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October 18, 2010

MCCA Australian Consumer Law Draft Regulations Consultation
Infrastructure, Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Competition and Consumer (Australian Consumer Law) Amendment Regulations

The Australian National Retailers Association welcomes the opportunity to provide feedback on the draft Competition and Consumer (Australian Consumer Law) Amendment Regulations and the draft Australian Consumer Law Compliance Guides.

ANRA represents the leading national retailers in Australia, across a broad range of retail products and services. Members of the Association include Australia's most trusted household names in supermarket chains, department stores and speciality retailers.

ANRA is broadly comfortable with the draft Competition and Consumer (Australian Consumer Law) Amendment Regulations. ANRA members do, however, wish to raise one issue in relation to the proposed arrangements, around express warranties.

ANRA supports the incorporation of a new standard statement in relation to warranties, such as the one proposed in the draft regulations.

However, it is likely that no express warranties on products that are currently stocked by retailers will currently include the specific warranty statement that will be required under the draft regulations. This has two implications for retailers.

Firstly, retailers sell thousands of product lines and it will take some time to review and amend documents to comply with the new requirements.

Secondly, in relation to warranties that form part of or are inserted into product packaging, it will take additional time to sell through existing stocks of product.

Consequently, if the regulations commence on 1 January 2011, as is currently planned, this requirement will cause significant compliance issues for retailers. It may also mean that retailers will need to throw out or dump considerable amounts of existing stock at considerable expense with no sound policy basis for this outcome.

ANRA is therefore proposing that it would be appropriate for a transition period to be incorporated in relation to this express warranty requirement, to allow retailers time to update all their documentation and to allow for a run-down in existing stock. ANRA proposes that an appropriate transitional period is 12 months on the basis that retailers generally purchase stock up to one year in advance and have significant stock either already ordered, in storage or in-store that needs to be sold.

To assist Treasury, ANRA has prepared a draft amendment to deal with this is transition period, which is attached to this letter. The proposed changes are in red text.

The stock in trade provision, as ANRA has drafted, in these proposed amendments ensures businesses will only be able to take advantage of the transition arrangements if the warranty otherwise complies with the requirements of the ACL at the time it was supplied by its manufacturer. This means the exemption only extends to the formal requirements imposed by regulation 89 and does not affect the substantive requirements of the ACL around consumer rights.

We welcome the opportunity to provide feedback on the Australian Consumer Law Compliance guides, and look forward to providing further input as required. Should you require more information on ANRA's submission, please contact Ms Margy Osmond, CEO, at margyo@anra.com.au or on (02) 8249 4520.

Regards

Margy Osmond
Chief Executive



ANRA Suggested Amendments to Regulation 89 - Addition of Transition Period

89 Requirements for warranties against defects

- (1) For subsection 102 (1) of the Australian Consumer Law, in relation to product supplied after [INSERT DATE] the following requirements are prescribed:
 - (a) a warranty against defects must be in a document that is transparent;
 - (b) a warranty against defects must concisely state:
 - (i) what the person who gives the warranty must do so that the warranty may be honoured; and
 - (ii) what the consumer must do to entitle the consumer to claim the warranty;
 - (c) a warranty against defects must include the text mentioned in subregulation (2);
 - (d) a warranty against defects must prominently state the following information about the person who gives the warranty:
 - (i) the person's name;
 - (ii) the person's business address;
 - (iii) the person's telephone number;
 - (iv) the person's email address (if any);
 - (e) a warranty against defects must state the period or periods within which a defect in the goods or services to which the warranty relates must appear if the consumer is to be entitled to claim the warranty;
 - (f) a warranty against defects must set out the procedure for the consumer to claim the warranty including the address to which a claim may be sent;
 - (g) a warranty against defects must state who will bear the expense of claiming the warranty and if the expense is to be borne by the person who gives the warranty — how the consumer can claim expenses incurred in making the claim;
 - (h) a warranty against defects must state that the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods and services to which the warranty relates.
- (2) For paragraph (1) (c), the text is 'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure'.
- (3) Notwithstanding anything in subregulation (1), where the warranty against defects:
 - (a) forms part of the packaging of the product to which it relates; or
 - (b) is inserted into the packaging of the product to which it relates.

will be taken to comply with the requirements of subsection 102 (1) of the Australian Consumer Law, if the warranty against defects otherwise complied with the requirements of the Australian Consumer Law at the time that the product was supplied by its actual manufacturer for a further period of 12 months from the date mentioned in subregulation (1).