

HEFTY FINES IMPOSED FOR AVOIDING RESPONSIBILITIES UNDER THE AUSTRALIAN CONSUMER LAWS

Most members will be aware of certain vehicle manufacturers informing their customers, who are experiencing faults with their vehicle, that their warranties will not be upheld because the vehicle was serviced by a third party or an aftermarket part was fitted to the vehicle

Such representations appear to be made even when the work performed or part fitted is completely unrelated to the fault with the vehicle. Such representations mislead the customer as to their rights under the Australian Consumer Law (ACL).

So how does the Australian Competition and Consumer Commission (ACCC) and Federal Court deal with such complaints and what is the appropriate advice to be giving customers who query these issues with you when you are performing work on their vehicles?

Apple Case Example

Earlier in the year, retail giant Apple received a \$9 million fine from the Federal Court for their attempt to avoid their responsibilities under the ACL.

It was held that Apple breached the ACL by refusing to repair or refund faulty Apple products which had previously been repaired by third parties. The court held that by doing so, Apple was engaging in misleading or deceptive conduct (or conduct that was likely to mislead or deceive) because having the product repaired by a third party did not exclude the application of the ACL

safeguards and therefore could not preclude the consumer's right to a remedy.

Apple were therefore required to repair or refund products even if they had been serviced by third parties, an entitlement which they were denying their customers. This case highlights the hefty fines that can be imposed on companies who attempt to avoid their responsibilities under the ACL.

Action taken by the ACCC against vehicle manufacturers who attempt to avoid their responsibilities under the ACL

Recently, we have seen the ACCC attempting to deal with an increase of vehicle manufacturers breaching the ACL by denying remedies to consumers to which they are entitled. The ACCC has stated that consumers purchasing new vehicle are entitled to free repairs (minor failures) or replacement of the car or a full refund (for major failures), if their vehicles malfunction.

In an attempt to prevent future non-compliance, the ACCC has taken action against some major vehicle manufacturers including Hyundai and Ford. From the action taken so far, we can see that the ACCC are focused on ensuring vehicle

IMPORTANT NEWS

On 23 August 2018 the Treasury Laws Amendment (2016 Measures No. 3) Bill was passed in the Federal Parliament.

This Bill increases the recommended penalty for breaches by companies of the ACL from \$1.1 million to the greatest of the following:

- I. \$10,000,000;
- II. three times the value of the benefit received by way of the breach; or
- III. If the value of the benefit cannot be determined, 10 percent of the annual turnover calculated on the previous 12 months.

Individuals will also see an increase in penalties from \$220,000 to \$500,000 per breach.

From the date the Bill receives Royal Assent (we are unable to provide an exact date at this stage, however, we will provide an update once Assent is received), companies who engage in false or misleading representations and unconscionable conduct in regards to the ACL will face these increased and much tougher penalties.

For more information, contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au

manufacturers are notifying consumers of their rights to remedies under the ACL for faults to their vehicle and ensuring that they have adequate complaints policies and procedures in place to deal with these issues.

If these issues are not addressed, it is likely that the vehicle manufacturers will find themselves in hot water with the ACCC.

What should you tell customers?

If a customer approaches you in regard to your work performed on their vehicle and whether this will void warranties/prevent remedies being obtained, you should advise them that your work does not preclude the safeguards offered by the ACL and therefore will not prevent a remedy being obtained from manufacturers for faults. This will put customer's minds at ease when having work performed on their vehicles by your workshops.

Need assistance?

Industry Legal Group provides advice on all issues relating to the Australian Consumer Laws.

Please contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au if you require any assistance.

