their business practices to comply with the consumer guarantee regime in 2018, and that complaints made in 2017 still leave them open to challenge by the ACCC.

#### ACL Guarantees

The ACL provides guarantees in addition to any manufacturer's guarantees or warranties for products and services offered for sale, hire, or lease for under \$40,000, or over \$40,000 but that are normally purchased for personal or household use. This includes guarantees that:

- Goods must be of acceptable quality.
- Goods must match descriptions made by the salesperson.
- Goods and services must be fit for their purpose.
- Goods must have spare parts and repair facilities available for a reasonable time after purchase, unless the consumers are informed otherwise.
- Services must be provided with acceptable care and skill or technical knowledge.
- Services must be delivered within a reasonable time where there is no agreed end date.

The ACL prescribes remedies for breaches of the consumer guarantees, including entitlement to a repair, replacement, or refund; cancelling a service; and compensation for damages and loss in some circumstances. Approximately half of the 2017 reports involved problems in obtaining remedies for faulty automotive, whitegoods, or electronics products.

Other areas of concern include businesses informing consumers that they need to take a faulty product back to the manufacturer, and misleading statements by businesses advising consumers that the explicit warranties associated with a product are their only protection.

#### Consumers Are Having Issues Enforcing Their Consumer Guarantee Rights

The ACCC has indicated that it considers this increase in reported issues concerning due to evidence that consumers are having issues enforcing their consumer guarantee rights. This follows publications in 2017 identifying concerns with the [new car retailing industry](#) and [airlines' policies in dealing with consumers](#). Businesses should be aware that there is a significant risk of litigation if they breach the consumer



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guarantees regime in the ACL, especially due to the ACCC's consistent reference to the regime in its statements, publications, and actions.

### ACCC Actions

It may be insufficient for a business to alter its practices in the new year to comply with the ACL; it may be advisable to seek legal advice on any issues or complaints that arose in 2017, in anticipation of a potential ACCC action. A preemptory conciliatory approach to the ACCC may be the only way of avoiding litigation.

Industries most likely to face ACCC scrutiny, based on the ACCC's media statement, are automotive, whitegoods, and electronics. Also, as noted above, the ACCC has recently released a report regarding the [compliance of the Australian airline industry](#) with the ACL. It is therefore likely that the Australian airline industry will now come under increased scrutiny from the ACCC.

As a matter of urgency, practices that need review and amendment include:

- "No refund" policies
- Any representations about consumers rights
- Statements as to how consumers may access those rights.

The maximum penalty for false or misleading statements (including as to the existence to a right or remedy) is A\$1.1 million for corporations and A\$220,000 for individuals.

### THREE KEY TAKEAWAYS

1. In response to a sharp increase in consumer complaints, the ACCC is focusing on consumer guarantee rights.
2. Companies that breach the ACL face a significant risk of litigation and therefore should review their consumer guarantee policies immediately to ensure compliance.
3. The automotive, whitegoods, and electronics industries are especially likely to face ACCC scrutiny.

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