

13 November 2024

Director  
Consumer Policy Unit  
Market Conduct Division  
The Treasury

By email to [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

Dear Director,

## Consultation on consumer guarantees and supplier indemnification under the Australian Consumer Law

Thank you for the opportunity to comment on the proposal to include prohibitions and penalties in the Australian Consumer Law (ACL) for businesses that fail to offer a remedy or reimburse a supplier as required by the ACL's consumer guarantees and supplier indemnification provisions.

As the ombudsman for Australia's telecommunications industry, our office provides free and independent external dispute resolution services for Australian residential and small business consumers. In performing this role, we regularly receive complaints that involve issues relevant to the ACL's consumer guarantees. Where this occurs, our complaint-handlers consider the guarantees as to acceptable quality of goods, due care and skill in the supply of services, and fitness for purpose of both goods and services. Typically, these issues arise in complaints about faulty telco equipment (such as mobile phones) or about poor service quality, for example when a consumer experiences slow download speeds on their internet service.

We offer the following feedback, based on our experience dealing with telecommunications complaints. While we support prohibitions and penalties relating to both the consumer guarantees and the supplier indemnification provisions, our commentary focuses on the consumer guarantees, as we do not have experience applying the supplier indemnification rules.

### 1. We support the proposed prohibitions and penalties for businesses that fail to offer remedies required under the consumer guarantees

The introduction of penalties for businesses that fail to offer remedies required by the consumer guarantees will provide a strong incentive for businesses (including telcos) to offer the remedies that are required under the ACL's rules.

In our experience, most telcos are usually willing to offer consumers remedies in line with what is required under the guarantees. However, we sometimes see instances where a telco either fails to acknowledge that a consumer guarantee applies, or inappropriately insists a consumer must contact the manufacturer of their equipment instead of offering a resolution consistent with the telco's obligations under the consumer guarantees. When this occurs, our compliant handlers will consider the law, good industry practice, and what is fair and reasonable in the circumstances. Where a telco is not willing to offer a remedy required under the guarantees, our office can direct it to do so.

While we can direct telcos to comply with their obligations under the consumer guarantees, not all consumers are aware they can make a complaint to our office, or that the consumer guarantees exist.<sup>1</sup> Imposing penalties for failing to offer remedies in line with the guarantees will encourage businesses (including telcos) to offer appropriate remedies without a consumer needing to make a complaint.

#### Case study – Brenda's telco refuses to assess her mobile handset for manufacturing defects\*

Brenda had a mobile service with Skink Networks. While Brenda had the service, she paid Skink Networks for the mobile phone she used with it, under a linked device repayment contract. Brenda experienced some difficulties with Skink Networks and cancelled her mobile service before lodging a complaint with our office. When Brenda lodged her complaint with the TIO, her mobile phone was no longer working properly. The operating system had become very slow and unresponsive. Because of this, Brenda wanted Skink Networks to waive her outstanding charges for the mobile phone.

After Brenda lodged her complaint, we asked Skink Networks to assess Brenda's mobile phone for defects, and repair or replace it if required. Skink Networks refused to assess the handset. It told us Brenda could not make a warranty claim for the mobile phone because she was no longer a customer of Skink Networks, and it did not have a warranty process for non-customers. Skink Networks advised that Brenda would need to contact the phone's manufacturer to get it assessed for defects.

We formally recommended Skink Networks should resolve the complaint by assessing the mobile and providing a remedy if it were found to be faulty, as required by the ACL. Skink Networks accepted our recommendation.

*\*Names of all parties have been changed*

We understand some stakeholders have expressed the view that introducing penalties for failing to offer remedies required by the guarantees would create an imbalance of power between consumers and businesses, and encourage unreasonable consumer behaviour. We disagree with this view. In our experience, many consumers of telecommunications goods

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<sup>1</sup> [Research conducted for the TIO by the Consumer Policy Research Centre \(CPRC\) in November 2023](#) found that 46 percent of Australians who experienced a telco challenge in the previous 12 months did not lodge a complaint about their problem – see page 13 of the CPRC's July 2024 report.

and services are more likely to be unaware of their rights under the consumer guarantees, than to make unreasonable or unmeritorious claims based on the guarantees.

In our view, the proposed prohibitions and penalties will not motivate a significant number of unreasonable claims from consumers. We understand the penalties would only be available to regulators seeking to take enforcement action against non-compliant businesses. It would therefore not be open to consumers to abuse the penalties provisions by taking legal action directly. In any case, the penalties would only apply when a business has failed to offer a remedy that is required by law.

## 2. We support the proposed prohibitions and penalties applying economy-wide

We support the proposed prohibitions and penalties applying economy-wide, rather than exclusively to the automotive industry or to high-value goods and services. There is a risk that introducing new rules that apply only to one industry may add undesirable complexity to the consumer guarantees regime. Applying the prohibitions and penalties only to one industry may also cause inconsistent approaches to the guarantees between industries.

In our view, a broad, economy-wide approach to the prohibitions and penalties would provide the most robust protection for consumer rights. As Treasury outlined in its consultation paper, consumers may be more likely to take action to enforce their rights under the consumer guarantees in a court or tribunal where the action relates to a high-value good or service. A broad, economy-wide approach would motivate businesses to offer remedies consistent with the guarantees in all cases, even where the cost of a good or service is low enough that consumers are unlikely to actively enforce their rights.

By comparison to the goods and services purchased in the automotive industry, most telco goods and services purchased by residential and small business consumers would generally be considered low value. However, we see in the complaints made to our office that the cost of repairing or replacing faulty telco goods and services (particularly faulty mobile phones) can represent a substantial burden for consumers.

Where a telco fails to offer a remedy, consumers may feel they are left with a choice between paying for the repair or replacement themselves, or putting up with faulty products. This is particularly concerning as consumers rely on their telco devices to participate in everyday life. As Treasury notes in its consultation paper, 22 percent of the consumer guarantees-related contacts the ACCC received in 2023 were about electronics and consumer whitegoods (which may include telco equipment such as mobile phones).

## 3. The principles-based provisions of the consumer guarantees regime do not present significant interpretive challenges for our office

We understand some stakeholders have raised concerns that aspects of the consumer guarantees regime are principles-based and may be unclear in their application to particular industries, goods, or services. These stakeholders have argued there should be greater clarity in the provisions if the government is to introduce the proposed prohibitions and penalties.

Clarity in legal provisions is always desirable, and we support changes that would make the operation of the consumer guarantees regime clearer. Where necessary, this may assist telcos and other businesses to understand and comply with their obligations. However, in

our experience the existing provisions do not generally present significant interpretive challenges for our office when applying the consumer guarantees.

In our view, the consumer guarantees provisions are generally sufficiently clear for businesses to know what remedies they require. Where there is genuine confusion about what the guarantees require, we expect regulators would take this into account when deciding whether (and the extent to which) they pursue businesses under penalties provisions.

We look forward to learning the outcome of this consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', with a long, sweeping horizontal flourish extending to the right.

Cynthia Gebert  
Telecommunications Industry Ombudsman