

11 February 2022

Consumer Policy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600 Enquiries
consumerlaw@treasury.gov.au

Dear Sir/Madam

Submission: Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law

The Consumer Electronics Suppliers Association (CESA) welcomes the opportunity to make a submission on the above Regulatory Impact Statement.

CESA is the premier national, industry body in Australia representing the consumer electronics industry. CESA participates in a range of ACCC regulatory arrangements, including the consumer guarantee under the ACL

General Comments

CESA Members endorse the broad objectives of the ACCC to improve the effectiveness of the consumer guarantee and supplier indemnification provisions of the ACL. This brief submission focuses on those issues directly related to CESA.

CESA's preference in terms of both issues (i.e. consumer guarantees and manufacturer indemnities) are (in order);

1. Option A – maintain status quo;
2. Option B – a three month education campaign (motor vehicle industry only);
and
3. Option B – a three month education campaign (economy wide).

CESA members do not support option C (prohibition + pecuniary penalties) for either issue, as we believe that consumers and suppliers may seek to use the threat of a pecuniary penalty to force manufacturers to accept consumer guarantee and indemnification claims (respectively).

Specific Questions of relevance or CESA

PART A: Receiving remedies

4. Do you consider it appropriate for factors such as a depreciation deduction (a reduction in the value of a refund for usage) to be considered relevant in determining a refund amount? In what circumstances do you consider this would be

appropriate? How would a reduction work? How should post-purchase increases in value be factored in? Please detail reasons for your position.

Yes, current legislation in the industry guide does not give guidance for depreciated refunds over life span of a product such as a TV. Typically, the principal-based legislation is deliberate in vague terminology i.e. only that items last a reasonable period of time. The issue here is that if industry push for depreciated refunds for a TV product, then Industry may be required officially state what the actual expected lifespan of a TV is. i.e. the end residual value we expect a TV to lose all its value after 5 or 10 years. There should be wording in the legislation that allows for depreciated refunds.

An additional concern of CESA members is the treatment of installed/connected products such as air conditioning and hot water systems. CESA members believe installed/connected products warrant separate and distinct consideration under the consumer guarantee and ACCC mandatory standards.

For Consumers:

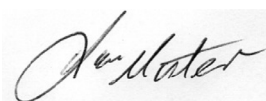
12. If you have experienced issues where a trader has offered to repair, rather than refund or replace a good with a major failure:

a. What direct financial costs did you incur during the period the good was being repaired (for example, visiting the retailer, taking the matter to a court or tribunal, or hiring a replacement for the good)?

In higher level complaints sometimes, customers will seek damages for unreasonable items such as arbitrary things like 'emotional trauma' it just needs to be clearly defined what is acceptable.

CESA notes that this Consultative Regulatory Impact Statement (CRIS) follows a similar RIS in 2018 ([Australian Consumer Law Review: Clarification, simplification, and modernisation of the consumer guarantee framework](#)). We would like to take this opportunity to reiterate **CESA's strong opposition** to the amendments made to the Consumer Guarantee definition of a major failure (in that 2018 RIS). This change created an addition and costly regulatory burden on suppliers by requiring suppliers to acquire and store additional product following encouragement by the ACCC for a refund rather than repair. The changes to the definition are also contrary to environmental policies on right to repair.

Yours sincerely



Ian McAlister
Chief Executive Officer