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ARA SUBMISSION TO IMPROVING THE EFFECTIVENESS OF THE CONSUMER GUARANTEE AND SUPPLIER INDEMNIFICATION PROVISIONS UNDER THE AUSTRALIAN CONSUMER LAW

The Australian Retailers Association (ARA) welcomes the opportunity to make a submission to the Federal government's consultation process into improving the effectiveness of consumer guarantee and supplier indemnification provisions under the Australian Consumer Law (ACL).

The ARA is Australia's oldest, largest and most diverse industry retail body representing two-thirds of a \$360 billion sector that employs 1.3 million Australians. Our members have over 100,000 shopfronts and online stores across the country and operate across all retail categories - from food to fashion, hairdressing to hardware, and cosmetics to computers.

Consumer guarantee and supplier indemnification provisions are of high concern for retailers and the communities they serve. One of our members summed up the sector's commitment, saying "we take our consumer guarantee obligations and customer satisfaction very seriously and are committed to providing remedies to customers in accordance with obligations under the ACL."

The ACL includes automatic legal rights relating to certain goods and services to ensure consumers get what they pay for. While the ACL ensures retailers are liable for providing remedies to consumers for guarantee failures, it also ensures that suppliers and manufacturers are liable for indemnifying retailers for the cost of providing that remedy, where the manufacturer is at fault.

The amount a manufacturer is liable to pay can include any compensation the retailer paid to the consumer for reasonably foreseeable consequential losses.

While the government is seeking views for amendments to apply economy wide to maintain clearer standards and more consistent messages about rights and responsibilities, views are also being sought on the application of motor vehicle-specific options. The ARA offers no submission on the application of these motor vehicle-specific options as it is outside our remit as an association.

The Regulatory Impact Statement (RIS) has identified two problems that this consultation process is attempting to resolve:

- Receiving remedies: consumers are not always given the remedies they are entitled to, and
- Providing indemnification: manufacturers often fail to indemnify suppliers and retailers.

To address these problems, the RIS presents a number of options for consideration, inclusive of a means for retaining the status quo.

The following piece of member feedback succinctly articulates the sector's view.

"Customers do not have issues in accessing consumer guarantee remedies when entitled. Rather, customers are generally very confident in asserting their consumer law rights and often threaten to report any potential issue to fair trading regulators at the outset.

"Unfortunately, in (our) experience, customers and manufacturers do not appreciate the nuances of their consumer guarantee rights and obligations."

With this feedback in mind, the ARA suggests the options outlined should not be considered mutually exclusive, as there are aspects from both options that could be combined into a hybrid model for maximum benefit.

Based on the options provided in the RIS, this hybrid model should incorporate:

- An ongoing, rolling education and guidance campaign for consumers, retailers, suppliers and manufacturers (both domestic and international)
- A civil prohibition for failing to indemnify retailers where a consumer guarantee failure falls within the responsibility of a manufacturer, supplier or importer
- A civil prohibition on manufacturers, suppliers and importers against retailers seeking to enforce their indemnification rights

The ARA therefore supports the adoption of policies which continue to protect consumers – to ensure they are provided with the remedies they are entitled to – while also ensuring that retailers are indemnified appropriately by manufacturers.

Further to this, the ARA would endorse policies which provided additional support for the civil prohibition on retribution from manufacturers.

Put simply, the ARA does not think it is acceptable for retailers to be "out of pocket" as a result of honouring the responsibility of a supplier or manufacturer to refund or replace faulty merchandise. So any future model must ensure retailers are protected when doing the right thing by their customers, and protect retailers from retaliatory action from suppliers and manufacturers as a result of those actions.

Thank you again for the opportunity to make a submission to this review. Given the potential financial risk associated with consumer guarantee and supplier indemnifications for Australian retailers, any effort to improve the effectiveness of these provisions would be welcomed by the ARA, our members and the Australian retail community.

Yours sincerely



Paul Zahra
Chief Executive Officer