



Australian Consumer Law Reform Interim Report December 2016

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### Submission Australian Consumer Law Reform

Friday 9 December 2016

To whom it may concern,

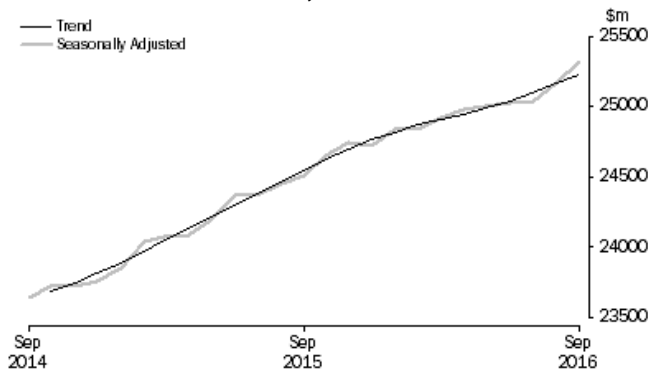
The Australian Retailers Association (ARA) offers support, information, and representation to around 5,500 retailers across the nation, representing more than 50,000 shop fronts. The ARA ensures the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

#### Current state of the retail sector

The state of the retail sector has certainly improved, but only slowly and cautiously.

General figures from the Australian Bureau of Statistics (ABS), shows an increase in general retail trade of \$24.5 billion in September 2015, increasing to \$25.3 billion in September 2016. This represents an increase of just 3.27% year on year which is a little above inflation of 1.3%.

#### RETAIL TURNOVER, Australia



Source: ABS

However, despite the positive news, retailers remain concerned about tough trading conditions.



## EXECUTIVE SUMMARY

The ARA welcomes the opportunity to submit to the Australian Consumer Law Review Interim Report being undertaken by Consumer Affairs Australia and New Zealand (CAANZ). The ARA is broadly supportive of the consumer protections provided by the ACL with some initiatives suggested by the Interim Report potentially enhancing the current framework.

This overall submission by the ARA is supportive of the intent of the current ACL Interim Report however, we have some suggestions on how the actual practical operation of the ACL could be improved and will identify further specific retail related recommendations.

No retailer wants to have customers that are unhappy with the service or products they received. As such, retailers are focused on ensuring that Australia has clear, consistent and comprehensive consumer protection laws. Further retailers want to ensure the right balance is struck between fairness for consumers and the regulatory burden on retailers.

The submission follows the general structure of the Interim Report addressing specific retailer issues raised by our members.

### Consumer guarantees

Our members have given consistent feedback on several the consumer guarantee key observations and options.

#### **Key observations**

##### Acceptable quality for goods

“While there was support for ‘acceptable quality’ remaining a flexible principles-based test, stakeholders commented on the lack of clarity about:

- the reasonable durability of a good, and whether it is feasible to provide specific guidance on how long a certain type of good should last”

This is an issue raised by all sized retailers on a regular basis and causes confusion for them as well as consumers. A better guide would go some way to resolving disputes and understanding for all those involved.

##### Extended warranties

As previously observed in the ARA’s initial submission, retailers feel more comfortable in refunding and rectifying goods and services when extended warranties apply. This is due to perceived and actual issues regarding indemnification between suppliers and manufacturers. While we recognise consumer groups have had concerns in regard to the upselling of warranties, we ask the review panel to consider the benefit these warranties provide to both retailers and consumers in efficiently resolving product issues.

We see confusion around the test for durability not being of typical lifespan, but on what is reasonable in the specific circumstances. When explained, retailers understand the complexities involved in



comparing to within the same product type line. However, the nature of the product, price etc., are hard to define when trying to keep customers happy while also having to deal with the supplier or manufacturer definitions.

We agree there is a great deal of confusion around “twelve month” warranty and expectations beyond that on durability. Further, education for both consumers and retailers would help rectify their matters.

We agree with the Australian Chamber of Commerce and Industry that some uncertainty is inevitable given the consumer guarantee framework must be principles based to provide the flexibility needed to adapt appropriately to transactions involving different goods and services.

The ARA agree with the CAANZ observations there should be scope to include more general guidance on ‘acceptable quality’ to address the below issues:

- the costs of technicians (in order, for example, to replace a product that is installed in a consumer’s home);
- the cost of returning goods rejected by the consumer;
- sending consumers to the manufacturer;
- supply chain issues;
- consequential losses; and
- factors for determining a reasonable time for providing a remedy.

#### Barriers to accessing refunds, repair or replacement

Generally, retailers try to keep consumers happy and satisfied, often at their own cost, due to a lack of co-operation from their suppliers and manufacturers.

Many of our smaller retailers have raised the need to simplify and mandate some manufacturers responsibilities in a clearer and more systemic manor.

We would like to see this review better emphasise the role of the supplier and manufacturer, in the resolution of a dispute, and their responsibilities to both the retailer, and consumer for a speedy resolution including out of pocket costs for the retailer.

An assumption can be made by customers that any failure is a major failure, and that a full refund or replacement should always be offered by retailers. Educating consumers about the difference between minor and major failures will greatly assist retailers in meeting consumer expectations.

The ARA has also found what constitutes a significant cost of returning goods. Consumer returns have become quite ambiguous and now expect the return cost to be covered by retailers, not understanding the full cost of returning goods.



### Product safety

The ARA agrees that having a single, national product safety regime provides a clearer and more cohesive approach to dealing with unsafe products.

Our consistent view has been if one jurisdiction finds the removal of a product necessary, then it should be temporally removed in all Australian jurisdictions until the issue is either resolved, the product is found safe, or the product is ruled unsafe and prenatally removed.

For example, last year hoverboards caused severe house fires across Australia. This issue saw some real inconsistencies in States and Territories, leaving retailers confused over the safety status of the boards, at both a national and local level.

Product safety matters across multiple jurisdictions also causes competition issues for retailers. For example, competition issues arise if a State is prohibited from selling a product but a competitor in another jurisdiction keeps selling the item.

### Objectives of the Australian Consumer Law

As previously submitted, the ARA believes a framework is needed to enhance consumer protection and reduce regulatory complexity for businesses. The ARA believes the objectives are meeting the needs of vulnerable and disadvantaged consumers, and promoting proportionate risk-based enforcement. Measures to enhance education, access to information and ease remedies allow a flexible framework for the future as consumer issues develop.

### Penalties and remedies

The ARA agrees that the ACL's penalties and remedies regime allows for flexible and proportionate enforcement. We do not believe there is any need to change penalty levels or expand the penalty regime.

### Purchasing online

The ARA believes the ACL is sufficiently flexible in addressing emerging issues, including those relating to online purchasing.

Where we do see, issues manifesting is in the lack of understanding in application of consumer guarantees to online as being the same as bricks and mortar retailers along with better definition on specific responsibility areas such as returns costs, how to rectify incorrect advertising and pricing along with obligations when consumers undertake transactions due to mistakes.

Much of the above exists in the form guidance however access to or understanding of these issues remains a significant barrier to retailers and consumers understanding their obligations.

### Lay-By Agreements

The lack of reference to issues surrounding lay-by agreements is somewhat disappointing in this review.



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The ARA finds continual confusion over the way this area is structured and believes that a lay-by agreement is something that should be contracted in writing with flexibility to account for reasonable costs due to special orders.

On multiple occasions, we find retailers have taken special orders only to find them cancelled. These situations significantly put retailers out of pocket by having to return money to the consumer because there have been multiple payments but no written agreement. In some cases, a bespoke item such as furniture, can be worth far less than any market price a retailer can get for the order if they try to on sell.

Where lay-bys do operate, customers are made fully aware of the terms and conditions of the layby the arrangement. The significant issues is that if a customer does not enter into a layby arrangement they are deemed to have done so as soon as they make a second payment on an item from a store without taking the product home.

The ARA supports layby terms and conditions but these should only apply when the retailer and the customer enter into a layby arrangement.

The layby provisions should not automatically apply to bespoke ordered items including personal items, photography (a significant issue), and furniture.

## Conclusion

While there are a series of issues within the current framework, we believe there is opportunity to rectify these issues. The ARA believes there needs to be a regular process in allowing retailers to raise failures as they occur within the system, especially considering the quickly changing retail environment. Our members thank CAANZ for the opportunity to be involved in this consultation and I would be pleased to discuss this submission further, at your convenience.

Kind regards,

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