

11 February 2022

Consumer Policy and Currency Unit
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Email: consumerlaw@treasury.gov.au

Dear Sir/Madam

Submissions to Treasury – Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law.

The Australian Credit Forum (**ACF**) welcomes the opportunity to make a submission to Treasury in respect of the potential reforms to improve the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law (**ACL**).

The ACF was established in the early 1970's by a group of senior credit professionals. The group recognised the need to develop an association where members could meet on a regular basis to exchange thoughts and ideas to strengthen their own knowledge but also the standards of the industry.

The association meets on a regular basis to discuss and review existing and proposed changes to the Federal and State Governments legislation that might have an impact on their company's credit policies and practices in their day-to-day role as credit professionals.

The members of ACF are drawn from all areas of the credit profession across a range of industry groups including but not limited to senior credit managers, members of the legal profession, insolvency practitioners, credit insurance underwriters and brokers, mercantile agents and credit reporting agencies. The depth and diversity in experience of the members ensures that a broad cross section of the credit industry considers the impact of all relevant legislation.

The members of the ACF have selected only focus questions of relevance to their experience and their businesses.

FOCUS QUESTIONS - SUPPLIER INDEMNIFICATION

1. Suppliers: to what extent are you able to enforce your indemnification rights?

The ACF is of the view that suppliers generally do not need to enforce their indemnification rights. This is due to the customer-centric focus that most suppliers and manufacturers have as their central approach to any claims for remedies that are made by traders. The majority of ACF members report that they do not face difficulty with obtaining indemnification for remedies, and that the process of providing a remedy to customers and obtaining indemnification from the manufacturer has become a 'reality of business'.

There are a small handful of reported cases whereby a supplier has had to enforce their indemnification rights under statute, however in most cases the difficulty faced by suppliers was due to the manufacturer's refusal to acknowledge supplier's indemnification rights, rather than any threat of retaliation.

2. **What are the barriers to seeking indemnification?**

The ACF is of the view that there are several significant barriers preventing suppliers from seeking and obtaining indemnification. The most significant, as reported by ACF stakeholders, were:

- (a) a lack of awareness from traders that a statutory right to indemnification exists;
- (b) a lack of awareness as to how traders can enforce their statutory right to indemnification;
- (c) the lack of serious consequences facing manufacturers who fail to provide such a remedy; and
- (d) a power imbalance between the trader and supplier/manufacturer, especially where the trader was largely dependent on one supplier or manufacturer for the majority of their work.

The ACF is of the view that the lack of awareness of the statutory right to indemnification, as well as the lack of consequences facing manufacturers who fail to provide such indemnification, contribute to the overall lack of data regarding the effectiveness of the current law.

3. **Has your business been subject to retribution when you have sought indemnification? If yes, what form did it take?**

The majority of the ACF members have not reported any instances of retribution, however there are various reports of manufacturers simply denying the existence of a supplier's right to indemnification.

4. **Please provide any relevant information or data you have that quantifies the extent of manufacturer's not indemnifying suppliers or making it difficult for suppliers to obtain indemnification.**

The ACF does not hold any data to quantify the extent of manufacturers not indemnifying suppliers, however ACF members reported less than five instances whereby manufacturers made it difficult for suppliers to obtain indemnification.

It should also be noted that the lack of awareness by suppliers of their rights to indemnification would certainly influence this data. The ACF members currently report that the customer-centric approach and the need to capture market share has led to suppliers providing remedies to customers and waring the costs themselves. Only reoccurring product issues, such as faults that were known to occur within a certain line of product, became subject to indemnification claims.

The ACF is of the view that if more suppliers were aware of their statutory right to indemnification and how this right may be enforced against manufacturers, there would be many more claims for indemnification and the data would likely reflect a different reality.

5. **Please provide any relevant information or data you have that quantifies the proportion of consumer claims that suppliers refuse or do not consider due to the inability or difficulty in obtaining indemnification, or due to fear of retribution?**

Based on ACF member responses, the ACF is of the view that most suppliers do not refuse claims due to the inability or difficulty in obtaining indemnification, or due to fear of retribution. There are a number of reports of suppliers refusing remedies, but this was generally due to a lack of awareness of their statutory right to indemnification for providing that remedy.

6. **Have you sought indemnification from manufacturers under the existing law? If not, please provide details.**

There were no reports from ACF members of any instances whereby suppliers sought indemnification from manufacturers under the existing law. The ACF is of the view that this is largely due to the lack of awareness of the suppliers' statutory right to indemnification.

7. **Have you experienced difficulties getting indemnified from manufacturers? If so, please provide details.**

ACF members reported several isolated incidents whereby suppliers experienced difficulties with obtaining remedies from manufacturers. Generally, the difficulties were classed as a 'denial of the existence' of any such right to indemnification. ACF members also reported an increased difficulty in obtaining remedies from larger manufacturers such as multinational organisations. Generally, suppliers reported that these larger organisations were only willing to repair products, and very seldom accepted returns.

The ACF is of the view that most manufacturers and suppliers incorrectly assume that the only rights that they have in relation to indemnification for remedies for consumer claims come from the agreement between the parties. In the instances where manufacturers declined to indemnify suppliers, manufacturers referred the suppliers to the terms and conditions that governed the relationship between the parties as evidence that no such right to indemnification existed.

8. **Would your inclination to seek an indemnification change if a civil prohibition was introduced?**

The ACF is of the view that the introduction of civil prohibitions might drive manufacturers to be more prone to retaliatory behaviour. The only threat to the integrity of the status quo seems to be the lack of awareness among suppliers and manufacturers alike of the statutory right to indemnification. The ACF is of the view that were a civil prohibition to be introduced, relationships between suppliers and manufacturers may become further antagonised, which may prompt retaliatory behaviour and take the focus away from consumers.

9. **Would your approach to providing consumer guarantee remedies to consumers change if a civil prohibition was introduced? If so, how?**

With specific reference to the data received from its stakeholders, the ACF is of the view that the majority of suppliers would not change their approach to providing consumer guarantees if a civil prohibition were introduced. Currently, most suppliers report a customer-focused approach whereby remedies are provided to customers regardless of whether the supplier will be indemnified. Therefore, the presence of a civil prohibition within the legislation likely will not change the approach adopted by most suppliers.



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