

CESA COMMENTS ON AUSTRALIAN CONSUMER LAW REVIEW ISSUES PAPER

The Consumer Electronics Suppliers Association (CESA) welcomes the opportunity to comment on the above Issues Paper.

CESA is a premier industry body in Australia representing a variety of suppliers of consumer and commercial electrical and electronic appliances and equipment, the majority of which would be subject to ACL requirements. A list of our members is available on our website www.cesa.asn.au.

CONSUMER POLICY IN AUSTRALIA

Q1. CESA members support the national consumer policy framework and objectives, in particular the uniform federal, state and territory consumer protection laws combined with a uniform approach to enforcement of the laws.

The nationally consistent approach certainly results in compliance cost savings for business, however our members have reported an increase in the number of products returned as “DOA” (dead on arrival) or “not working” where the consumer has claimed a “major failure” and obtained a refund. When tested, many of these products have no fault at all.

It may be that some consumers have found a similar product at a lower price, or have changed their mind, or found the product did not suit their surroundings and have then returned the product to the supplier claiming it does not work, therefore claiming a refund under the ACL, although technically not entitled to (could this be “misleading or deceptive or unconscionable conduct” on behalf of the consumer?).

The actions of some suppliers in merely taking the consumers word without checking the goods, since the introduction and broad awareness of the ACL, is imposing additional regulatory compliance costs on manufacturers.

We suggest that once the consumer notifies the supplier that the goods are rejected, the supplier should be able to use the transfer of title provisions in part 5-4, section 263 of the ACL to be able to confirm the “major failure” either by testing the goods themselves or by returning the goods to the manufacturer for assessment.

Q3. To assist to reduce business compliance costs mentioned in Q1, we would like to see more stakeholder involvement in more regular reviews of the various guidelines. We would like to see more examples of various situations and suggested means of resolving the situations contained in the guidelines. We would be pleased to provide examples of real-life situations that our members regularly encounter.

AUSTRALIAN CONSUMER LAW — THE LEGAL FRAMEWORK

Q4. The ACL appears to be clearly written but certain aspects are difficult to interpret without court precedents. For example part 5-4, section 263 states that when a consumer rejects goods due to a claimed major failure property reverts to the supplier. So does that mean that the supplier now has the right to have the goods properly evaluated to assess whether a major failure actually exists? In the event that the consumer has caused the failure so a “major failure” claim is rejected, does the property revert back to the consumer or did property not revert to the supplier in the first instance because the consumer had no right to reject the goods?

As mentioned earlier, we believe the various guides should be more regularly updated with information of various situations as they occur in the market and how they may be resolved. The guides are easier to read than the ACL by consumers and businesses.

Q10. It is mentioned in the issues paper that “Consumers can claim a remedy from the supplier or manufacturer,”. If a consumer has the right to claim a refund and claims the retail price paid as the refund from the manufacturer, it places an unnecessary cost on the manufacturer, as the manufacturer would have originally only received a wholesale price for the goods from the supplier. The ACL should require the consumer to always claim the refund from the supplier. However the supplier should be guided by the manufacturer on the course of actions and costs associated in resolving the consumers problem to avoid a supplier taking inappropriate and costly actions on the assumption that the manufacturer will cover all costs. For example, a manufacturer may have an established service network or logistics arrangement that could quickly and efficiently resolve the consumers problem.

As mentioned in item 2.3.3 of the issues paper, the area around major failures and consumer rights under the consumer guarantees causes our members most concerns.

We totally support the rights provided to the consumer where there is a clear case of goods not being of acceptable quality, however what may appear to be a “major failure” to a consumer may actually not be the case.

Of particular concern is how a “major failure” can be verified. For example a consumer calls a retailer and states their large screen TV or air conditioner is not working and they would like the retailer to collect the product and provide a refund.

A reasonable consumer allows the retailer to organize a service person to attend to either confirm a major fault, which qualifies for a refund, or a fault that can easily be fixed either on the spot or by providing a replacement part in a short period of time. The technician may also determine that the product has been damaged or used abnormally by the consumer. All of those options are provided in the guidelines but there is no suggestion that the consumer should allow such

inspections. Indeed, some unreasonable consumers have refused to allow a service call at all and just demanded a collection and refund.

Similarly, if a consumer returns the small electric lawnmower, used an example in the Electrical and Whitegoods guide, for a refund because it has stopped working, how is the retailer supposed to determine that the lawnmower has been used to mow 4 hectares every two weeks without a thorough examination of the product, most likely by sending it back to the manufacturer.

As mentioned earlier, another related area of confusion is the statement on page 23 of the Consumer Guarantees guide: "*When the consumer notifies the supplier they are returning the goods, the goods become the supplier's property.*" Does this mean that when the consumer turns up with the lawnmower mentioned above, the supplier has the right to return the goods to the manufacturer for examination because the goods now belong to the supplier, even before providing the refund to the consumer?

A situation that occurs regularly but is not mentioned in the ACL or the guides is where a consumer lives say a hundred kilometers from a town or service center. The consumer has a large screen television, refrigerator or air conditioner delivered and installed and a short time later calls the supplier and claims the product has a major failure, demands a refund and wants the supplier to pick up the goods.

Without any evidence that a major failure exists, the supplier wishes to send a technician to examine the goods, but the technician needs to be paid for travel and time expenses. If the supplier pays the technician and the technician finds the consumer has damaged the goods, then the supplier must try and recover the expenses from the consumer, not covered by the ACL and not an easy task.

We believe in these cases the consumer should pay for the technician to visit. If the failure is found to be the fault of the product then the supplier is obligated under the ACL to refund to the consumer the cost of the technician and the cost of the goods. If this is difficult to include in the ACL then at least it should be provided as an example in the relevant guides.

Another example is a large expensive television receiver that suddenly stops working. This could be construed to be a major failure by the consumer however the fault may be caused by a number of problems not associated with the television receiver:

- The external roof mounted aerial or connecting cable has been damaged,
- The external aerial amplifier has been disconnected or has failed,
- A mains power surge has blown a fuse located within the television, which can easily be replaced by a technician.
- The mains power plug on the back of the television was originally loosely connected to the socket by the consumer and has worked loose.

The length of time goods should be expected to last and "reasonable durability" are difficult to define given the cost differences and ever-changing technology.

For example, consumers are aware that mobile phone and computer technology changes regularly and those products purchased today may not be able to utilize newer technology in say three years time. Analogue television receivers in the past could last for many years however digital television is a rapidly changing technology so that a television purchased say three years ago may not be able to receive new broadcast service available today. This is no “fault” of the goods or the broadcasters but consumers may not be aware of technological changes in this area.

It is issues like those mentioned above that we would like clarified and perhaps develop additional examples and amendments to the relevant guides, so that all parties are more aware of reasonable processes that should be followed in order for all parties to be able to fulfill their responsibilities under the ACL.

WARRANTY AGAINST DEFECTS

As mentioned in item 2.3.6 the ACL requires suppliers or manufacturers who provide a warranty against defects to do so in a prescribed form. This is not a problem in many products and is desirable especially for medium and high cost goods where providing the prescribed form is less of a problem.

However, as mentioned in item 1.1, in Australia we are operating in an ever-changing market with rapid technological change with trade liberalization. This means an ever-increasing supply of products designed for global markets. Requiring specific requirements, not related to safety, for Australia is a regulatory cost burden on manufacturers.

Some of our members indicated that rather than comply with the prescribed form requirements regarding the addition of the specific paragraph with reference to consumer guarantees, overseas manufacturers decided either not to supply those goods to Australia (being a very small quantity of their production) or to remove any reference to a “warranty against defects”, thus not requiring the prescribed form. This does therefore impose unnecessary compliance burdens on business and stifle effective competition and market innovation especially in the lower cost goods category.

WE suggest a relaxation of the prescribed form requirements for lower cost items, especially with increased consumer awareness of the requirements of the ACL in respect of consumer guarantees.

PROTECTING THE CONSUMER FROM UNSAFE PRODUCTS

Q’s 13 & 14. The ACL’s product safety regime provides a means for regulators to respond quickly and effectively to new product safety issues and this is welcomed.

However as stated in Principle 6 of the Guide to Regulation, policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens. Regulators should consult relevant Australian, state/territory and local government agencies and regulators to identify the scope and efficacy of the current regulatory regime. Regulators need to identify any overlapping regulatory

functions and streamline regulation or avoid creating a cumulative regulatory burden. Intergovernmental consultation can also identify innovative approaches to regulation, which may help minimise the regulatory burden on business.

The use of trusted international and/or AS/NZS safety standards is preferable unless deficiencies can be identified in those standards, in which case the deficiencies should be raised with the responsible standards bodies for review.

More use should be made of voluntary standards such as AS/NZS 3820 *Essential safety requirements for electrical equipment*, which is prescribed in some jurisdictions for mains operated equipment, however the standard also covers battery operated equipment and could be called up by the ACL in a manner similar to the European *General Product Safety Directive 2001/95/EC*.

PRODUCT RECALLS

Q14. Many years ago some suppliers/manufacturers required consumer registration to qualify for a warranty. This of course was rightly outlawed under consumer legislation, but it did provide a good reference of which consumers purchased certain products, which was useful in the event of a product recall.

Perhaps consumers should be encouraged to record their details (address/phone number/email address) with the supplier at the time of purchase and the supplier required by law to provide those details to a regulator at the time of a recall. A number of suppliers already collect consumer information but are reluctant to provide the information externally because of privacy concerns.

EFFECTIVE DISPUTE RESOLUTION

CESA fully agrees with the statements in section 3.3.1 that:

- “problems are generally prevented or avoided in the first place — for example, by providing education and guides for consumers and businesses.” And
- “where problems do occur, they are resolved in a timely manner, and the parties have access to information to help resolve the problem”.

A reasonable supplier and a reasonable consumer work well to resolve problems to the satisfaction of all parties. CESA would be pleased to assist in improving information available to consumers and suppliers, especially in improved guides.

REACH OF THE ACL – RECOGNITION OF FOREIGN JUDGMENTS

Q29. Regulatory requirements in Australia do add to the cost of doing business in Australia. Overseas suppliers in many cases can offer similar products at cheaper prices because the suppliers and products do not need to meet many Australian regulatory requirements.

CESA welcomes and supports the international project to develop a global judgments Convention. If successful, this project would expand the list of countries in which Australian judgments could be recognised and enforced.

CESA would be pleased to provide more information on our comments and to participate in further discussions.

Yours sincerely

A handwritten signature in black ink that reads "C. Doyle". The signature is written in a cursive style with a large, looped 'D'.

Colin Doyle
Technical Director
Consumer Electronics Suppliers Association
PO Box 250 Avoca Beach NSW 2251
Ph: +61 2 4382 6985
Fax: +61 2 8580 5090
Email: colin.doyle@cesa.asn.au

27 May 2016