

23 April 2018

Our ref: KB-C&C

Manager
Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: australianconsumerlaw@treasury.gov.au

Dear Manager

**Consultation Regulation Impact Statement Australian Consumer Law Review:
Clarification, simplification and modernisation of the consumer guarantee framework**

Thank you for the opportunity to provide a response on the clarification, simplification and modernisation of the consumer guarantee framework. The Queensland Law Society (QLS) appreciates being consulted on this important reform to the Australian Consumer Law (ACL).

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

We make the following comments on the options developed for each chapter of the Regulation Impact Statement (RIS).

Chapter 1: Increasing the threshold in the definition of 'consumer' from \$40,000 to \$100,000

We note that the Treasury has been provided with a number of views on the threshold from various stakeholders including views supporting an increase, decrease or maintenance of the current value. QLS's view is that if there is evidence to demonstrate that goods that were and should be afforded a consumer guarantee no longer attract this due to an increase in their cost beyond threshold, then the threshold should be increased to an appropriate amount.

We caution against applying indexation to the threshold however, as we consider that there should be certainty and clarity in the law. We also note that there has been some discussion about the changing nature of the economy and regulating who will be a small business versus a consumer which will also need to be considered when reviewing the current threshold. We recommend that regular reviews are undertaken to ensure that the right balance is struck between the threshold and those who it affects.

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Chapter 2: Clarifying the consumer guarantees remedies (comprised of two proposals – failure within a short period of time and multiple failures)

In our view, consistent with our previous submissions, it is important that any change in the law is accompanied by better resourcing for regulators to allow them to enforce the new and existing laws to a greater extent.

We note the considerable evidence demonstrating difficulties consumers face with the current guarantee arrangement, usually with higher value goods such as cars and white goods. In these circumstances we do not consider that maintaining the status quo is appropriate. We consider that the imposition of a short period of time within which a consumer is entitled to a refund or replacement without the requirement of proving a major failure may be appropriate. However, as noted in option 3, the definition of "major failure" is the subject of debate. In addition, we query the difference between the uses of terms "non-major failure" over "minor failures". All definitions should be clearly understood by consumers and suppliers. It is important to clarify these definitions in any new legislation.

We also note the significant difficulties a consumer may have in providing expert evidence to prove a major failure, in QCAT or a Court. We strongly recommend that the number of minor failures which constitute a major failure be specifically identified in the legislation for reasons of clarity and certainty for both industry and consumers.

We also consider there should be guidance as to whether each minor failure needs to occur concurrently, or whether a major failure could comprise successive failures with the same part. For example, do multiple minor failures in a motor vehicle constitute a major failure in that vehicle or is a recurring issue with one part sufficient?

We also consider that the word 'can' is ambiguous in that it could be construed as permissive or mandatory. We suggest that it be replaced by the words 'it does'.

Chapter 3: Enhanced disclosure for extended warranties

We submit that currently many consumers do not understand the difference between an extended warranty they have purchased and any existing protections that they have under the Australian Consumer Law. In our view, it is important that in any market, the seller should be required to know the product they are selling to a consumer and likewise the consumer should understand the risks and benefits of any product they are purchasing so that they can make an informed decision about the product's value to them.

As a result, we submit that additional disclosure should be provided to consumers about extended warranties to address the current information asymmetry in the market.

It is important that any additional disclosure be simple for consumers to understand.

Opt-in vs Opt out process for Consumer Warranties

Our view is that the purpose of this legislation is to protect all consumers, and this protection is particularly important in relation to vulnerable consumers. An opt-out process, similar to the cooling-off period that exists for unsolicited sales under the Australian Consumer Law, is the most effective way of protecting vulnerable consumers.

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We acknowledge that an opt-in process may be effective for more sophisticated, less vulnerable, consumers, however, in our view the focus of the legislation should be on protecting those consumers who are most at risk of being exploited.

Chapter 4: Access to consumer guarantees for goods sold at auctions

Our view is the law should apply equally to all consumers and that there are no justifiable differences in a sale by auction to justify its exclusion from consumer guarantee requirements.

We would appreciate the opportunity to contribute further to these reforms including the review of any draft legislation.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to K.Brodnik@qls.com.au.

Yours faithfully



Ken Taylor
President