



Submission to Treasury

Introducing penalties for consumer guarantees

November 2024



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INTRODUCTION

Thank you for the opportunity to comment on the Government’s proposed introduction of civil prohibitions and penalties for breaches of consumer guarantees and supplier indemnification provisions of the Australian Consumer Law (**ACL**). This joint submission is made on behalf of the following organisations:

- CHOICE
- Indigenous Consumer Assistance Network (**ICAN**)
- CPRC
- Westjustice
- Consumer Action Law Centre
- LawRight
- Redfern Legal Centre
- Consumer Credit Legal Service (WA) Inc. (**CCLS**)
- WA Consumer Advocacy Network.

Assisting people to assert their rights under the consumer guarantee regime when they have been sold faulty goods or services is unfortunately core work for all of our organisations. People seek our assistance because it is very difficult, sometimes practically impossible, for consumers to do it themselves. It is often still an uphill battle with specialist consumer lawyers on their side. This is an issue that occurs in all markets across the economy, and which disproportionately impacts those experiencing vulnerability and/or are on low incomes.

The absence of penalties for breaches of consumer guarantees is a major barrier to enforcing rights under them because businesses lack the incentive to consider claims by customers properly or respond to them quickly. In the vast majority of markets there is no easy and fast way for consumers to attempt to enforce these guarantees – tribunals are backed up and confusing and courts are prohibitively expensive. In many cases, consumers eventually give up on their legitimate claims. The absence of penalties also means fewer cases have reached courts that can deliver guidance on interpreting consumer guarantees.

We have long advocated for a robust, economy-wide prohibition and penalty regime to be introduced for non-compliance with consumer guarantees under the ACL.¹ We have welcomed

¹ References to a “penalty regime” for consumer guarantees refers to introducing provisions to empower regulators to use a full suite of enforcement actions against businesses that do not provide consumers with appropriate remedies for goods or services failures.

the Assistant Treasurer's announcement that the Government will introduce penalties to the consumer guarantee regime. This submission responds to the focus questions in the consultation paper (**Paper**).

We urge the Government to progress this long awaited reform as a priority, particularly since some of the questions asked in the Paper are very similar to those asked in the 2021/22 consultation on this issue (**Previous Consultation**).² We provided detailed evidence in our submission to that consultation as well.³

RECOMMENDATIONS

1. Introduce economy-wide civil prohibitions and penalties for breaches of consumer guarantees under the ACL.
2. Penalties for non-compliance with consumer guarantees should be introduced as a priority, and should not be delayed by other amendments to the regime that cannot be finalised on the same timeline.
3. Regulators should produce guidance to help determine what constitutes a major failure specifically for markets where complaints regularly arise. This should at a minimum cover the new and used motor vehicle industry, appliances and major products consumers will purchase as part of the sustainable transition.
4. Regulators should introduce guidance clarifying their expectations of what constitutes reasonable durability and a rejection period.
5. Reverse the onus of proof for failure claims made under the consumer guarantee regime if they are made within a very short time period. If the rejection is within a time such that the consumer would have received no meaningful benefit from the good or service, consumer guarantee rights should apply unless the business can prove otherwise.
6. Introduce specific penalties for situations where businesses fail to assess a claim a product or service has failed within a reasonable time, fail to make repairs in a reasonable time, or charge unreasonable fees to assess consumer's claim that a good or service has failed.
7. The Government should consider whether the consumer guarantee regime is sufficiently robust to provide consumers with appropriate remedies when a purchase involves both

² <https://treasury.gov.au/consultation/c2021-224294>

³ Available at:

<https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2022/february/consumer-guarantees-cris>

This submission included feedback provided by CHOICE supporters in 2022 and 2021 surveys. We have provided additional feedback from these surveys in parts of this submission as well.

goods and services. This should involve detailed consideration of the evolving nature of technology and software in particular, and the impact of AI.

8. The application of a penalty regime for non-compliance with consumer guarantees under the ACL should not be restricted by any industry, failure type and/or goods/services value.
9. Depreciation should not be factored into calculating refunds for consumer guarantees.
10. Ensure that the definition of supplier in the ACL is sufficiently broad to capture online marketplaces when consumer guarantees apply, so that consumers can enforce these rights against the business that sold it the good or service.
11. Introduce penalties for manufacturers that fail to meet their obligations under the supplier indemnification provisions in the ACL so both manufacturers and suppliers are sufficiently incentivised to comply with the consumer guarantees regime.

Clarifying the law

Some aspects of the consumer guarantee regime would benefit from clarification or guidance, but this should not delay the introduction of a broad penalty framework for clear non-compliance.

We also caution against attempting to address all issues requiring clarification via legislative amendment. As with many provisions in the ACL, the consumer guarantee provisions are principle-based rules that apply broadly across the economy, across many markets. There are many benefits to principles-based legislation:⁴

- It focuses on delivering outcomes in line with the purpose of the regulation, rather than prescriptive compliance that can become detached from its goals;
- It provides flexibility that allows laws to be adapted to a range of circumstances, situations and industries;
- It imposes consistent obligations across all markets. More specific obligations generally have to identify where obligations apply or change, which can create challenges; and
- More prescriptive obligations create complexity, add an additional risk of creating loopholes, and potentially encourage regulatory arbitrage.⁵

We firmly agree with the view of the ACCC, as noted on page 14 of the Paper, that introducing penalties and enabling ACL regulators to undertake enforcement action would help deliver greater clarity in the law. The absence of a penalty regime dramatically reduces the basis upon which ACL regulators can justify bringing consumer guarantee matters to court. Compared to other key ACL protections, this has meant that there is far less judicial guidance on the meaning of consumer guarantees.

If any clarification in the law cannot be fast-tracked, penalties should be introduced separately as a priority. Even if the law is clarified, there will always be an element of interpretation in applying it to particular circumstances or industries. This does not mean the laws should not apply or have no real consequences for non-compliance.

Recommendation 1

Introduce economy-wide civil prohibitions and penalties for breaches of consumer guarantees under the ACL.

⁴ Australian Law Reform Commission, *Regulatory Theory*, 16 August 2010: <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/4-regulating-privacy/regulatory-theory/>

⁵ For many examples, see Australian Law Reform Commission, *Review of the Legislative Framework for Corporations and Financial Services Regulation*, 11 September 2020: <https://www.alrc.gov.au/inquiry/review-of-the-legislative-framework-for-corporations-and-financial-services-regulation/>

Recommendation 2

Penalties for non-compliance with consumer guarantees should be introduced as a priority and should not be delayed by other amendments to the regime that cannot be finalised on the same timeline.

Distinguishing between major and minor failures

In disputes we see between consumers and suppliers, determining whether a failure is considered to be major is a key issue that can regularly cause disagreement. This is an area that could benefit from both the introduction of penalties and regulator guidance.

The existing ACL provisions that set out what constitutes a major failure establish reasonably clear principles. Specific guidance for particular industries where harmful disagreements regularly arise around what constitutes a major failure would be the most useful intervention. Based on ACCC data, the results from the 2023 Australian Consumer Survey, findings from CPRC research⁶ and cases our services see, markets that would benefit from guidance include:

- motor vehicles (particularly used vehicles);
- electronics or appliances;
- tradeswork like mechanics, or home improvements not covered by the domestic building regime; and
- digital platform services.

We also expect to see growing complaints for products that many households will purchase as part of the sustainable transition, including solar panels, solar inverters, home batteries, heat pumps and other energy efficient upgrades. To the extent it is possible, specific guidance in all these areas would be welcomed.

Case study - CHOICE

Ned (name changed) contacted CHOICE for advice about his rights regarding a solar panel and battery system he got installed on his house that cost over \$15,000. After he bought it, the battery was recalled due to its fire risk.

Ned said he was able to get his recalled battery replaced, but reported that the supplier told him in future they would not honour his warranty if the battery fails. He told us he has also since learned that the battery has been discontinued by the manufacturer. Ned said it wasn't clear to him why the warranty wouldn't be honoured, but one representative he spoke to told him it was because he used too much power, and the sun doesn't shine enough where he lives

⁶ CPRC (2023). Consumer issues in Victoria. Available at: <https://cprc.org.au/report/consumer-issues-in-victoria-survey>

(Melbourne) to allow the panels to operate as intended.

Ned is worried about what happens if the battery fails as the whole system cannot work with a different battery – he says it would render his investment useless. Ned described it as being like ‘buying a car and then being told there are no spare parts for it.’

The absence of guidance and effective dispute resolution, and the inherent imbalance in power between businesses and consumers, means that businesses often get the final say on what constitutes a major failure in many cases. While there is always an element of subjectivity in applying principles-based law to the relevant facts, many businesses set the bar for a major failure far too high.

“JBHI sold me a faulty laptop. It wasn't a minor problem, the whole laptop didn't work at all. They even acknowledged it was faulty but said I wasn't entitled to a refund if they could repair it. They did this to me three times with the same laptop. It just never worked and it took months of repeated repair attempts before they eventually agreed to give me store credit, not the refund I was legally entitled to.”⁷

One clear example where businesses set the bar too high for a major failure is in regard to safety. Under the acceptable quality consumer guarantee, unsafe products should clearly be treated as a major failure.⁸ The motor vehicle industry desperately needs guidance and incentive to meet this important standard. We see instances where car yards deny that faults occurring very soon after purchase that put drivers in danger are major failures.

Case study - Westjustice

Yuki purchased her first vehicle in Australia from a second-hand car dealer, paying \$8000.00 for it in total. One week after she took possession of the vehicle, the steering wheel seized up while Yuki was driving on the freeway with her three children in the car. Yuki was extremely fortunate not to be in a serious or fatal accident and was able to come to a stop on a shoulder. An initial mechanic assessment indicated that multiple mechanical and electrical defects in the car meant this would repeat itself.

The dealer which Yuki purchased the vehicle told her they were allowed to attempt to repair it first and then held on to the vehicle for several weeks without updates. When Westjustice intervened seeking rejection of the car and a refund, the dealer again affirmed that this was not a major failure as it could be fixed. Relevantly to this market, the dealer had also provided Yuki

⁷ Feedback provided for CHOICE Improving Consumer Guarantees survey completed by 9785 people in January 2022.

⁸ Section 260(1)(e) ACL, see also <https://www.accc.gov.au/consumers/stay-protected/product-safety>

with an used vehicle add-on warranty that offered very limited options for free repair, but served to further obfuscate what should have been a clear right to reject the vehicle.

“We purchased a car from a dealer and the dealer made out as if the car was great and no issues. We later found that the air bags don’t work. The tyres needed changing and the side-view mirror on the driver’s side was defective. And after complaining multiple times, the dealer made some changes but they were only temporary.”⁹

Recent research has shown that 54% of Victorians who had purchased a car in the last five years experienced a fault – 17% of which were considered major.¹⁰

The overwhelming reason these practices are occurring is because recalcitrant businesses know that there is very little risk of further punishment for resisting these claims. We reiterate that the best way to clarify the law in this regard would be via a penalty regime. This would lead to clearer precedents and would incentivise businesses to act fairly.

Recommendation 3

Regulators should produce guidance to help determine what constitutes a major failure specifically for markets where complaints regularly arise. This should at a minimum cover the motor vehicle (including used) industry, appliances and major products consumers will purchase as part of the sustainable transition.

Penalties for breaches of major and minor failures

Penalties should apply to businesses that do not rectify both major and minor failures. The distinction between major and minor failures already leads to different remedies for consumers, and businesses have more flexibility when addressing minor failures. This means a proportionate approach is already built into the regime and introducing a penalty regime does not change the existing proportionality.

Businesses should honour consumer rights and the penalty regime should incentivise honouring all rights equally. It is not appropriate to create incentives for honouring only some rights. If penalties were introduced only for non-compliance relating to major failures, businesses may not be properly incentivised to take minor failures seriously. The outcomes if there are no penalties for failing to provide a remedy for minor failures could be perverse. For example,

⁹ Feedback provided in CPRC’s Consumer Issues in Victoria survey, representative of the Victorian state population, completed by 1500 Victorian consumers in November 2022.

¹⁰ CPRC (2023). Detours and roadblocks: The consumer experience of faulty cars in Victoria. Available at: <https://cprc.org.au/detours-and-roadblocks/>

regulators would not be able to pursue penalties if a business systematically and intentionally ignored all consumer guarantee claims that relate to minor failures. Penalties must be available for this kind of business behaviour.

Any concern that a penalty regime for failures to remedy non-major failures would be disproportionate is also disconnected from how the law will work in practice:

- If drafted like other ACL penalty provisions, businesses will only be at risk of penalties if they breach the law, the regulator takes action and a court determines a penalty is appropriate. Regulators have broad remits and must apply their resources proportionately, considering the impact and harm of particular conduct. Regulators will only practically have the resources to use enforcement powers to address conduct concerning minor failures if it causes systemic and substantial harm.
- When imposing penalties, courts will take into account the relevant conduct as well, and if it is appropriate, non-compliance regarding minor failures could be considered as a mitigating factor compared to an equivalent case regarding major failures.

Other areas for clarification

Determining whether goods are reasonably durable and if the rejection period applies

Consumers can struggle to engage with their rights and protections under consumer guarantees. Recent qualitative research by CPRC in October 2024 found there is limited understanding of consumer rights under Australian Consumer Law, leaving many unaware of protections beyond the warranty period.¹¹ In other research published in 2023, 32% of consumers were given incorrect or incomplete information by businesses about their consumer guarantee rights.¹²

Consumers regularly report disagreement with businesses around whether the consumer guarantees apply to their goods based on the age of the product. There are two issues that require clarification to assist consumers in using their rights:

- Clarification about what durability means for different product types as it ties to the consumer guarantee that goods are of acceptable quality (s 54(2)(e) ACL).
- Clarification about the time period for the consumer to reject goods under s 259(2)(b)(ii).

As with disputes around what constitutes a major failure, in many cases the limits on access to justice often give businesses the effective final say on rejection periods. In our experience,

¹¹ CPRC qualitative research conducted in October 2024, to be published in future.

¹² CPRC (2023). Consumer issues in Victoria. Available at: <https://cprc.org.au/report/consumer-issues-in-victoria-survey>

some businesses take extremely unreasonable positions on this issue. We also note that in some circumstances, particularly due to consumers' uncertainty navigating the guarantee provisions and their associated remedies, guidance is needed to confirm how to communicate rejection. We encounter consumers who misapprehend that rejection is only possible if they are in a financial position to physically return a good, or who have articulated dissatisfaction and their desire for a refund but subsequently face a dispute about whether they clearly 'rejected' the item. In some cases, even the fact that the rejection was not in writing has meant the consumer could not sufficiently evidence the rejection despite attempts to communicate with the supplier about the problem.¹³ The rejection period and process should align to the purpose of the legislation and not be a matter of 'saying the magic words'.

When the concept of durability was raised in recent qualitative research by CPRC, consumers around Australia showed substantial interest. The research found that 66% of these 49 consumers would refer to appliance durability information when purchasing a major home appliance but do not have this information available to them at the point of purchase.¹⁴ This means consumers are left to self-determine how long they think a product should reasonably last, with a risk that people underestimate how long they are protected by Australian Consumer Law.

As with most consumer guarantee issues, the worst cases we see often involve second hand motor vehicles. Consumers buying second hand vehicles don't expect cars to last as long as a new car, but some positions car yards take are unreasonable and can have a devastating impact on the buyer. Victorian research in 2023 found that 36% of faulty cars failed within the first three months, and 59% within the first year of ownership. Consumers face high financial and non-financial costs. 59% of people with faulty cars spent more than \$1,000 trying to resolve the problem and 24% spent more than \$10,000 resolving the problem, and 55% of Victorians with a faulty car experienced a detrimental non-financial impact on their wellbeing, safety or family.¹⁵ Guidance from regulators would be welcomed to help address both advice on durability of products and the unreasonable rejection period interpretation in this market.

Case study - ICAN (*Financial counsellor case notes, February 2023*)

Sally came into the [community] office. She says that she purchased a vehicle in mid-2022, and less than a few weeks after purchase there were engine issues and it began to blow lots of smoke. She called Buffalo Motors, they told her to bring the car in to be fixed, which she did, but they charged her for the cost. Very shortly after, the engine was playing up again and it was

¹³ *Cox v J & M Phelan trading as Carrara Carmart* [2020] and *Fawkes v ZS Motor Group Pty Ltd* [2021] QCAT 150

¹⁴ CPRC qualitative research conducted in October 2024.

¹⁵ CPRC (2023). Detours and roadblocks: The consumer experience of faulty cars in Victoria. Available at: <https://cprc.org.au/detours-and-roadblocks/>

blowing smoke, so she took it back again and they charged her \$700 for the fix which she could not afford to pay.

She has also been unable to pay the car loan, at times because of what she has paid to Buffalo, and has also missed paying her board due to this. She is now looking for housing and needs to go to appointments for her young daughter, which she is unable to do as she has no car. Sally is not sure whether to just pay the money and get the car back as she is concerned it could just crap out again.

Have also reviewed response from Buffalo Motors. They are denying responsibility to repair under ACL guidelines as they say that damages were a result of overfilling the oil on the vehicle. Have requested further info.

Another example is in the electronics and appliance market. Some major businesses publish policies that address their approach to refunds, returns or repairs. These policies are commonly drafted to expressly not interpret consumer guarantees under the ACL, but in practice likely indicate the business’s view on reasonable durability and the relevant rejection periods for goods.

For example, JB Hi-fi’s Refunds & Warranties guide¹⁶ provides an indication of timeframes it will accept refunds for electronic products with defects, depending on the price of the good. The guidance is difficult to understand, but appears to indicate that even for products worth over \$4000, not all major failure remedies may be available if a failure occurs longer than 6 months after purchase. A similar policy for Samsung implies customers may only have 30 days to return defective products.¹⁷ Policies like these can further create confusion and may lead to consumers not seeking remedies for failures that should be captured by consumer guarantees.

“Purchased a 65” TV with 12 months warranty only and 5 months out of warranty it stopped working and JB Hifi where I bought it from as well as the warranty place refused to help me in anyway they said it's my bad luck I'm so upset as a tv should work longer than 17 months and can't afford to buy another.”¹⁸

While these policies do not claim to impact ACL consumer guarantees, they also create further confusion about what consumers are actually entitled to under their statutory rights. 2024 research by CPRC showed that consumers use warranty information as a gauge for durability,

¹⁶ Available at: <https://support.jbhifi.com.au/hc/en-au/articles/360053005194-Refunds-Warranties-guide>

¹⁷ Available at: https://www.samsung.com/au/shop-faq/returns-and-cancellations/?srsltid=AfmBOooJ_sWvSrjZG6CJXuRBYNPE_QcdYI4OPqI11MDgSjiGVvMV3rc8

¹⁸ Feedback provided for CHOICE Improving Consumer Guarantees survey completed by 9785 people in January 2022.

and when an appliance breaks down after the warranty period, some consumers feel forced to buy a new appliance due to difficulty and expense involved in repair.¹⁹

In 2022, CHOICE conducted a mystery shop of major retailers that found many misrepresented rights associated with consumer guarantees through sales processes, commonly by implying tight limits on rejection periods.²⁰ Other companies have faced enforcement action under false or misleading representation prohibitions for making similar misleading claims.²¹

The matter is further complicated by extended warranties and similar products that most retailers offer to customers - 73 of the 80 salespeople CHOICE spoke to in its mystery shop offered to sell one.²² This is similar to findings from a recent mystery shop conducted by CPRC, extended warranties were encouraged by salespeople for 43 out of 100 large appliance purchases.²³

As most extended warranties exclude accidental damage, these products exist in part because the uncertainty around rejection periods has created an opportunity to upsell people peace of mind. In many cases, people are likely paying for rights the ACL already entitles them to, at least in part.

Regulator guidance would help reduce the opportunities for businesses to impose a restrictive view of the rejection period for consumer guarantees, and to sell junk warranties. Over time, case law from cases brought by the regulator would help provide more certainty as well.

Recommendation 4

Regulators should introduce guidance clarifying its expectations of what constitutes reasonable durability and a rejection period.

Reverse the onus of proof for immediate claims

We also recommend legislative reform to address cases where a claim of a failure is made by a consumer within a very short period after purchase, such that the consumer received no meaningful benefit from the good or service. In these situations, a presumption should be

¹⁹ CPRC qualitative research conducted in 49 Australian consumers in 2024, to be published in future.

²⁰ More information available at:

<https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/articles/extended-warranty-mystery-shop>

²¹ See for example:

<https://www.accc.gov.au/media-release/booktopia-to-pay-6m-for-misleading-statements-about-consumer-guarantee-rights>

²²<https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/articles/extended-warranty-mystery-shop>

²³ CPRC mystery shop conducted across 100 large home appliances across Australian stores in 2024.

applied so that a failure is assumed to be covered by consumer guarantee rights unless the business can demonstrate otherwise.

For example, if a (new or used) car breaks down within a few weeks of purchase, the law should place the burden on the car yard to provide evidence as to why the consumer is not entitled to their guarantee rights. Placing the onus on a consumer for failures very soon after purchase is not reasonable, and research across various sectors shows many consumers don't pursue complaints due to overwhelm, lack of time or know-how. The existing onus is suitable for claims made later in the rejection period, but a quick rejection should be believed in the first instance. This approach is taken in Singapore, where defect claims made within 6 months of purchase for most products will be assumed to exist unless the supplier demonstrates otherwise.

Case study - CCLS

Greg (not his real name) took his recreational fishing boat to a marine mechanic to fit a new motor. The mechanic informed Greg that they had to build up the transom (back) of the boat in order to fit the engine. Greg was quoted \$21,000 for this service, which he paid as soon as the service had been completed. Unfortunately, when the customer arrived home, he realised the transom had several cracks in it, which meant his boat was no longer seaworthy. Greg contacted the marine mechanic right away who informed him 'the issue must have happened when you drove the boat home'. Frustrated and shocked by the mechanic's lack of support, Greg took his boat to another mechanic who quoted him a further \$1,000 for repair to fix the bad workmanship of the original mechanic. Without any penalties or threat of enforcement, the marine mechanic felt no obligation to assist Greg, leaving him with no further option for recourse other than to pay the alternative mechanic and pursue time consuming and costly court proceedings.

Recommendation 5

Reverse the onus of proof for failure claims made under the consumer guarantee regime if they are made within a very short time period. If the rejection is within a time such that the consumer would have received no meaningful benefit from the good or service, consumer guarantee rights should apply unless the business can prove otherwise.

Specific penalties for handling failure claims

Asserting rights under the consumer guarantee regime can be made far more difficult for consumers when a business resists acknowledging a claim, or puts barriers in place to having a claim assessed. For example, for some consumers we speak with, the second hand car dealers use obfuscating tactics such as changing their business names or contact details, making it difficult for a consumer to locate and contact them.

Specific obligations around assessing claims, with separate penalties attached, would also be a significant aid to improving the bargaining disparity between consumers and businesses.

Specifically, we recommend introducing:

- An obligation to assess a claim of a failure within a reasonable time;
- An obligation to complete repairs within a reasonable time for minor failures or where consumers accept repair as a remedy; and
- A prohibition on businesses charging unreasonable fees (or any fees beyond their reasonable costs) to assess a claim made about a failure, even if these fees only apply if the claim is refused.

ICAN case study (Ref: 1223)

ICAN was contacted by an older couple who had purchased a vehicle from a local Cairns secondhand car dealership. The couple had paid just over \$9,000 for the vehicle which they had travelled to Cairns from Cooktown to purchase in late June 2021. On their way back to Cooktown a couple of days later, the vehicle broke down (the clutch went) and it could not be driven.

Unbeknownst to the couple, the dealer had sold them a repairable write off and it had a number of major faults. The couple organised to get the vehicle towed back to Cairns. They contacted the dealer both in person and via email about the problem and sought their money back. However, the dealer refused to give them their money back. They sought support in talking to the dealer from two friends, one of whom was a lawyer, who went down to the dealer with them and demanded the money back. The dealer still refused to pay the money back and alleged that the faults arose due to how the car had been driven in the very brief time that the couple had used it. One of our clients, a gentleman in his 60's had been a truck driver for many years and knew how to drive cars carefully and responsibly.

The vehicle was taken to a mechanic for a quote but the costs of fixing it were too much for the couple and the dealer refused to pay for its repair. As the couple don't live in Cairns where the vehicle was, they had to find local storage for it. ICAN therefore stored the vehicle at its premises after paying to tow it from the mechanics to our offices because the couple could not afford the tow costs.

The couple sought legal advice and with the assistance of the local community legal centre, issued a QCAT application seeking a refund of monies paid in October 2021. They could not have issued this application by themselves. The matter was not heard until the following year in July 2022 at which the dealer was ordered to pay the couple the purchase price of \$9,711. The couple were ordered to return the vehicle which they did that day, paying a tow truck driver to get it to the dealership. The dealer refused to accept the return of the vehicle. An ICAN

representative had to deliver the keys the following day when the dealership was back open.

In August 2022, the dealer lodged an appeal of the QCAT decision. The lawyers for the couple sought to have the appeal struck out, however this application was dismissed. It was only when the dealer failed to lodge documents ordered by the Tribunal, that the appeal was finally struck out in March 2023. Since that time the couples' lawyers have taken numerous steps to try and enforce the QCAT order. However, the directors of the dealership have avoided service and the dealership has now shut down. While efforts to enforce remain ongoing, the likelihood of this couple ever getting their money back is very low.

Recommendation 6

Introduce specific penalties for situations where businesses fail to assess a claim a product or service has failed within a reasonable time, fail to make repairs in a reasonable time, or charge unreasonable fees to assess consumer's claim that a good or service has failed.

Technology and the distinction in guarantees for goods and services

The Government should consider whether changes to the distinction between guarantees for goods and services are needed to deal with technological-based purchases that may be a hybrid of the two, or involve AI. As an increasing number of key consumer purchases involve software-based technology, the distinction between whether someone is buying a good or service can blur.

Software is generally treated as a good under the ACL.²⁴ However, updates or forms of customer service can be vital for many software purchases to remain useful in an online environment. It can also apply to more traditional goods like mobile phones – if updates are not provided, the phone may no longer be suitable for its fundamental uses. This was an issue explored in the Productivity Commission's right to repair inquiry report.²⁵ AI has the potential to expand the range of hybrid goods/services, and potentially further complicate the distinction. Our submission to the Government's concurrent *Review of AI and the Australian Consumer Law* consultation addresses this issue as well.

The Productivity Commission's recommendation to amend the ACL to require reasonable software updates as part of consumer guarantees for goods should be considered.²⁶ The Government should also make certain that the consumer guarantees are sufficiently robust to

²⁴ *Australian Competition and Consumer Commission v Valve Corporation (No 3)* [2016] FCA 196

²⁵ Productivity Commission, *Right to Repair Inquiry Report* (2021), see part 3.5

²⁶ Productivity Commission, *Right to Repair Inquiry Report* (2021), Recommendation 3.1

deliver all necessary remedies for consumers purchasing goods that involve AI or otherwise require an ongoing service-based relationship.

If this question cannot be quickly resolved (perhaps due to the developing and fast-changing role of AI in goods and services), it should not be a prerequisite to introducing penalties for the existing consumer guarantees regime.

Recommendation 7

The Government should consider whether the consumer guarantee regime is sufficiently robust to provide consumers with appropriate remedies when a purchase involves both goods and services. This should involve detailed consideration of the adapting nature of technology and software in particular, and the impact of AI.

Breadth of the penalty regime

This section responds to the following focus questions in the Paper:

- Should civil prohibitions and penalties for failures to provide a consumer guarantees remedy be applied economy-wide, or for new motor vehicles only?
- Should the ACL prohibit suppliers from failing to provide a consumer guarantees remedy in relation to all goods and services, or only in relation to goods and services above a specified value? Why or why not? What should the value be?
- Is there a need to have penalties, or have stronger penalties, in relation to higher value goods and services?

Penalties must be economy-wide

It is essential that the penalty regime for consumer guarantees applies economy-wide. We are concerned that the consultation paper raises the possibility of limiting the regime to new cars only as any decision to do so would be a major failure.

The Previous Consultation paper also contemplated only applying a penalty regime to breaches concerning new cars. Just as we said then, there is still no clear justification for such a restriction, and indeed it seems the evidence referred to in the Paper supports economy-wide action.

The Paper notes that motor vehicles were the subject of the most consumer guarantee-related complaints to the ACCC in 2023. However, this still only represents 24% of those complaints, with many thousands of complaints relating to other industries.

Our collective experience working with and advocating for consumers also highlights that problems with consumer guarantees arise in many markets other than cars, as detailed below.

Online games

Negative impacts from digital gaming are common, but close to half of players don't complain.

In a soon to be published study of digital gaming experiences, CPRC found that close to half of players who had incurred loss in terms of money or time (42%), did not complain or seek support when things went wrong, even when they experienced financial loss.

Reasons for not pursuing some form of redress included a lack of knowledge about how to do this, scepticism about a lack of outcome, and an imbalance in time and effort versus return.²⁷

Digital platforms

Digital platform services often function as software by subscription, risking consumers' ability to seek redress through lack of clarity around their rights. For example, when a consumer has experienced repeated service disruptions through undue account suspension, on a digital communications platform like Facebook, consumers should be confident that a service is supplied in a reasonable time. Which is to say have their account re-instated. Where consumers have lost access to a digital platforms service through account suspension or other means and this has not been re-supplied then a consumer should be able to seek remedies through the ACL. There needs to be clear communication for consumers that minor failures cumulate to a major failure and consumers are able to seek remedies through consumer guarantees in the ACL. The ACL and accompanying regulator guidance should be updated to better communicate this remedy to consumers.

Airlines

Consumers often experience difficulties obtaining refunds when airline services are not delivered.

In October 2023, CHOICE surveyed 8947 CHOICE supporters about their experience with the airline industry in the previous 12 months. This research found that of those who pursued a refund for a flight cancellation, 47% received it within a month. Others faced significantly longer wait times, with 20% having to wait over six months for a refund.

²⁷ CPRC (2025). Playing the player – Unfair digital gaming practices and their impact on Australians (unpublished report).

Telecommunications

Many Australians don't complain about issues with their telecommunications service.

In a nationally representative study in 2023, CPRC found that 46% of Australians with telco issues did not lodge a complaint. Forty percent of complaints not made were due to the complainant feeling overwhelmed, not knowledgeable enough, or sceptical about the outcome versus effort required to complain.²⁸

Appliances

As noted in our submission to the Previous Consultation, reliability surveys conducted by CHOICE in 2019-2020 indicated that up 31% of respondents experienced a fault with an appliance within the previous 12 months. The worst products included Stickvacacs, printers, laptops and smartphones.²⁹

*"Dyson vacuum JBHIFI refused to refund or replace the faulty vacuum. Was less than 3 months old , had to accept a repair, waiting over a month to get the vacuum cleaner back."*³⁰

CHOICE data from 2023 shows that large home appliances are also still breaking frequently. CHOICE identified that of 1,345 Australians with a new or second-hand fridge, 23% had experienced a problem in the past 12 months. Close to half (48%) had experienced a problem since purchase (typically in the first three years after purchase), 42% of which were considered major or warranted a recall.

Used cars must be captured

For years, community lawyers and financial counsellors across the country have been inundated with requests for assistance from consumers who have been sold lemon cars by second hand car dealers. From Consumer Action Law Centre's experience, defective cars are the most common consumer good or service for which people call seeking legal advice. A recent review of calls to the legal helpline found more than 100 clients had called seeking advice in relation to a faulty car in the two years between June 2022 and June 2024.

In general, second-hand cars are the only cars available to people experiencing or at risk of financial hardship. For many people we speak with, a car is necessary for getting to work or

²⁸ CPRC (2024). Barriers to effective dispute resolution in the telecommunications industry. Available: <https://cprc.org.au/report/barriers-telco-dispute-resolution>

²⁹ CHOICE Product Reliability surveys (2019-2020), responses sourced from over 5,000 CHOICE members.

³⁰ Feedback provided for CHOICE Improving Consumer Guarantees survey completed by 9785 people in January 2022.

securing employment, getting their children to school, accessing essential services and supports or travelling to connect with family and community. For low-income earners excluded by traditional lenders, poor value, high-cost car loans are often the only available option to pay for these cars. When they break down, the consequences can be disastrous and compound their financial and personal hardship. These are the people who need better outcomes from the consumer guarantee regime the most.

Used car sales are also a market where the many barriers faced by people when trying to exercise their consumer rights are very clear and obvious. CPRC's 2023 'Detours and Roadblocks' report into the consumer experience of faulty cars in Victoria found that making a used car complaint can require over 60 steps for a consumer - from fault discovery to receiving a remedy.³¹

³¹ CPRC (2023). Detours and roadblocks: The consumer experience of faulty cars in Victoria. Available at: <https://cprc.org.au/detours-and-roadblocks/>

Case study – Consumer Action Law Centre

Carolyn (name changed) lives in a small town on the outskirts of Melbourne. She was working two jobs and earning a reasonable income. Carolyn relied on her car to get to and from work and she decided to trade in her car for a newer model.

In January 2023, Carolyn purchased a second-hand SUV from a licensed trader, which included a 27-month extended warranty. The advertised price for the car was \$15,000 and after Carolyn's \$500 deposit and \$1,000 trade-in were deducted, the total purchase price for the car was \$13,500. Carolyn borrowed the full amount from a loan provider that is well known to consumer advocates. With an interest rate of 24.95% per annum and \$2,600 in fees to be paid to the loan provider, almost \$27,000 was then owing over the life of the loan.

Carolyn noticed the car needed repairs as soon as she had picked it up. The car was overheating, the engine light was on and coolant was leaking. She tried to return the vehicle to the dealership the day after and was told she needed to go through the warranty provider for the repairs. Carolyn then contacted the warranty provider to arrange for the faults to be fixed, and was told the faults she had found with the car were not covered by the warranty.

Carolyn took the car to her own mechanic to replace the cooling system, water pump and radiator. She spent a total of \$4,000 on repairs to the car. To cover the costs, Carolyn borrowed \$2,200 from another loan provider well known to consumer advocates, at an interest rate of 47% per annum, and the loan was secured against the car. These repairs did not resolve the core issue and in July 2023, Carolyn was told the engine needed to be replaced, which would cost an additional \$6,000.

During this time, Carolyn paid for Ubers to get to and from work. However, she lost one of her jobs because there was no way to get to her place of employment without a car and due to the distance involved, Ubers were unaffordable. She was now working casual hours for one employer and continuing to pay for Ubers to get there.

Carolyn attempted on multiple occasions to negotiate hardship arrangements with both loan providers. The first loan provider initially agreed to a 3-month affordable plan of \$100 per week, however, at the end of this period the amount increased to \$250 per week. Carolyn needed to seek support from a financial counsellor to advocate with the finance companies for affordable hardship arrangements.

In 2024, the provider of the loan that was secured against the car threatened repossession. Carolyn has been quoted by multiple mechanics that the car is worth only \$1,400, which is around 8 per cent of the purchase price.

There is also significant evidence that the businesses that most systematically fail to meet their consumer guarantee obligations are also in the used car market. Multiple signatories to this submission have made multiple complaints to state regulators about individual car yards that have sold many clients lemon cars, and then aggressively resisted all attempts by consumers to assert their consumer guarantee rights. Additional financial barriers to vulnerable consumers also exist in this market because proving that a car was sold with a major failure often requires expert evidence that costs money, such as a mechanic report. There is a desperate need in the used car market for the effective deterrent that a penalty regime for failing to meet consumer guarantees will bring.

ICAN's experience with Buffalo Motors Cairns

Since March 2021, ICAN has assisted at least 50 people with disputes involving a used car dealership called Buffalo Motors which was located in Cairns, far north Queensland. The disputes all involved people who purchased second hand cars from this dealership and the cars had faults of some kind; sometimes it was numerous minor faults and sometimes major faults appearing within weeks or months of purchase. The cases reveal that the dealership regularly required the consumer to bring the vehicle back to the dealership at the consumer's cost and, where the consumer could do this, it would frequently charge the consumer to fix the fault. In a number of cases, the fault was never properly fixed and the car ceased working and could not be driven. In almost all of these cases, the person has bought the vehicle on finance from the same high-cost lender and, in many of the cases, a warranty product has been added to the loans without the consumer's knowledge, adding to the overall cost of purchase. When the consumer has been told about the insurance and attempted to claim, the claim has been denied.

Early on in our work on these cases ICAN made four complaints on behalf of individual consumers to the Queensland Office of Fair Trading in relation to our concerns about Buffalo Motors. We regularly raised our ongoing concerns with this company through various consumer forums. We were advised that there was not much the OFT could do as they could not obtain penalties for breaches of guarantee provisions.

In early 2023, Buffalo Motors shut down its business and a new second hand car dealership took over the premises. Former Buffalo Motors customers have therefore lost the opportunity to obtain a remedy from this company.

All but four (4) of these 50 people identify as First Nations peoples. Many of these people live in regional and remote communities across far north Queensland in which the family car is the only form of transport available. They have come to Cairns, which is the nearest regional centre with second hand car dealers, to purchase their vehicle. The majority are women who receive Centrelink as their sole or primary means of income. Many cannot afford to pay for the ongoing cost of fixing the vehicles and in some cases have gone into further debt to get the vehicles fixed.

The following case studies are de-identified. Names have been changed to protect privacy. The cases come from the notes taken by our financial counsellors at the time of seeing the client. Many more case studies are supplied in the Appendix.

April 2024 (Ref: 11678)

Sara called and informed us that a year or two ago, she purchased a car from Buffalos Motors, which she paid \$15,000 in cash for. Sara stated that within a month the car broke down when she was heading to Cooktown and she had to pay \$500 for a new battery. She then had to get a mechanic to do some work on it, which cost her even more money. Sara stated that she did try and take it back to Buffalos, but they informed her that she was past the warranty after the first month as the vehicle she bought is a 2015 model car. Sara stated that she had taken Buffalo Motors' word for it: that the car is in good order and she wouldn't have any problems.

September 2023 (Ref: 4420)

Peter attended the Cairns office as a walk in. He was having extensive problems with a car he bought from Buffalo Motors in 2021 and could not afford the finance used to purchase it. The car has had minor issues since day one, and Peter has had to take the vehicle back to Buffalo many times for repairs which they charged him for. More recently, he has had to pay large sums whenever he gets it serviced for extra repairs or has to do these himself. He now has a very long list of things that need to be fixed which has been provided by his mechanic and he is concerned because he cannot afford these. Peter advised that he needs the car to be fixed as he has just got a job and will need his car. He says the car, a Holden Captiva, cost \$15K but at last check he still owes \$19K. He is paying about \$250 f/n or more in repayments.

August 2021 (Notes from financial counsellor)

Client purchased a car from Buffalo Motors last year (Mar 2020) for approximately \$8000.00. She thinks she has paid approx.. \$12,000. Car is now broken and requires over \$5000 in repairs. The mechanic has advised that the car wouldn't have been given a safety certificate.

FC spoke to the client and asked her when did you start having issues with the car? The client stated 4-5 months after buying the car. She was told by Buffalo Motors that "Once it goes out of the yard you only have a month regarding any issues with the car". So once the client started having issues with the car she thought that it was no use taking the car back to Buffalo Motors, because they told her she has a month if any issues surface, and it was 4/5 months when the client started having trouble with the car.

High and low value goods and services

Imposing any limit on the application of the penalty regime for consumer guarantees based on the value of goods or services would also be a major error with significant consequences. It risks leaving people on low incomes with less or no protections when a product or service does not deliver.

As with limits based on failure type or industry, leaving lower value goods or services outside the penalty regime may incentivise businesses not to take consumer guarantees for these goods or services seriously. In addition, regulators will not be equipped to enforce systemic and deliberate failures with respect to low value goods. The aggregate harm from this kind of non-compliance could be very significant.

As the Paper sets out, the reality is that under the current regime the barriers to enforcing consumer rights for low value goods are too high to justify the effort for most consumers. The time and energy required to enforce these rights means most consumers will not try, or give up. This indicates that low value goods and services are precisely where intervention is needed to make these laws meaningful and give businesses a reason to comply with them.

"I purchased a Samsung mobile phone from Dick Smith for around \$400, unfortunately just before it went into liquidation. My phone's microphone never worked properly. Samsung did one repair, which only fixed it for a few weeks then the problem returned. They refused to repair again and claimed there was water damage which was my fault. The phone was only 4 months old at this stage and had never been anywhere near water since I purchased it. They refused to do a refund or repair. ACT consumer affairs advised me there was nothing that could be done as it would cost me more than the phone was worth to take Samsung to court. Since then I have NEVER bought any Samsung product - not just phones."³²

Any concerns that consequences for businesses in these markets may be unreasonable are again not based on the reality of how regulators and the courts work:

- Regulators prioritise their enforcement work. Intervention for non-compliance relating to low value goods or services will only ever be worth the time when it is systemic, or is causing significant harm.
- For any cases that reach the courts, the value of the goods or services will impact any penalties applied.

A high value limit may also create a problematic incentive for businesses to sell lower value goods that may be of worse quality or less safe (including pricing goods to evade the application

³² Feedback provided for CHOICE Improving Consumer Guarantees survey completed by 9785 people in January 2022.

of a penalty regime). A low value unsafe product is just as dangerous as a more valuable unsafe product, and its impact may be more widespread. CHOICE recently purchased and tested 15 random products containing coin or button batteries from online retailer Temu. All 15 products failed at least one requirement under the Australian button battery regulations – from improperly secured battery compartments that could be accessed by a child to missing warning labels.³³ If there is no penalty for refusing a consumer a remedy for inexpensive unsafe products, consumers may be less likely to report safety issues or pursue returns – meaning safety issues go unreported or unactioned as companies continue to sell them.

Recommendation 8

The application of a penalty regime for non-compliance with consumer guarantees under the ACL should not be restricted by any industry, failure type and/or goods/services value.

Depreciation

We oppose depreciation being taken into account when calculating refunds. We consider the Federal Court decisions referenced in the Paper on this issue set an appropriate approach. As we stated in our previous submission, the ACL is beneficial legislation intended to protect consumers. As a general principle of statutory interpretation, beneficial legislation should be given an interpretation favourable to the class of persons intended to be protected. Rejection periods also limit the time frame in which a refund can be obtained.

In many cases, taking depreciation into account when calculating a refund would leave consumers in a worse position financially as a result of their purchase, through no fault of their own, for a number of reasons:

- Depreciation for some products occurs rapidly, such as with new cars. While a car may depreciate by thousands of dollars the moment it leaves the showroom, a car that breaks down soon after purchase provides the buyer very little value. The inconvenience will likely mean they are worse off in any event;
- It should generally be assumed that consumers will need to replace the defective purchase they are being refunded for. In some cases, this will necessitate purchasing a new equivalent product - which will likely come at the same cost.

If the Government decides to amend the law to consider depreciation, it should ensure it is only done conservatively, so that any assumptions calculate depreciation at a lower rate.

³³ More information available at:

<https://www.choice.com.au/babies-and-kids/children-and-safety/toys-and-safety-at-play/articles/dangerous-toys-sold-at-temu>

Recommendation 9

Depreciation should not be factored into calculating refunds for consumer guarantees.

Concerns over unintended consequences

The Previous Consultation asked if submitters had any evidence that consumers are ‘gaming’ the consumer guarantees law to obtain new vehicles or refunds. As the Paper indicates that no evidence of this was provided, we are disappointed that the question about consumers seeking a remedy when they are not entitled to one has been asked. As we stated in our submission to the Previous Consultation, there is significant evidence that it is businesses that are currently ‘gaming’ a toothless consumer guarantees regime.

Not only are we not aware of any evidence of this practice, it is difficult to conceive of how a penalty regime in line with other ACL provisions could be abused by consumers. It would not meaningfully change the rights individual consumers have under consumer guarantees. Rather, it would simply empower regulators to undertake enforcement activities for non-compliance. Before questions of proportionality discussed above even come into consideration, enforcement action will require the ACCC to be satisfied that non-compliance has occurred. While we would welcome a penalty regime that empowered the courts to impose penalties for matters brought before it by consumers as well so that the impact of the law was not so heavily reliant on regulators, it does not appear this is what is being proposed in the Paper.

A consumer with an illegitimate claim that a good or service has failed them is no more powerful under a regime that is supported by penalties in the ACL. In the unlikely event that these claims are occurring, businesses could still refuse them just as they would refuse illegitimate claims now. It is only businesses that are resisting legitimate claims that have anything to worry about under these reforms – which is precisely the conduct we should be trying to deter and stop.

Civil prohibitions and penalties should not lead to higher costs for consumers generally. Businesses should only factor in the risk of facing penalties for non-compliance with consumer guarantees if that business regularly refuses legitimate claims under the regime. In assessing the costs and benefits of the regime, the high volume of complaints the ACCC receives should clearly suggest that any cost to business will be considerably outweighed by the savings in the economy to consumers. Consumers who spend time and money trying to assert their legitimate rights will be better off. It should also create a greater incentive for businesses to produce more durable products that are fit for purpose.

Enforcement powers and penalty size/structure

We strongly support empowering regulators with a full suite of compliance and enforcement powers for all non-compliance of consumer guarantee obligations, consistent with other key consumer protections in the ACL. Giving regulators a full suite of powers is essential to help deliver effective outcomes and allow for proportionate responses.

The volume of complaints the ACCC receives about consumer guarantees demonstrates the need for infringement notices as part of the regime. Court action is extremely time consuming and costly. Infringement notices will still likely only be issued for a small minority of cases, but the deterrent impact would be of great value for cases where businesses are blatantly disregarding their obligations. We support setting the penalties at 60/600/12 penalty unit rates that are common across the ACL.

We strongly support empowering regulators to seek pecuniary penalties via court proceedings in line with similar provisions in the ACL.³⁴ Litigation will only be used in serious cases, so the maximum applicable penalties should be significant. There is no need to impose different maximum penalties for different goods and services based on monetary thresholds. Both the ACCC and the courts will consider the relevant conduct and facts of the case when seeking/imposing penalties. Even if goods or services are of lower value, widespread or particularly harmful conduct may justify a large penalty in some cases.

We would also support regulators using other compliance tools like enforceable undertakings or public warning notices, where appropriate. Regulators should be encouraged to use these tools more. We understand that regulators already could issue public warning notices about companies it has reasons to believe are not complying with consumer guarantee obligations – there are many businesses across the country (particularly used car yards) that regulators should be warning the public about.

Other challenges – definition of supplier

While it also should not delay the introduction of a penalty regime, we also urge the Government to review how consumer guarantees apply to online marketplaces (where suppliers are

³⁴ As set out on this page:

<https://www.accc.gov.au/business/compliance-and-enforcement/finer-and-penalties>

businesses). We regularly hear from consumers who report facing additional barriers to enforcing their consumer guarantee rights on these increasingly common platforms.

Many large retailers now offer products that appear in regular product searches on their websites that are actually provided from 'marketplace partners' that are separate (often overseas) businesses. Particularly where these retailers had not traditionally been online marketplaces, and sell both their own products and suppliers sell products through their website, consumers may not be aware of the difference.

"I bought a robot vacuum cleaner from Kogan. It needed to be charged before use. Problem was, it would not charge. When I contacted them, they said they were only the distributors for the product and that I had to go to the manufacturer directly. I did eventually get my money back, but it took several months and calls and letters and even needing to contact consumer affairs in the process to get this sorted out."³⁵

In many cases, it can be difficult to identify that a product is being sold by a marketplace partner,³⁶ or the implications of a marketplace purchase are not clear without reviewing other pages.³⁷ While different businesses have different returns policies in relation to marketplace products, consumers often need to contact, and deal with, the third party supplier and are subject to the third party supplier's returns policy. This can come as a surprise to consumers when they seek to return faulty products and can create additional barriers, particularly if the relevant supplier is located overseas - which can make enforcing ACL near impossible.

In these situations, sellers are benefiting from the reputation of major retailers, but the arrangement allows consumers to be given the runaround when it comes to enforcing their rights. We recommend that the Government reviews the definition of supplier in the ACL to ensure that online marketplaces cannot avoid responsibility under the consumer guarantee regime altogether.

³⁵ Feedback provided for CHOICE Improving Consumer Guarantees survey completed by 9785 people in January 2022.

³⁶ See this example on the Myer website:

<https://www.myer.com.au/p/pronti-pronti-200w-electric-meat-slicer-fod-chese-vegetable-processor>

³⁷ See this Bunnings Marketplace example:

https://www.bunnings.com.au/sahara-10-seat-teak-and-wicker-dining-table-and-chairs-furniture-setting_p0359281

Recommendation 10

Ensure that the definition of supplier in the ACL is sufficiently broad to capture online marketplaces when consumer guarantees apply, so that consumers can enforce these rights against the business that sold it the good or service.

Part 2 - Supplier indemnification

As our experience is from the perspective of consumers, we have limited ability to comment on the current operation of the supplier indemnification provisions in the ACL. However, we generally support the introduction of an equivalent penalty regime for manufacturers of goods or services that fail to meet consumer guarantees.

Manufacturers should have the same incentives to comply with their obligations as suppliers do. A system without this safeguard risks leaving suppliers in a difficult situation where they risk carrying the full burden of the regime. This would not be fair on suppliers, and it would risk reducing the impact of the reforms, as suppliers may still be more likely to resist legitimate repair or replacement requests from consumers if the supplier is likely to bear the full cost of the failure. The ACCC's 2022 New caravan retailing report indicated that this may be currently occurring in that market.³⁸

Recommendation 11

Introduce penalties for manufacturers that fail to meet their obligations under the supplier indemnification provisions in the ACL, so both manufacturers and suppliers are both sufficiently incentivised to comply with the consumer guarantees regime.

Further information

Please contact Tom Aboutizk at tabourizk@choice.com.au if you wish to discuss this submission.

³⁸ ACCC, *New caravan retailing*, July 2022, available at: https://www.accc.gov.au/system/files/22-33RPT_New%20caravan%20retailing_FA.pdf

APPENDIX

ICAN case studies and notes from financial counsellor concerning Buffalo Motors

June 2023 (ICAN ref 2792)

Met with Simone in [small community]. She came to see me as she has a Buffalo Motors problem. About two years ago she purchased a vehicle from Buffalo Motors (V6 Holden Commodore) for \$8000 and less than two weeks later she had to take it to the mechanics for repairs. She was told by the mechanic that there was an issue with the fuel system, specifically the injectors and the fuel pump, and that this would cost over \$1000 to repair. She could not afford these repair costs and meet the loan repayments.

Simone contacted Buffalo who advised her that there was nothing that could be done on their end, as the damages occurred after taking ownership. At the time she took the loan and purchased the vehicle, she was a single mum with two kids and was not working.

Simone has continued to repay the loan despite having no ability to use the vehicle and has often sacrificed essential needs to do so. She is unsure how much she has paid to the loan, or how much she has left to pay. When she came to see us, Buffalo Motors had already shut down and she could not seek a remedy from them.

February 2023 (ICAN ref 2534)

Carol was referred to us via her mum. Carol purchased a vehicle from Buffalo Motors a month ago for \$8,000 with a car loan from [Lender]. Carol was 9 months pregnant at the time of buying the car. She wasn't given a choice of car - she was just sent a picture of it and nor did she get to test drive it. She purchased a 2004 Ford Territory Wagon. The car is faulty - it has dodgy tyres and makes squeaky sounds going around corners. There is no oil in the car and it is idling incorrectly and picks up speed for no reason when driving it. There is also a leak that appears to come from the dashboard. She can't drive the car home over the range back to Yarrabah with its faults. Carol's mum stated that the car has only been driven to the shop around the corner three times since its purchase. Carol hasn't had a chance to take it back to the dealer because she has only just had her baby but they have booked it into Buffalo Motors to get looked at.

FC contacted the client to follow up on where things are at. Carol informed FC that she picked up the car from Buffalo Motors (which has since closed down and is now a new business) last week and it still has problems. Carol stated that her cousin's sister was driving the vehicle and

that she couldn't go over 80 km's as the car shakes. She said that the air-con won't turn off, she has tried to press the button, but it won't switch off and she is worried its chewing up the petrol. Carol also stated that the driver's window won't go down. Plus the guy at the dealership didn't give her a report. Carol stated that she would really like to reject the car, as the car will just keep coming back with more repairs to it. With Buffalo having now shut down, Carol could not obtain a remedy.

November 2022 (ICAN ref 2365)

Spoke with Delphine and her mum, Kara, as per intake notes and set up appointment at [community] office:

Delphine is a single mum of two on Parenting Payment and has a debt with [car lender] she is worried about, which has resulted from a faulty vehicle issue she purchased from Buffalo Motors in November 2020 just after her second child was born. She and her mother went to Buffalo Motors to look at vehicles so that she would have transport for medical appointments for this child, who was born prematurely.

When they approached BM they had sighted a car that they liked, but upon enquiring further were told during the finance application that the car was not affordable under the available finance and were directed by the sales person to another, cheaper vehicle for approximately \$3,700. They were able to test drive it and had some concerns but were re-assured by the salesperson. After approximately 8 months, the engine failed.

They contacted BM who said they would fix it, which they did at a cost of \$2000 to Delphine, and then two weeks later the engine died again. They contacted BM and took the vehicle back and were told they would need to pay for a new engine. The car has been at Buffalo since. Every time they call to see what is happening they are told by BM they are still waiting on an engine. They have requested that BM replace the vehicle with a new one of similar value, but they have told them this is not possible, and they would have to pay for a new car.

Delphine has kept paying [Lender] approximately \$200 f/n, and when they have contacted them about the debt they have advised that there is nothing they can do to support them. Delphine thinks she has paid far above the principal amount she borrowed.

Delphine and her mum (who is helping her with this) have advised that the situation has caused significant stress, both initially due to the transport limitations and impact this had on Delphine and her child, and due to the ongoing hassle with the vehicle and finance.

November 2022 (ICAN ref 2346)

Mrs. Green was browsing Cairns' dealerships to find a suitable vehicle for herself. In this search, she ended up at Buffalo Motors. Whilst there, she was advised that they had no vehicles for her at that time (around September 2021). Roughly one week later, Mrs Green received a call from Buffalo Motors and was told they had a vehicle for her that was \$8000. Mrs. Green went down to the dealership and despite having initial concerns with the vehicle, was told this was the only one available for her. Begrudgingly, she accepted as she desperately needed a vehicle. Within the first two months Mrs Green had to spend around \$2000 using Afterpay to bring the vehicle up to scratch. In addition to these repairs, Mrs. Green said there was no working radio, several of the windows did not work and that various panels on the car did not match the rest of the vehicle. It was also at this time that the mechanic mentioned to her that he had major concerns around the vehicle, particularly the engine. Eventually, after a year, the vehicle completely broke down and Mrs. Green tried in as many ways as she could to seek a resolution. Buffalo Motors took the vehicle back but refused to do any repairs, Mrs. Green tried her best but they stopped speaking to her and all she was left with was a broken vehicle and a loan she should have never received. Years on from this, Mrs. Green is still without a vehicle and all she has is a loan she should have never received and a destroyed credit file that is preventing her from moving on with her life.

September 2022 (ICAN ref 2203)

Client's mother referred her daughter Wendy, due to watching an NITV documentary about Wujal Wujal and car dealerships. Wendy's mum stated that her daughter bought a car from Buffalo Motors. The engine failed and requires a new engine. The vehicle is still with Buffalo Motors, but he's wanting to charge \$8k for the second engine. Wendy stated that she first purchased her vehicle, a 2011 Nissan Patrol from Buffalo Motors back in October 2021 for \$10k.

Wendy stated that she had gotten pre-approval from [lender], to purchase a car. The client felt pressured by [sales representative] that she needed to rush on this, as the car was up for grabs and would be snapped up. Wendy wasn't given the option of a test drive or had anyone look at it before she bought it. She stated that once she gave the go-ahead that she wanted to purchase the Nissan Patrol, Buffalo Motors informed her to come back in a couple of days to pick it up.

Wendy stated that she started having trouble with the car a week later, the engine kept over-heating. She got a mobile mechanic to have a look at her car, and they informed her she needs a new engine.

Wendy stated that she had called Buffalo Motors and they tried to blame her, stating that she should have called them earlier. She stated that the car has been sitting at Buffalo Motors since November 2021. Wendy stated that she has tried calling them, but she keeps getting the run-around, stating that they haven't found the right engine yet.

September 2022 (ICAN ref 2101)

Iris advised that she purchased the car as her family was growing and they needed a vehicle which was suitable for the family and for taking Iris to hospital as well as other appointments. Iris also advised her children were 3 and 6 at the time she purchased the vehicle.

Iris advised that she purchased the vehicle in 2020 and had it for roughly 1 year before it completely broke down. I asked Iris when she began experiencing problems with the vehicle. Iris advised that problems began from the first day of owning the car as the tyres were all different sizes. Iris had this repaired, however, the difficulties continued regularly. The gearbox broke amongst other things and eventually culminated in the engine blowing up roughly 18 months ago. Since then the car has sat in Iris's yard. Iris said she was working but paying \$130 p/week and finding it very expensive.

I let Iris know we could look into this for her. I asked if she had still had the car, Iris advised that she no longer did as the mechanic advised it was going to cost \$15000 to repair and it would be better to just scrap it.