

ACCC NOTIFICATION ON CONSUMER GUARANTEE OBLIGATIONS IN PRINCIPAL / AGENT RELATIONSHIPS

16 July 2024

To: ALL AADA MEMBERS

In the past few years, the AADA has been approached by several members operating under an agency model, questioning their obligations as Agents under the Australian Consumer Law (ACL).

Under the traditional Dealer franchise model, the Dealer is treated as a "supplier" under the ACL and is responsible for honouring consumer guarantees. Under an agency model, the Agent never has ownership of the vehicle. The Agent merely facilitates the sale of the vehicle between the OEM (as Principal) and the customer. As a result, doubts have emerged over whether an Agent is deemed a "supplier" under the ACL and is therefore responsible for "consumer guarantees".

The AADA, as part of its membership of the ACCC's Small Business Franchising Consultative Committee, asked the ACCC to provide guidance on this issue.

Today we received a notification from the ACCC which we have included below.

The AADA believes that the ACCC's notification makes it clear that under an agency model it is the OEM, as the Principal, which has the obligation of the "supplier" in relation to honouring Consumer Guarantees under the ACL.

Please be aware that the ACCC notification makes it clear that while an Agent is not a "supplier" for the purposes of the ACL, it can still be deemed to have contravened the ACL if it has caused the loss.

Also, although not dealt with in the ACCC notification, where a dealer Agent is not an agent for the purposes of carrying out servicing of vehicles (and only for the sale of vehicles), the dealer will be deemed the "supplier" and be responsible for the consumer guarantees to the customer with respect to the servicing of the vehicle.

As always, the AADA recommends that members seek legal advice with respect to your specific circumstances.

ACCC NOTIFICATION

Dear SBFCC members & observers,

*Please see below our responses to the **Action Items** from previous meetings:*

SBFCC meeting No.18 of 3 November 2023

Action Item 1 – ACCC to provide guidance on consumer guarantee rights and responsibilities when an agent acts as an intermediary at the point of sale between the manufacturer and consumer.

ACCC response:

Consumer guarantee obligations attach to the supplier. In agency-principal arrangements, one business (the agent) acts as an intermediary between another business (the principal) and the customer. In these circumstances, title to the goods does not transfer to the agent and the principal business will be the supplier. The principal's liability to meet the consumer guarantees, and provide remedies when consumer guarantees are not met, cannot be excluded, restricted or modified by contract.

If a problem arises with a product or service, the customer can contact either the principal business or the agent or both businesses. However, it is the principal that owes the remedy if a consumer guarantee has not been met and that must provide instructions to the agent on how to handle the claim. The principal should ensure the instructions it provides, and the processes it sets up with its agents for consumer guarantees claims handling, are in compliance with the Australian Consumer Law.

In agency-principal arrangements, the principal business will generally be responsible for the conduct of its agents, including in relation to possible contraventions of the ACL. If an agent engages in conduct for which liability can be attributed to the principal, the agent will also likely have engaged in conduct in contravention of the ACL.

Previous ACCC court action concerning sales conduct by agents on behalf of various energy companies may serve as useful case studies. For example:

- In 2013, two energy providers under the AGL corporate group were ordered to pay \$1.5 million for illegal door-to-door sales practices undertaken by their agents. The relevant agent, a marketing company used by the AGL companies called CPM Australia Pty Ltd, was also ordered to pay \$200,000 for its role in the conduct.*
- In 2015, [EnergyAustralia Pty Ltd and its then-agent, a telemarketing firm called Bright Choice Australia Pty Ltd, were ordered to pay penalties of \\$1 million and \\$100,000 respectively](#) for making false or misleading representations and engaging in misleading or deceptive conduct when selling electricity and gas plans to consumers.*

Businesses should seek legal advice about how the ACL will apply in their specific circumstances.

We are in the process of updating the [ACCC 'Consumer Rights and Guarantees' web page](#) to include a summary of this information and will share the updated content with SBFCC when it is live on our website.

If you have any questions or need further information, please contact:

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