

WHEN DO WARRANTIES AND CONSUMER GUARANTEES APPLY?

Manufacturers and suppliers may provide customers with a warranty for products such as, vehicles or vehicle components

When there is a warranty on a product, it is important to remember that the consumer guarantees provided under the Australian Consumer Law (ACL), will continue to apply. This gives rise to several questions, including:

- How do warranties and consumer guarantees interact?
- Who is responsible for assisting the consumer?
- Who is responsible for the cost of providing a remedy (repair, replacement or refund) to the consumer?

Warranties

A warranty is a promise made by a manufacturer or a supplier to a consumer. Unlike the consumer guarantees which automatically apply under the ACL, a warranty is a promise made to a consumer at the choice of a manufacturer or supplier and operates as a contract between the person giving the warranty and the consumer.

There are several types of warranties that may be made by manufacturers or suppliers. A warranty against defects (also referred to as a manufacturer's warranty), is a promise about what the person giving the warranty will do if the product is faulty. There are also extended warranties which extends the length of a warranty; and express warranties where a verbal or written promise is made about a product, such as the characteristics of the product or how long the product will last.

Interaction of Warranties and Consumer Guarantees

Under the ACL both suppliers and manufacturers have obligations in respect of the consumer guarantees. If a warranty is given for a product, the consumer guarantees will continue to apply and will not be limited in any way.

This means that the application of warranties and consumer guarantees is multi-layered. Additionally, more than one person may carry a consumer guarantee obligation in regard to the same product.

This gives consumers several avenues to seek a remedy for the failure of a product, such as:

- through the warranty (if there is one);
- through the supplier's consumer guarantee obligation; or
- through the manufacturer's consumer guarantee obligation.

Consumer guarantees apply for a reasonable period based on the nature of the product. This

means that the consumer guarantee may continue to apply to a product after a warranty period has expired.

Who is responsible for assisting the consumer?

The consumer guarantee obligations continue to apply to both suppliers and manufacturers regardless of whether there is a warranty. The responsibility for assisting the consumer lies with the person the consumer approaches for assistance (provided the person carries the obligation for the relevant consumer guarantee).

The following is an example of a situation where a product on which a manufacturer has provided a one year warranty fails to meet the consumer guarantee as to acceptable quality (ACL section 54 [for which both suppliers and manufacturers have an obligation]):

- if the consumer approaches the manufacturer of the product for a remedy during the one year warranty period, then the manufacturer is obligated to provide a remedy pursuant to the warranty and the consumer guarantees;
- if the consumer approaches the manufacturer of the product for a remedy after the one year warranty expires, then the manufacturer is obligated to provide a remedy pursuant to the consumer guarantees;
- if the consumer approaches the supplier of the product for a remedy during the one year warranty period (rather than the manufacturer), then the supplier is obligated to provide a remedy to the consumer pursuant to the consumer guarantees;
- if the consumer approaches the supplier of the product for a remedy after the one year warranty period has expired, then the supplier is obligated to provide a remedy to the consumer pursuant to the consumer guarantees.

As a general overview, if the supplier carries an obligation in relation to a consumer guarantee, then the supplier has an obligation to assist the consumer if approached and should not redirect the consumer to the manufacturer to obtain a remedy. Instead, the supplier may be able to seek an indemnity from the manufacturer (see below).

Who is responsible for the cost of providing the remedy?

If a consumer guarantee has not been met, then a consumer may have the product repaired, replaced or refunded and may in some cases seek compensation.



The supplier has a right of indemnity against the manufacturer if the supplier has incurred costs in relation to the failure to meet the following consumer guarantees:

- the consumer guarantee as to acceptable quality (ACL section 54);
- the consumer guarantee as to fitness for a disclosed purpose, which is made known by the consumer to the manufacturer either directly or through the supplier (ACL section 55);
- the consumer guarantee in relation to the description applied to the product by or on behalf of the manufacturer (or with the express or implied consent of the manufacturer) (ACL section 56).

Additionally, in certain circumstances the supplier also has a right of indemnity against the manufacturer if the supplier is liable to pay damages to a consumer for loss or damage for the failure to meet a consumer guarantee.

If the supplier seeks to enforce the right of indemnity against the manufacturer the supplier must do so within three years commencing at the earlier of (a) the first day of the discharge of the liability or (b) the day on which the consumer commenced proceedings against the supplier.

Takeaways

The key takeaways are:

- A warranty operates as a contract between the person giving the warranty and the consumer;
- The consumer guarantees automatically apply to both suppliers and manufacturers (as applicable);
- The consumer guarantees continue to operate even where a warranty exists;
- A warranty does not limit the consumer guarantees; and
- The supplier has a right of indemnity against the manufacturer in certain circumstances.

AAAA Member Benefits

Industry Legal Group provides advice to members on commercial law matters. If you have any questions relating to the above case, please contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au