

Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law

J ODwyer / February 2022



Introduction

Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au

MEA will limit its response to Part B of the consultation paper.

MEA members represent suppliers, as defined by the consumer law, of electrical installation equipment which ranges from cables to complicated equipment including but not limited to Air-conditioners, renewable energy systems including Solar and battery system, lighting, generators and home automation systems.

It is our members experience that they are frequently confronted with being in the middle of the consumer guarantee.

Feedback from our members report that their experience as a supplier ranges from very good to very bad in responding to consumer complaints. MEA was interested to read in the discussion paper the following extracts on page 53 and subsequent pages

For example, the Australian Industry Group (Ai Group) has previously noted certain products (e.g. air conditioners, water heaters, solar- battery systems and televisions) require installation or other after-service support by a third party and problems can arise if a good is incorrectly installed or serviced.⁸⁸ For small manufacturers, indemnification of such claims could represent a significant cost that might threaten their viability.

Where a manufacturer failure is a major failure, consumers are entitled to their choice of refund or replacement. In such cases, where the consumer elects to receive a refund or replacement, the manufacturer does not need to be provided with an opportunity to repair the good. Ai Group has previously expressed concerns manufacturers sometimes receive little opportunity to inspect goods for manufacturer faults before a remedy is provided by a supplier:

In practice, upon receiving a returned good from a retailer, the manufacturer may have no practical ability to return the goods to the retailer. This is because some retailers automatically provide the consumer with a replacement, and the manufacturer therefore does not have an opportunity to assess, repair (if there is a failure) and return the good. And where there is a failure that was not due to the manufacturer, it is often not commercially viable to repair returned goods. These returned goods are typically sent to waste, and are a substantial and growing cost for manufacturers.⁸⁹

In other instances, manufacturers may not be familiar with the ACL's requirements or incorrectly assume the ACL does not apply to them (e.g. as may be the case with some overseas-based manufacturers).⁹⁰

There will also be circumstances where the fault does not sit with manufacturers. In this regard, the effective operation of the indemnification provisions relies on suppliers and manufacturers correctly assessing each good as either:

- a failure on the part of the manufacturer, like a manufacturer fault, for which indemnification should be sought or*
- a failure on the part of the supplier, like where an item sold through an online trader's website was listed with an erroneous description of the good, for which indemnification should not be sought from the manufacturer.*

*A correct assessment of whether a failure exists can also require a degree of expertise in more complex goods. This issue was highlighted by Ai Group in the ACL Review consultation. Ai Group noted a large proportion of electronic and home appliance goods returned to manufacturers do not have a fault or do not have a fault caused by the manufacturer. Ai Group attributed this to a lack of obligation or incentive on suppliers to investigate whether a failure exists.⁹¹ However, if there is no *Improving the effectiveness of the consumer guarantee and supplier indemnification provisions* fault caused by the manufacturer, then there will be no obligation for the manufacturer to indemnify the supplier.*

Our members report, in response to the above, that the ability of suppliers to gain information concerning faults in equipment whilst on site with a customer varies greatly. Our members report that some manufacturers are extremely good in providing phone and online technical support for their products. In this case our member report particularly with fault identification that these companies are easily accessible and understand that by providing a technical support service that it reduces the number of returns from the consumer and supplier.

However, the converse is also true, where manufacturers who provide poor, slow, unresponsive or nonexistence support for their products then the consumer guarantee by the supplier is and should be undertaken to support the consumer.

In many specific cases members report air conditioner, renewable solar and battery companies who have responsive technical hotlines can discuss the fault with the supplier, in real time and can agree in most cases about the fault and using mobile technology can view the installation and product as it is installed. This results in the manufacturer establishing if the product has been installed incorrectly or if it is truly a situation where it is a manufacturing fault.

As one member expressed, he completed a \$10,000 job for a homeowner comprising of switch board, general electrical work and solar system and two fans. The 2 ceiling fans were faulty, but the client would not pay the whole invoice until they were satisfied. The brand had no support line and had an email address for installer. The contractor relayed that from his experience the emails were not answered in some cases for weeks. The member replaced the fans, the client paid, the manufacturer did not compensate for the fans or the alternative replacements that the contractor used. The contractor accepted the cost of labour and 4 fans that was not reimbursed by the manufacturer.

Based on these examples and situations MEA is supportive of part B whereby manufacturers should be fined and the ACCC able to act against manufactures. It is cognisant on manufacturers to appropriately price their technical support and product failures into the wholesale price of their product if they fail to do so that should not be the expense of the consumer nor the supplier.

In all industries there are examples of best practice and poor practice unfortunately legislation and laws are generally written because the bottom 10 % of participants in an industry. If a manufacturer in a market creates a product for lowest price with no quality and no service or support this puts at risk consumers and therefore suppliers.

MEA Supports the introduction

- a court civil pecuniary penalty and injunctions against a manufacturer for a contravention of the obligation to provide indemnification, which could require the businesses to act, or refrain from acting, in a certain way
- the ACCC would be given the ability to issue infringement notices where they have reasonable grounds to believe that a manufacturer has contravened the obligation to provide indemnification.



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