

**CONSULTATION REGULATION IMPACT STATEMENT**

**CHAPTER THREE**

# Australian Consumer Law Review: Enhanced disclosure for extended warranties

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Consumer Affairs Australia and New Zealand  
2017

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# EXECUTIVE SUMMARY

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Extended warranties are optional products that consumers typically purchase for an additional amount around the time of purchasing the primary product to which the extended warranty applies. The warranty provider generally agrees to repair or replace, or cover the cost of repairing or replacing goods (or parts of components), if a defect occurs within a specified time period. Extended warranties are separate to a consumer's statutory rights and any manufacturer's warranty provided. Although consumers may perceive extended warranties to be a 'feature' of the primary product to which the extended warranty applies, extended warranties are themselves a separate product.

Extended warranties are frequently offered to consumers when they purchase expensive or complex consumer goods, such as white goods and electrical products. Extended warranties can be attractive to consumers because they offer consumers the 'peace of mind' that they do not have to worry about paying for the unexpected costs of repairing or replacing a product. They can also make the process of obtaining a refund, repair or replacement easier for consumers because the consumer does not have to establish a breach of the Australian Consumer Law (ACL).

However, in some cases it may be difficult for consumers to determine if an extended warranty offers value for money and provides the additional protection they seek. Extended warranties may not always offer significant benefits over and above a consumer's statutory rights or manufacturer warranty rights. Consumers may have difficulties making informed decisions about buying an extended warranty if they:

- are not aware of their existing rights under the ACL or any applicable manufacturer's warranty,
- have trouble understanding the terms and conditions of an extended warranty,
- are not able to compare an extended warranty with their rights under the ACL and under any manufacturer warranty,
- are influenced by behavioural biases,
- are under time pressure, and/or
- have trouble comparing different extended warranties (or don't compare them).

Although there is evidence that there is a problem that may warrant regulatory intervention, there is currently a lack of data about the size of this problem. Consultation will gather further information on the identified problem. This chapter is a consultation regulation impact statement (RIS) on options that would assist consumers to make more informed purchasing decisions with regard to extended warranties.

In 2017, the ACL Review Final Report (the Review) recommended enhancing disclosure in relation to extended warranties by requiring:

- agreements for extended warranties to be clear and in writing,
- additional information about what the ACL offers in comparison, and

- a cooling-off period of ten working days (or an unlimited time if the trader has not met their disclosure obligations) that must be disclosed orally and in writing.

This recommendation is one of the options considered in this RIS chapter (Option 2), along with maintaining the status quo (Option 1), or disclosure and an opt-in process (Option 3). Views are sought on these options – including whether they would address the problem, how effective they would be and what impacts they would have. Consumer Affairs Australia and New Zealand (CAANZ) also welcomes views on any alternative options for helping consumers make better decisions about purchasing extended warranties.

# INTRODUCTION

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## EXTENDED WARRANTIES

1. Extended warranties are optional contracts that consumers typically purchase for an additional amount around the time of purchasing the product to which the extended warranty applies (the primary product). The warranty provider generally agrees to repair or replace, or cover the cost of repairing or replacing the primary product (or parts of components), if a defect occurs within a specified time period. They are separate to a consumer's statutory rights and any protections provided in any manufacturer's warranty. In addition to offering repair or replacement, extended warranties also frequently advertise added benefits or remedies, such as protection for accidental damage, priority customer treatment and technical support. In some cases, extended warranties have a delayed commencement date, providing cover only after the manufacturer's warranty has expired.
2. Many retailers of expensive consumer goods (such as cars, whitegoods, televisions and appliances) offer extended warranties. They are also available from manufacturers and insurance companies.
3. Although extended warranties may appear to 'extend' a manufacturer's warranty, extended warranties are actually a separate product and in some cases, may be an insurance product. In addition to being a separate product, extended warranties are often provided under a separate contract. Extended warranties are generally entered into at the same time, or shortly after, the sale of the primary product.
4. Consumers typically purchase extended warranties to minimise any costs associated with a product breaking down or having faults during the warranty period. The main perceived benefit of an extended warranty is that they provide consumers with 'peace of mind' that they do not have to worry about the unexpected costs of repairing or replacing a product (for a particular period). Consumers who buy extended warranties can also benefit from not having to invest time to search for a company to repair a product.
5. Extended warranties can also make the process of gaining a refund, repair or replacement easier, compared to relying on statutory rights. Retailers may be more willing to provide refunds and replacements and may have more convenient or straightforward processes where a consumer is able to rely on an extended warranty.

## OTHER TYPES OF WARRANTIES

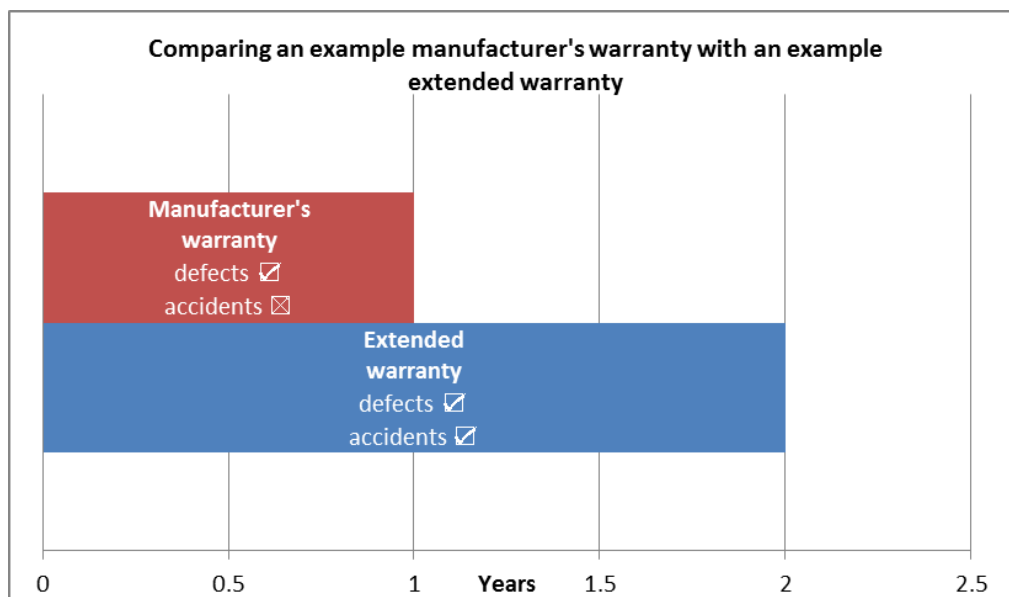
6. Consumer products generally come with other types of warranties, called express warranties and warranties against defects. These are different to extended warranties. Express warranties and warranties against defects are provided to consumers for no additional cost. In contrast, extended warranties are warranties offered to consumers that the consumer pays for, separately to payment for the primary product.

## Express warranties

7. An express warranty relates to the quality or standard of a product. It is a promise about what a product can do, in terms of its characteristics, performance, quality and/or the action that will be taken if the product is faulty. Under the consumer guarantees, suppliers and manufacturers are required to comply with the terms of any express warranty.<sup>1</sup> For example, if a supplier sells a book shelf that is advertised as holding up to 80 kilograms this is a statement about what the product can do and the shelf must meet this standard.
8. Suppliers who do not honour express warranties can also be liable under other provisions of the ACL, such as for making a false or misleading representation about the effect of any warranty.

## Warranties against defects

9. Suppliers and manufacturers often provide an express 'warranty against defects' for a specified period of time. The time period is often one to three years. Warranties against defects are also known as manufacturer's warranties. Warranties against defects are representations that a supplier or manufacturer will (unconditionally or on specified conditions): repair or replace products (or part of them), resupply or fix a problem with services (or part of them), or provide compensation to the consumer.<sup>2</sup>
10. If a supplier or manufacturer chooses to provide a warranty against defects then the warranty document must comply with specific information requirements, including mandatory text.<sup>3</sup>



Note: this is an example only. The coverage and duration of extended warranties and manufacturer's warranties varies.

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1 *Competition and Consumer Act 2010* (Cth) ('Competition and Consumer Act'), Schedule 2, Australian Consumer Law ('ACL') section 59.

2 ACL section 102(3).

3 ACL section 192; *Competition and Consumer Regulations 2010* (Cth) regulation 90.



# THE PROBLEM

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## OVERVIEW

A lack of clear and accessible information, behavioural biases and time constraints can make it difficult for consumers to make informed decisions about whether to purchase an extended warranty. Consumers may not always be aware of their existing rights or may experience difficulty comparing the protections offered under an extended warranty with their existing rights. This may make it difficult for consumers to determine if an extended warranty provides value for money and the additional protection they seek. Additionally, consumers may be unlikely to compare extended warranties offered by a retailer with extended warranties available elsewhere.

Although there is evidence that this problem may warrant regulatory intervention, there is currently a lack of data about the size of this problem. Consultation will gather further information on the identified problem.

## SCOPE OF THE PROBLEM

11. Extended warranties do not always provide consumers with significant benefits over and above a consumer's existing rights. This RIS chapter identifies that it can be difficult for consumers to make informed decisions about extended warranties, due to a lack of information, time constraints and behavioural biases.
12. This RIS chapter is not directed at issues of unconscionable or misleading conduct by traders in relation to the sale of extended warranties. Unconscionable conduct and misleading or deceptive conduct is already prohibited under the consumer law.

## CONSUMER AWARENESS OF THE ACL

13. The 2016 Australian Consumer Survey found that 90 per cent of consumers are aware that laws exist to protect consumer rights when purchasing products or services.<sup>4</sup> However, consumers may have a general awareness of consumer protection laws but not have specific knowledge about the consumer guarantees. Additionally, some consumer groups have lower reported awareness of consumer laws, including females, younger respondents, those living outside of a capital city and those who speak a language other than English at home.<sup>5</sup>

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4 The Australian Treasury on behalf of Consumer Affairs Australia and New Zealand, *Australian Consumer Survey 2016*, May 2016 ('Australian Consumer Survey'), page 21.

5 Australian Consumer Survey, page 21.

14. A study of the former *Trade Practices Act 1974* found that a lack of awareness of statutory rights was driving the demand for extended warranties.<sup>6</sup> Where consumers are not aware of their statutory rights under the ACL, including the consumer guarantees, they may be more inclined to consider that they should purchase an extended warranty, and may be more susceptible to purchasing an extended warranty that offers no real benefit above the ACL.

## CONSUMER UNDERSTANDING OF EXTENDED WARRANTIES

15. Consumers may experience difficulties reading and understanding the terms and conditions of extended warranty contracts and may not always have an adequate opportunity to read the contractual terms before purchasing an extended warranty. The contracts can be lengthy and difficult to understand, and consumers may have limited time to read and properly understand a contract. Consumers may be unlikely to read in full an extended warranty contract, especially for lower cost extended warranties.

### FOCUS QUESTIONS – UNDERSTANDING EXTENDED WARRANTIES

#### For consumers

- Have you ever been offered or purchased an extended warranty? Did the business explain the difference between the extent of coverage under the extended warranty, the consumer law and any manufacturer's warranty provided?
- If you have purchased an extended warranty, did you understand the terms and conditions of the warranty when you purchased it?
- If you have purchased an extended warranty, why did you decide purchase it?
- If you have been offered an extended warranty and chose not to purchase it, what factors affected your decision?

16. A lack of clear information may make it difficult for consumers to compare the protections offered by an extended warranty with their existing consumer rights.<sup>7</sup> While statements to encourage consumers to take up an extended warranty must not be misleading, there is no positive obligation upon traders to provide information comparing rights under an extended warranty with a consumer's existing rights under the ACL or under any manufacturer warranty. There may also be no strong market incentive for provision of this information, because a trader is unlikely to obtain any additional benefit from providing consumers with comparison information, unless the extended warranty offers clearly superior protections or features compared to a consumer's existing rights. In some cases this may mean there is an information asymmetry between consumers and traders which may result in consumers purchasing extended warranties on an uninformed basis that are not right for them.

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6 National Education and Information Taskforce, *National Baseline Study for Statutory Warranties and Refunds*, Research Paper No 2, October 2009.

7 Consumer Affairs Australia and New Zealand, *Australian Consumer Law Review Final Report*, March 2017 ('ACL Review Final Report'), page 27.

## FOCUS QUESTIONS – UNDERSTANDING EXTENDED WARRANTIES

### For businesses

- For businesses, what training do you provide to assist salespersons to explain the benefits of an extended warranty compared to rights available to consumers under general consumer laws and any manufacturer's warranty provided?
- For businesses, what additional protections do you offer through extended warranties that are over and above the rights a consumer has under the ACL and any applicable manufacturer's warranty?
- For businesses, how do you ensure that the extended warranties you sell provide additional protection or features over and above the rights a consumer has under the ACL and any applicable manufacturer's warranty?

17. Consumers may be unlikely to compare different extended warranties to find the best deal before choosing to purchase one. Retailers may benefit from situational monopolies at the point of sale, meaning a consumer may purchase an extended warranty on the spot without conducting further research into other extended warranties that may be available elsewhere.
18. Market research from the United Kingdom indicates that consumers typically do not shop around for an extended warranty for electrical products, despite a range of providers offering extended warranties.<sup>8</sup> Consumers may perceive extended warranties to be a 'feature' of the product for which the warranty is bought, rather than a separate product that they can potentially purchase elsewhere. It is also generally more convenient for a consumer to purchase an extended warranty at the same time that they purchase the primary product.

## FOCUS QUESTIONS – COMPARING DIFFERENT WARRANTIES

### For consumers

- If you have considered purchasing an extended warranty, what sort of research have you done to help you make your decision?
- If you have purchased an extended warranty, did you buy it at the same time that you purchased the product to which the extended warranty applies?
- Have you ever compared extended warranties from different businesses to find the best value extended warranty?

### For businesses

- For businesses, do you offer a number of different extended warranties for any one product? If yes, how do you assist consumers to choose between extended warranties? How do these different warranties vary in terms of the protections or features that they provide?

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<sup>8</sup> UK Office of Fair Trading, *Extended Warranties on Domestic Electrical Goods: Final Decision on a Market Investigation Reference*, June 2012, paragraph 4.13.

19. In circumstances where extended warranties are provided by third parties (not the retailer or manufacturer of the primary product), consumers may not always be aware that the retailer is not the provider of the extended warranty.

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION'S *NEW CAR RETAILING INDUSTRY MARKET STUDY, DECEMBER 2017:***

The Final Report of the Australian Competition and Consumer Commission (ACCC) study into the new car retailing industry found that:

- Consumers are not being provided adequate information about the consumer guarantees at the point of sale of a new car and many consumers face difficulties understanding how the consumer guarantees apply and the distinction between consumer guarantees and warranties.
- These difficulties affect the ability of consumers to accurately evaluate the value of extended warranties compared to the rights consumers already have under the consumer guarantees or the manufacturer's warranty.
- Where dealers are remunerated on a commission basis, they have a commercial incentive to maximise their sales of extended warranties.

## BEHAVIOURAL BIASES

20. Behavioural biases can affect the purchasing decisions of consumers. Retailers typically offer extended warranties to consumers when the consumer has already decided to purchase the primary product to which the extended warranty would apply. In this sales environment, consumers may feel pressured to make a quick decision. Consumers who are risk adverse may also be more inclined to consider the purchase of an extended warranty for 'peace of mind'.
21. As extended warranties tend to be sold for expensive products, the high cost of the primary product can create a reference point for a consumer. At the time, the cost of the extended warranty may seem small in comparison. Where consumers have purchased an expensive primary product, they may be more inclined to purchase an extended warranty due to the fear of losing time and money if the primary product breaks down (loss aversion). Consumers that attach a higher value to the primary product may be more inclined to purchase an extended warranty to protect the perceived value of the primary product.
22. In some cases, consumers may have also spent significant time and cognitive resources on the primary purchase, and may experience decision fatigue at the point when they are offered the extended warranty.
23. Together, these behavioural biases can affect the ability of a consumer to make an informed decision about purchasing an extended warranty.

## MAKING AN INFORMED PURCHASING DECISION

24. It can be difficult for consumers to determine if an extended warranty offers value for money and the additional protection that the consumer seeks due to the difficulties outlined above with understanding the terms and conditions of an extended warranty, comparing rights under an extended warranty with existing rights, comparing different warranties and behavioural biases. These factors can prevent consumers from making informed decisions about extended warranties.
25. This conclusion is supported by the ACCC's New Car Retailing market study, which found that inadequate information makes it difficult for consumers to accurately evaluate the value of an extended warranty (see box above). Indeed it is largely self-evident that if a consumer does not have sufficient information about how an extended warranty compares to their existing rights, they will not be able to make an informed purchasing decision.

### FOCUS QUESTIONS – INFORMED DECISIONS

#### For consumers

- How would you prefer to receive information about extended warranties (that is, written, oral or both)?

#### For businesses and other stakeholders

- What factors can help or hinder consumers to make informed decisions about extended warranties?

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION'S CONSULTATION PAPER 294: *THE SALE OF ADD-ON INSURANCE AND WARRANTIES THROUGH CARYARD INTERMEDIARIES*, AUGUST 2017:

The Australian Securities and Investments Commission (ASIC) examined the sale of extended warranties in caryards and reported that:

- Extended warranties for cars can be structured to avoid being classified as insurance, meaning providers do not need to comply with the requirements of the *Insurance Contracts Act 1984*.
- In relation to dealer warranties, the risk of poor sales practices is increased as providers do not comply with the licensing or conduct obligations of the *Corporations Act 2001* (Corporations Act), while consumers cannot take action against misconduct at the point of sale by complaining to an external dispute resolution scheme.
- There are some systemic unfair practices in the warranty add-on market, including: sales of warranties that provide unnecessary cover, the absence of any contractual right to a rebate if the warranty is cancelled before the end of its term, and unfair arrangements that increase the price of warranties for financially vulnerable consumers.

## LACK OF CLARITY IN THE LAW

26. A related problem for consumers making informed decisions about extended warranties is that in some circumstances there can be a lack of clarity as to the meaning and scope of the existing law, particularly around the triggers for when they have a right to a refund, replacement or repair.
27. Where there are grey areas in the law it can be difficult for consumers to determine how their statutory rights apply to a particular product. Consumers may also be hesitant to rely on statutory rights where there is any real or perceived lack of clarity or difficulty in enforcing their rights. For example, a consumer may decide to purchase an extended warranty because they believe the warranty provides certainty that a defect in a product will be remedied.

## HOW SIGNIFICANT IS THE PROBLEM?

28. The Review reported that many consumer stakeholders suggest that a lack of clear information can prevent consumers from comparing an extended warranty with the ACL to determine if the extended warranty provides value for money.<sup>9</sup> The Review found that legislative change is needed to ensure consumers receive adequate disclosure and can make informed purchasing decisions about extended warranties.<sup>10</sup> This conclusion is supported by the findings from the ACCC's study into the new car retailing industry and ASIC's paper on the sale of add-on insurance and warranties through caryard intermediaries (both outlined above).
29. These findings indicate that there is a problem that may warrant regulatory intervention, however there is a lack of data about the size of the problem. Consultation will gather further information on the identified problem. Specifically, there is a lack of data about the size of the extended warranty market and the proportion of extended warranties that offer tangible benefits over and above a consumer's existing rights.

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9 ACL Review Final Report, page 23.

10 ACL Review Final Report, page 24.

# THE EXISTING LEGISLATIVE FRAMEWORK FOR EXTENDED WARRANTIES

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## OVERVIEW

The Australian consumer protection framework includes the ACL and the consumer protection provisions contained in the *Australian Securities and Investments Commission Act 2001* (ASIC Act).<sup>11</sup> The ACL applies to goods and services, whereas the ASIC Act applies to financial products and services. The consumer protection provisions in the ASIC Act largely mirror the provisions in the ACL.

In most, if not all cases, extended warranties come within the definition of a 'financial product' because they are facilities through which a person manages a financial risk.<sup>12</sup> This means that extended warranties are generally subject to the consumer protection provisions in the ASIC Act, rather than the ACL.<sup>13</sup> However, the ACL applies to the primary product for which an extended warranty is bought. Furthermore, conduct that relates not only to the extended warranty, but also to some characteristic of the primary product to which the warranty applies, may be actionable under both the ASIC Act and the ACL.

Currently, there are no targeted laws applying only to extended warranties. Instead, traders are subject to generic consumer protection requirements, reflecting the economy-wide application of the consumer law. The consumer protection provisions particularly relevant to the sale of extended warranties are:

- misleading or deceptive conduct,<sup>14</sup>
- unconscionable conduct,<sup>15</sup> and
- false or misleading representations.<sup>16</sup>

Importantly, extended warranties do not override a consumer's statutory rights, including the consumer guarantees that apply to the primary product for which an extended warranty is purchased.

In some circumstances, extended warranties are also subject to the Corporations Act, which imposes additional licencing and disclosure requirements on traders.

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11 *Australian Securities and Investments Commission Act 2001* (Cth) ('ASIC Act') part 2, division 2.

12 ASIC Act sections 12BAA(1) and (5); *Corporations Act 2001* (Cth) ('Corporations Act') sections 763A and 763C.

13 Competition and Consumer Act section 131A.

14 ASIC Act section 12DA; ACL section 18.

15 ASIC Act sections 12CA and 12CB; ACL sections 20 and 21.

16 ASIC Act section 12DB; ACL sections 29(1)(n) and 151(1)(n).

## THE REGULATION OF EXTENDED WARRANTIES AT STATE AND FEDERAL LEVEL

30. Under Commonwealth legislation, extended warranties are subject to the ASIC Act rather than the ACL.<sup>17</sup> However, extended warranties are subject to the ACL at a state level. Regardless, the same consumer protection requirements apply.

## EXTENDED WARRANTIES AS FINANCIAL PRODUCTS

31. There are different ways in which extended warranties may be provided to consumers, which can affect the regulatory requirements that apply. Extended warranties can be offered by a supplier, a manufacturer, or a third party. A table comparing the regulatory framework applying to different types of extended warranties is below (see **Table A**).
32. Extended warranties are generally regulated as financial products because they are facilities through which consumers manage financial risks.<sup>18</sup> This means the consumer protection provisions in the ASIC Act apply.<sup>19</sup> These consumer protection requirements are set out below at paragraph 38.
33. In some circumstances, an extended warranty can amount to a contract of insurance under the Corporations Act.<sup>20</sup> An extended warranty is likely to be insurance if:
- it is provided by a third party to the sale of the goods, rather than a person who has an existing responsibility for the quality of the goods (such as the manufacturer, retailer or other distributor of the goods),
  - the customer is entitled to the benefits described in the warranty if they have a valid claim, rather than only a right to have their claim considered,
  - it covers additional costs or losses that do not result from defects in, or failure of, the goods and that are beyond the control, or not the responsibility, of the retailer or manufacturer (such as accidental damage or theft), and
  - it covers normal wear and tear.<sup>21</sup>

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17 Competition and Consumer Act section 131A.

18 Corporations Act sections 763A and 763C; ASIC Act sections 12BAA(1) and (5).

19 Issuing a financial product, or arranging to issue a financial product, constitutes a dealing in a financial product and therefore amounts to providing a financial service (ASIC Act sections 12BAB(1)(b), (7)(b) and 8). Arranging for a person to apply for a financial product also constitutes the provision of a financial service (ASIC Act sections 12BAB(1)(b), 7(a) and 8).

20 Corporations Act section 764A(1)(d); ASIC Act section 12BAA(7)(d).

21 ASIC, *Information Sheet 198: Extended warranties*, July 2014, <http://asic.gov.au/for-finance-professionals/afslicensees/applying-for-and-managing-an-afs-licence/licensing-certain-service-providers/extended-warranties/>.



34. Warranties that are automatically provided to consumers by the supplier of goods as part of a sale of goods, such as manufacturer's warranties, are generally not financial products. This is because the consumer does not take any active steps to acquire them, and so cannot be considered to be 'managing' their financial risks by acquiring the warranty. In contrast, extended warranties are generally acquired by payment of an additional amount to secure the promised cover for a specified period of time, and are acquired to manage the financial risks of a breakdown of the primary product.
35. Additional licensing and product disclosure requirements apply to extended warranties that come within the 'financial product' definition in the Corporations Act. However, some extended warranties that would otherwise be subject to these additional requirements fall within an 'incidental product exemption' and will not be a financial product for the purposes of the Corporations Act.<sup>22</sup> This exemption applies where an extended warranty is provided by a retailer at the point of sale, and the warranty only covers the repair or replacement of the purchased primary product in the event of defect or failure. There are no mandatory disclosure requirements for 'incidental products'.
36. Importantly, where extended warranties come within the 'incidental product' exemption from the Corporations Act, they will still be a financial product under the ASIC Act (and be subject to the ASIC Act's consumer protection requirements).
37. There is a lack of data on the proportion of extended warranty providers that are subject to the additional licensing and product disclosure requirements under the Corporations Act. Additionally, it is unclear what proportion of consumers that purchase extended warranties already receive disclosure information as required under the Corporations Act.

### **FOCUS QUESTION – EXISTING DISCLOSURE REQUIREMENTS**

#### **For businesses**

- For businesses, are you subject to the disclosure requirements under the Corporations Act for any extended warranties you sell?

(This question is intended to gather information on the proportion of businesses that already provide disclosure information for the extended warranties they sell).

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22 Corporations Act section 763E.

**Table A: The regulatory framework for extended warranties**

Issuer	When/how made available to consumers	ASIC Act - financial product	Corporations Act - financial product	Corporations Act - licensing requirement	Corporations Act - PDS disclosure requirement
<b>Supplier of goods</b>	Available for purchase when goods supplied (for example, retailer issued extended warranties administered by a third party)	Yes	No (if incidental exemption applies)	No	No
<b>Third party</b>	Available for purchase when goods supplied (for example, third party issued warranty distributed by retailer)	Yes	Yes	Yes	Yes
<b>Supplier of goods</b>	Available for purchase after goods supplied (for example, while still within a previous warranty period)	Yes	Yes (likely incidental product exemption will not apply)	Yes - unless rely on another exemption, for example, intermediary authorisation exemption	Yes
<b>Third Party</b>	Available for purchase after goods supplied	Yes	Yes	Yes	Yes

## THE MIRROR CONSUMER PROTECTION PROVISIONS IN THE ACL AND ASIC ACT

### Consumer guarantees

#### Guarantees applying to the primary product

38. The consumer guarantees in the ACL provide consumers with a set of automatic rights for the goods and services they acquire. Under the consumer guarantees:
- Suppliers and manufacturers guarantee that goods are: acceptable quality, will match any description provided, and that any express warranties will be honoured.
  - Suppliers guarantee that a consumer is buying goods that: have clear title (unless otherwise stated), do not have undisclosed securities, are fit for any disclosed purpose, have a right to undisturbed possession and match the sample or demonstration model provided.
  - Manufacturers guarantee the availability of repairs and spare parts (other than for auctioned goods) for a reasonable period after the goods are supplied.

39. Importantly, consumers may be entitled to a repair, replacement or refund for a defective product under the consumer guarantees in the absence of an extended warranty or even after an extended warranty has expired.
40. The guarantee as to acceptable quality provides the consumer with a statutory right, which can mean that a consumer may decide that they do not need to purchase an extended warranty. However, it can be difficult for consumers to determine the actual length of protection provided by this guarantee.
41. Extended warranties apply in parallel to a consumer's statutory rights: they do not override or alter the consumer guarantees in the ACL, or affect a trader's responsibility to meet these statutory requirements. This means that a consumer may be entitled to a remedy under the consumer guarantees even if they have no remedy under their extended warranty. Additionally, the consumer guarantees cannot be excluded by contract.<sup>23</sup>
42. Extended warranties should provide additional rights over and above the consumer guarantees. A trader must not represent to a consumer that they are required to pay for any rights that are equivalent to a consumer guarantee (see *False or misleading representations* at paragraph 47).

### Guarantees applying to extended warranties (except contracts of insurance)

43. Extended warranties that are not contracts of insurance are subject to guarantees relating to the supply of services.<sup>24</sup> These are that services will be rendered with 'due care and skill'<sup>25</sup> and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.<sup>26</sup> Traders providing extended warranties (except insurance contracts) to consumers must do so with 'due care and skill' and ensure the extended warranty service is fit for purpose.
44. Additionally, if a consumer makes known to the trader any particular purpose for which the services are required, or the result the consumer desires from the services, there is a guarantee that the services supplied and any materials supplied in connection with the services are reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result. The exception to this is if the consumer does not rely, or it is unreasonable for the consumer to rely, on the trader's skill or judgement in providing the service.<sup>27</sup>

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23 ACL section 64.

24 ASIC Act section 12ED.

25 ASIC Act section 12ED(1)(a).

26 ASIC Act section 12ED(1)(b).

27 ASIC Act section 12ED(2).

## Misleading or deceptive conduct

45. A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.<sup>28</sup> This means that traders must not mislead consumers about the need for an extended warranty or the benefits of an extended warranty. Similarly, traders must not mislead consumers about the scope of the rights automatically provided by the consumer guarantees in the course of selling an extended warranty.
46. For example, it would be misleading for a trader to suggest to a consumer that they can only have a faulty product repaired or replaced if they purchase an extended warranty.<sup>29</sup> In *ACCC v Fisher & Paykel Customer Services*, an extended warranty letter prominently represented to consumers that they would not be protected against repairs after a period of two years from the date of purchase unless the consumer purchased an extended warranty. This was found to be misleading and deceptive conduct and a false or misleading representation, despite references to the ACL in the fine print.<sup>30</sup>

## False or misleading representations

47. Similarly, a person must not, in trade or commerce, make a false or misleading representation.<sup>31</sup> This includes false or misleading representations about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy,<sup>32</sup> or about the need for any services.<sup>33</sup>
48. This prohibition also includes false or misleading representations concerning a requirement to pay for a contractual right that is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy that the person has under the law of the Commonwealth, a state or a territory.<sup>34</sup> This clause is directed at traders of extended warranties.<sup>35</sup>
49. Traders that sell extended warranties that offer anything less than or simply mirror a consumer's existing entitlements risk misleading consumers into thinking they are receiving additional benefits when they are not. For example, if a telecommunications provider offered to consumers a mobile phone on a two year plan and offered an extended warranty to repair or replace the phone in the event of a defect in the first year, this would likely be a false or misleading representation as the extended warranty provides less than the protections already available to consumers.<sup>36</sup>

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28 ASIC Act section 12DA; ACL section 18(1).

29 *Australian Competition and Consumer Commission v Fisher & Paykel Customer Services Pty Ltd* [2014] FCA 1393.

30 *Ibid* (consent orders January 2015).

31 ACL section 151(1)(n), section 29; ASIC Act section 12DB.

32 ACL section 29(1)(m); ASIC Act section 12DB(1)(i).

33 ACL section 29(1)(l); ASIC Act section 12DB(1)(h).

34 ACL section 29(1)(n); ASIC Act section 12DB(1)(j).

35 Stephen Corones, 'Getting what they paid for: Consumer guarantees and extended warranties' (2011) 39 *Australian Business Law Review*, page 346.

36 *Ibid* page 348.

50. Unlike misleading or deceptive conduct, these provisions only apply where there has been an express or implied 'representation'. However, the same conduct may constitute misleading and deceptive conduct and also be a false or misleading representation.

### Unconscionable conduct

51. A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.<sup>37</sup> This is relevant where the consumer is at a 'special disadvantage'.<sup>38</sup>
52. Similarly, a person must not, in trade or commerce, engage in conduct that is, in all the circumstances, unconscionable.<sup>39</sup> This statutory provision applies where conduct is more than simply unfair and goes against conscience as judged against the norms of society.
53. In sales of extended warranties without any unfair or high pressure sales tactics, these protections are less likely to be relevant. In any case, these protections do not directly assist consumers to understand the contract or their statutory rights before making a purchase.

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37 ACL section 20; ASIC Act section 12CA.

38 *Australian Competition and Consumer Commission v Radio Rentals Ltd* (2005) 146 FCR 292.

39 ACL s 21; ASIC Act section 12CB.

## POLICY OBJECTIVES

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54. The policy objective is to ensure that consumers are able to make more informed decisions about whether to purchase an extended warranty. To make informed decisions about an extended warranty, consumers need to be aware of their existing rights under the ACL and under any manufacturer warranty and understand what a particular extended warranty offers in comparison. This information helps consumers to determine if the extended warranty offers value for money and provides the additional protection they seek.
55. The options to address the identified problem would seek to improve incentives for traders to provide clear information about extended warranties and thereby assist consumers to make more informed purchasing decisions.
56. In achieving this objective, it is important that benefits should exceed costs.
57. In addition, options for addressing the problem identified would seek to provide certainty for traders as to the application of any laws applying to extended warranty contracts.

# OPTIONS AND IMPACT ANALYSIS

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## OVERVIEW

Through the policy development and consultation processes of the Review, CAANZ identified and assessed a range of options to help consumers make informed decisions about whether to purchase an extended warranty.

To address the problem defined, this RIS explores three options:

**Option 1:** Maintain the status quo.

**Option 2:** A legislative amendment comprising the following three elements.

*Cooling-Off Right:* a requirement for traders to provide a cooling-off period of ten working days from the time the consumer receives the written agreement. Where a trader does not meet disclosure requirements (set out below) the cooling-off period would be unlimited.

*Oral Disclosure:* a requirement for traders to provide oral advice, where reasonably practicable, about the consumer's cancellation rights before entering into a contract.

*Written Disclosure:* a requirement for traders to provide a written agreement containing:

- all the terms and conditions, including:
  - the rights and obligations of the warrantor and the consumer (including the cooling-off right),
  - the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made),
  - the total price payable under the agreement,
  - the date of the agreement,
- information on the front page of the agreement, including:
  - a summary that compares the key features and benefits of the relevant consumer guarantees and the protections provided by any extended warranty agreement (this may be in the form of a table or diagram),
  - a short prescribed statement that the agreement does not override the ACL consistent with the text for warranties against defects,
  - the warrantor's name, street address, telephone number and email address.

Sub-options under Option 2 are to have a disclosure regime only, or a cooling-off right only.

**Option 3:** Oral and written disclosure with an opt-in process. That is, a requirement for consumers to confirm the extended warranty after a specified period.

## OPTION 1: STATUS QUO

58. Option 1 would maintain the existing regulatory regime for extended warranties.
59. The existing safeguards for consumers would remain in force, including the generic protection against misleading and deceptive conduct. Further, regulators would continue to promote awareness of rights and obligations and take enforcement activity where appropriate.
60. Under this option, traders would continue to be prohibited from misleading consumers. The consumer guarantees would continue to apply to the primary product for which the extended warranty is bought. Furthermore, traders would continue to be prohibited from making false or misleading representations concerning requirements to pay for a contractual right that is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy that the person has under the law.
61. As Option 1 maintains the status quo, it is unlikely to address any of the concerns outlined in the problem section. As a result, some consumers may continue to have difficulties with making informed decisions about extended warranties and some may be induced to purchase extended warranties that they would not otherwise have bought.
62. Non-regulatory options, such as regulator guidance and education, could be pursued and improved under the status quo. However, regulators already prepare guidance and educational material for consumers and traders on the interaction between the consumer guarantees and extended warranties.<sup>40</sup>
63. Education campaigns typically work more effectively in confined markets for a target group of consumers, rather than as a broad campaign attempting to educate consumers generally. Accordingly, this RIS does not propose an education campaign as an option. Regulators would update existing guidance material if one of the regulatory options proposed in this RIS was implemented, which would assist consumers and traders to understand the new law.

### Impact Analysis

64. As Option 1 does not change the current regulatory environment, it would not result in new benefits or costs for consumers, traders or other stakeholders. Traders would not have to make any changes to practices for the sale of extended warranties or amend standard extended warranty contracts.
65. As discussed in the *'Problem'* section, some consumers experience difficulties making informed purchasing decisions about extended warranties, and would continue to do so under this option. Some consumers would continue to pay 'economic rent' for their existing rights.

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40 ACCC, *Warranties*, <https://www.accc.gov.au/consumers/consumer-rights-guarantees/warranties#extended-warranties-or-care-packages>; ASIC, *Extended warranties information sheet 198*, <http://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/licensing-certain-service-providers/extended-warranties>; The Checkout, ABC1, *Extended Warranties*, 2 May 2013, <https://www.youtube.com/watch?v=NrxzsaBkC4>.



BENEFITS	COSTS
<ul style="list-style-type: none"> <li>No additional compliance costs are incurred by traders or consumers.</li> </ul>	<ul style="list-style-type: none"> <li>Some consumers continue to have difficulties with making informed decisions about extended warranties.</li> </ul>

### FOCUS QUESTION – STATUS QUO

#### For businesses

- For retailers, do you train your staff to promote the additional protections available under an extended warranty compared to the consumer law and any manufacturer’s warranty provided? If yes, how much does this training cost?

## OPTION 2: COOLING OFF RIGHT WITH ORAL AND WRITTEN DISCLOSURE

66. Under Option 2, transparency around extended warranties would be enhanced through a disclosure regime and a cooling-off right. Option 2 reflects the proposed reform in the Review Final Report (proposal 3) to address concerns regarding extended warranties. This proposal was subject to broad stakeholder consultation as part of the Review. The formulation of the proposal reflects submissions and information received as part of the Review.
67. Traders would be required to provide a cooling-off period of ten working days from the time the consumer receives the written agreement. The cooling-off right means that a warranty would have effect from the time the agreement is made. Within ten working days, a consumer could cancel the agreement and receive a refund. However, where a trader did not meet their disclosure obligations (for example, they do not provide any information or only provide a generic brochure about the ACL), the cooling-off period would apply for an unlimited period of time, meaning the consumer could cancel the extended warranty and receive a refund at any time.
68. A cooling-off period may be particularly beneficial where a consumer has received contrary information or needs time to read and understand the information they have been provided. The cooling-off period may give consumers time to distinguish the purchase of the warranty from the purchase of the primary product and assess the purchase of the warranty on its own merits away from the pressure of a sales negotiation.
69. This proposed cooling-off period is consistent with the existing ten day period for unsolicited consumer agreements under the ACL.
70. Traders would be required to provide oral advice, where reasonably practicable, about a consumer’s cancellation rights before entering into the contract. Oral disclosure would not be required in circumstances where it would not be reasonably practicable, such as when consumers purchase products online.

71. Traders would also be required to provide a written agreement. The agreement would have to include the terms and conditions of the extended warranty, including: the rights and obligations of the warrantor and the consumer (including the cooling-off right), the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made), the total price payable under the agreement, and the date of the agreement.
72. Traders would also have to include the following information on the front page of the agreement:
  - a summary that compares the key features and benefits of the relevant consumer guarantees and the protections provided by the agreement (this may be in the form of a table or diagram),
  - a short prescribed statement that the agreement does not override the ACL consistent with the text for warranties against defects, and
  - the warrantor's name, street address, telephone number and email address.
73. The proposed disclosure obligations are broadly modelled on the approach taken in New Zealand, which was discussed in the Review Interim Report and which received general support from stakeholders. The New Zealand regime was introduced in June 2014 and requires disclosure of a number of matters, including a comparison of the consumer's rights under New Zealand law and the protections offered by the warranty. It also creates a five-day cooling off period.<sup>41</sup>
74. There is currently no legislative definition of 'extended warranty'. Accordingly, Option 2 would require a definition of 'extended warranty' to be developed.

## REGULATION OF EXTENDED WARRANTIES IN NEW ZEALAND

The *Fair Trading Act 1986* (NZ) contains rules for traders that offer extended warranties to consumers. In New Zealand, traders are required to:

- explain the protections that consumers are provided under the *Consumer Guarantee Act 1993* (CGA),
- compare the CGA protections with the protections offered by the extended warranty, and
- explain that if consumers buy an extended warranty, they can change their minds within five days and cancel the warranty and obtain a full refund of the price paid for the extended warranty.

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41 *Fair Trading Act 1986* (NZ), Part 4A, Subpart 3.

## REGULATION OF EXTENDED WARRANTIES IN NEW ZEALAND (CONTINUED)

Businesses that breach these requirements can be liable to an infringement notice and a fine of \$1,000 for each breach, or to prosecution and a fine of up to \$30,000. Individuals may also be liable to an infringement notice and a fine or to prosecution and a fine of up to \$10,000.

In New Zealand, an extended warranty is defined as an agreement that:

- is between a consumer and a ‘warrantor’ in relation to the purchase of goods or services,
- is entered into around the same time as the goods or services are purchased,
- provides specific warranties, guarantees or undertakings (either directly or through a third person) relating to those goods or services, and
- is purchased at a cost additional to the price paid for the goods or services.

### Impact Analysis

75. Consumers would likely benefit from Option 2’s enhanced disclosure and cooling-off right. The additional information may help consumers make more informed purchasing decisions. The cooling-off right would give consumers time to reconsider a decision to purchase an extended warranty. The cooling-off right may mitigate the effects of high-pressure sales techniques and psychological factors that influence decision-making in a sales environment. Option 2 would mean consumers would be less likely to purchase extended warranties that do not offer significant benefits over their existing rights or do not offer value for money, saving them money.
76. Option 2 imposes compliance costs (mostly transitional) on traders that supply extended warranties, in developing and providing the additional information. Compliance costs will be higher if specific, as well as general, information is required (for example, traders could be required to provide specific comparison information or could only be required to specify that coverage under the ACL is ‘a reasonable period of time’ given the nature and use of the particular good).<sup>42</sup> Traders would need to assess and modify documentation for extended warranties to identify the benefits above the consumer law that the extended warranty provides. Traders would need to ensure that comparisons do not mislead consumers, which may require legal advice. Traders would also face costs associated with administering the cooling-off period, such as amending accounting practices to enable the provision of refunds.
77. A diminished availability of extended warranties is a possible impact of Option 2. However, in the Review, retail stakeholders indicated that many extended warranties offer real and legitimate benefits over ACL rights, including greater coverage of protections, certainty of remedies and streamlined processes. Accordingly, the Review found that clearer explanations of these benefits would be unlikely to diminish the availability or desirability of legitimate extended warranties in the market.

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42 ACL Review Final Report, page 25.

- 78. Option 2 would provide traders with increased clarity and certainty about the definition of an extended warranty, and therefore of their legal obligations regarding extended warranties.
- 79. Compliance costs may be able to be mitigated by a sufficient transition period. Option 2 may also cause reduced compliance costs for other provisions of the ACL. For example, the Review found that ‘the regulator guidance and the new comparison in the warranty document can help traders educate staff on how to make correct representations that do not mislead consumers’.<sup>43</sup>
- 80. Option 2 may assist regulators with investigating representations made about extended warranties because regulators could examine the disclosure information that traders would be required to provide.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>• Consumers gain additional information that enables them to make more informed purchasing decisions, saving them money.</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance costs (mostly transitional) for traders in developing and providing additional information.</li> </ul>
<ul style="list-style-type: none"> <li>• Consumers gain additional time to consider their purchasing decision and a new right to cancel the purchase and obtain a refund.</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing costs for traders in administering cooling-off right.</li> </ul>
<ul style="list-style-type: none"> <li>• Regulators are assisted in investigating representations about extended warranties.</li> </ul>	
<ul style="list-style-type: none"> <li>• Traders have increased clarity and certainty about the definition of an extended warranty, and therefore of their legal obligations regarding extended warranties.</li> </ul>	
<ul style="list-style-type: none"> <li>• The quality of extended warranty products and competition for them increases.</li> </ul>	
<ul style="list-style-type: none"> <li>• Sales of high-quality extended warranties may increase.</li> </ul>	
<ul style="list-style-type: none"> <li>• Potential reduced compliance costs for traders related to other ACL provisions.</li> </ul>	

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43 ACL Review Final Report, page 26.

## FOCUS QUESTIONS – ENHANCED DISCLOSURE AND COOLING OFF RIGHT

### For consumers

- Would the proposed disclosure information (as set out in Option 2) be useful for you when you are considering whether to purchase an extended warranty?
- Would the introduction of a right to cancel an extended warranty within ten days of purchase make you more likely to purchase an extended warranty? What period of time would you need to consider whether to opt out once at home? What benefit would you see in ten day period as compared to a five day period?

### For businesses and other stakeholders

- What would be the costs to businesses of providing general and specific disclosure (see discussion on general and specific disclosure under Option 2)?
- In your view, would greater and better disclosure change, in practice, outcomes for consumers?
- In considering purchasing an extended warranty, should consumers have access to additional or improved information about rights they have under any manufacturer warranty? Why/why not?
- How much would it cost for your business to develop the written disclosure material?
- For businesses, what differences would arise for you if a five day versus a ten day cooling off period was introduced?

### Sub-option 2a: Disclosure regime only

81. This sub-option is the oral and written disclosure regime as set out in Option 2, without a cooling-off right.
82. Traders would be required to provide oral advice, where reasonably practicable, about a consumer's cancellation rights before entering into the contract. Oral disclosure would not be required in circumstances where it would not be reasonably practicable, such as when consumers purchase products online.
83. Traders would also be required to provide a written agreement. The agreement would have to include the terms and conditions of the extended warranty, including: the rights and obligations of the warrantor and the consumer, the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made), the total price payable under the agreement, and the date of the agreement.
84. Traders would also have to include the following information on the front page of the agreement:
  - a summary that compares the key features and benefits of the relevant consumer guarantees and the protections provided by the agreement (this may be in the form of a table or diagram),
  - a short prescribed statement that the agreement does not override the ACL consistent with the text for warranties against defects, and
  - the warrantor's name, street address, telephone number and email address.

85. This sub-option may address some of the concerns set out in the ‘*Problem*’ section by providing consumers with additional information. However this sub-option does not give consumers extra time to process this information through a cooling-off period, which could mitigate any potential benefits of increased disclosure.

## Impact Analysis

86. Option 2a would impose similar costs and benefits as Option 2, however Option 2a would likely be of less benefit to consumers without the cooling-off right. Compared to Option 2, there would be less costs for traders as there would be no cooling-off right to administer.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>Consumers gain additional information that enables them to make more informed purchasing decisions, saving them money.</li> </ul>	<ul style="list-style-type: none"> <li>Compliance costs (mostly transitional) for traders in developing and providing additional information.</li> </ul>
<ul style="list-style-type: none"> <li>Regulators are assisted in investigating representations about extended warranties.</li> </ul>	
<ul style="list-style-type: none"> <li>Traders have increased clarity and certainty about the definition of an extended warranty, and therefore of their legal obligations regarding extended warranties.</li> </ul>	
<ul style="list-style-type: none"> <li>The quality of extended warranty products and competition for them increases.</li> </ul>	
<ul style="list-style-type: none"> <li>Sales of high-quality extended warranties may increase.</li> </ul>	
<ul style="list-style-type: none"> <li>Potential reduced compliance costs for traders related to other ACL provisions.</li> </ul>	

### Sub-option 2b: Cooling off right only

87. This sub-option is the cooling off right in as set out in Option 2 without a disclosure regime. This cooling off right would provide less protection compared to the Option 2 cooling-off right that applies for an unlimited period where a trader fails to comply with disclosure obligations.
88. Traders would be required to provide a cooling-off period of ten working days from the time the consumer receives the agreement. The cooling-off right means that a warranty would have effect from the time the agreement is made. Within ten working days, a consumer could cancel the agreement and receive a refund of the cost of the extended warranty (but would not be entitled to a refund for the goods or services to which the extended warranty applied). Traders may need to also be required to inform consumers about the cooling-off period, otherwise it is likely that consumers would not be aware of the cooling-off right.
89. This sub-option may help consumers to make better decisions by giving them more time to consider an extended warranty. However, without the disclosure regime, consumers may not have the necessary information to assess what an extended warranty offers in comparison to their existing rights.

## Impact Analysis

90. Option 2b would impose less costs and benefits compared to Option 2. Option 2b would provide consumers with the benefit of a cooling-off right for extended warranties. Without enhanced disclosure, this additional right may not result in a significant benefit to consumers and continues to rely on traders to voluntarily provide information.
91. Option 2b would impose costs on traders that sell extended warranties in providing the additional cooling-off right to consumers.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>Consumers gain additional time to consider their purchasing decision and a new right to cancel the purchase and obtain a refund, which may save them money.</li> </ul>	<ul style="list-style-type: none"> <li>Costs for traders in administering cooling-off right.</li> </ul>
<ul style="list-style-type: none"> <li>Traders have increased clarity and certainty about the definition of an extended warranty, and therefore of their legal obligations regarding extended warranties.</li> </ul>	
<ul style="list-style-type: none"> <li>The quality of extended warranty products and competition for them increases.</li> </ul>	
<ul style="list-style-type: none"> <li>Sales of high-quality extended warranties may increase.</li> </ul>	

## OPTION 3: DISCLOSURE AND OPT-IN PROCESS

92. Option 3 is a disclosure regime and an *opt-in* process, rather than an 'opt-out' cooling-off period. This Option would include the disclosure regime as set out in Option 2. Traders would need to explain to customers the opt-in process, rather than disclosing a cooling-off period.
93. This Option would require a consumer to confirm an agreement for an extended warranty within a limited period, such as ten business days, before they were required to pay for the extended warranty. As a consequence, a consumer might not be entitled to immediate coverage under the extended warranty because the warranty would only apply once the consumer had opted-in.
94. Traders would be required to provide oral advice, where reasonably practicable, about the opt-in process before entering into the contract. Oral disclosure would not be required in circumstances where it would not be reasonably practicable, such as when consumers purchase products online. Nonetheless, consumers would need to opt-in to the extended warranty even if purchased online.
95. Traders would also be required to provide a written agreement. The agreement would have to include the terms and conditions of the extended warranty, including: the rights and obligations of the warrantor and the consumer (including the opt-in process), the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made), the total price payable under the agreement, and the date of the agreement.

96. Traders would also have to include the following information on the front page of the agreement:
- a summary that compares the key features and benefits of the relevant consumer guarantees and the protections provided by the agreement (this may be in the form of a table or diagram),
  - a short prescribed statement that the agreement does not override the ACL consistent with the text for warranties against defects, and
  - the warrantor's name, street address, telephone number and email address.
97. This Option imposes a burden on the consumer to remember to confirm an extended warranty. If a consumer wishes to purchase an extended warranty but forgets to confirm the purchase, they would lose the benefit of the warranty. Under an opt-in model, consumers may also not be entitled to immediate coverage from the point of sale.

### Impact Analysis

98. Consumers would likely benefit from increased disclosure and an opt-in process under Option 3. An opt-in process would benefit consumers by ensuring that consumers make an active decision to confirm the purchase of the extended warranty. Option 3 would mean consumers would be less likely to purchase extended warranties that do not offer significant benefits over their existing rights or do not offer value for money, saving them money. However there would be a burden on consumers to opt-in to extended warranties. If a consumer wishes to purchase an extended warranty but forgets to confirm the purchase, they would lose the benefit of the warranty.
99. The impact of Option 3 on traders would be similar to Option 2, however traders would face costs associated with administering the opt-in period. Traders could lose revenue from consumers who forget to opt-in to an extended warranty.



BENEFITS	COSTS
<ul style="list-style-type: none"> <li>Consumers gain additional information that enables them to make more informed purchasing decisions, saving them money.</li> </ul>	<ul style="list-style-type: none"> <li>Compliance costs (mostly transitional) for traders in developing and providing additional information.</li> </ul>
<ul style="list-style-type: none"> <li>Consumers have more time to consider and opt-in to an extended warranty.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing costs for traders in administering opt-in period and potential lost revenue if consumers forget to opt-in.</li> </ul>
<ul style="list-style-type: none"> <li>Regulators are assisted in investigating representations about extended warranties.</li> </ul>	<ul style="list-style-type: none"> <li>Burden on consumers to opt-in to extended warranties (time costs).</li> </ul>
<ul style="list-style-type: none"> <li>Traders have increased clarity and certainty about the definition of an extended warranty, and therefore of their legal obligations regarding extended warranties.</li> </ul>	<ul style="list-style-type: none"> <li>Consumers who forget to opt-in lose the benefit of an extended warranty.</li> </ul>
<ul style="list-style-type: none"> <li>The quality of extended warranty products and competition for them increases.</li> </ul>	<ul style="list-style-type: none"> <li>Consumers who do opt-in may not have immediate coverage from the point of sale of the primary product.</li> </ul>
<ul style="list-style-type: none"> <li>Sales of high-quality extended warranties may increase.</li> </ul>	
<ul style="list-style-type: none"> <li>Potential reduced compliance costs for traders related to other ACL provisions.</li> </ul>	

## FOCUS QUESTIONS – OPT-IN PROCESS

### For consumers

- Would the introduction of a requirement for consumers to confirm the purchase of an extended warranty to within a limited period (such as ten days) make you more likely to purchase an extended warranty? (This would mean you could decide not to go through with the purchase of the extended warranty, but if you did want the warranty you would need to confirm this with the business).

### For businesses and other stakeholders

- For businesses, what differences would arise for you if a five day versus a ten day opt-in period was introduced?
- How much would it cost your business to put in place a process to allow consumers to purchase an extended warranty for a good after the point of the sale?

## **FOCUS QUESTIONS - GENERAL**

### **For consumers**

- What is your preferred option? Please explain why.
- Do you believe there are other, better options to help consumers make more informed decisions about extended warranties? If so, please explain what they are and why you believe they are better.
- How likely are you to purchase an extended warranty for a good after the point of sale?

### **For businesses and other stakeholders**

- What is your preferred option? Please explain why.
- What are the costs and benefits or disadvantages associated with the current arrangements and your preferred option?
- Do you believe there are other, better options to help consumers make more informed decisions about extended warranties? What are they and what are the costs and benefits or disadvantages associated with these other options?
- How should extended warranties be defined in the consumer law?
- How many claims are made as a percentage of extended warranties sold and what were the outcomes? How would each of the options affect this?
- How much would it cost for your business to train staff to comply with the proposed options?

# FOCUS QUESTIONS

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The focus questions from throughout this chapter are set out below for ease of reference. Stakeholders are encouraged to refer to the focus questions listed below in their submissions. Where possible, CAANZ encourages stakeholders to provide case studies, data and evidence to support their views.

## THE PROBLEM

### For consumers

- Have you ever been offered or purchased an extended warranty? Did the business explain the difference between the extent of coverage under the extended warranty, the consumer law and any manufacturer's warranty provided?
- If you have purchased an extended warranty, did you understand the terms and conditions of the warranty when you purchased it?
- If you have considered purchasing an extended warranty, what sort of research have you done to help you make your decision?
- If you have purchased an extended warranty, why did you decide purchase it?
- If you have purchased an extended warranty, did you buy it at the same time that you purchased the product to which the extended warranty applies?
- Have you ever compared extended warranties from different businesses to find the best value extended warranty?
- How would you prefer to receive information about extended warranties (that is, written or oral)?
- If you have been offered an extended warranty and chose not to purchase it, what factors affected your decision?

### For businesses and other stakeholders

- What factors can help or hinder consumers to make informed decisions about extended warranties?
- For businesses, what training do you provide to assist salespersons to explain the benefits of an extended warranty compared to rights available to consumers under general consumer laws and any manufacturer's warranty provided?
- For businesses, do you offer a number of different extended warranties for any one product? If yes, how do you assist consumers to choose between extended warranties? How do these different warranties vary in terms of the protections they provide?
- For businesses, what additional protections do you offer through extended warranties that are over and above the rights a consumer has under the ACL and any applicable manufacturer's warranty?
- For businesses, how do you ensure that the extended warranties you sell provide additional protection over and above the rights a consumer has under the ACL and any applicable manufacturer's warranty?

## EXISTING LEGISLATIVE FRAMEWORK

### For businesses

- For businesses, are you subject to the disclosure requirements under the Corporations Act for any extended warranties you sell?

(This question is intended to gather information on the proportion of businesses that already provide disclosure information for the extended warranties they sell).

## OPTIONS AND IMPACT ANALYSIS

### For consumers

- What is your preferred option? Please explain why.
- Do you believe there are other, better options to help consumers make more informed decisions about extended warranties? If so, please explain what they are why you believe they are better.
- Would the proposed disclosure information (as set out in Option 2) be useful for you when you are considering whether to purchase an extended warranty?
- Would the introduction of a right to cancel an extended warranty within ten days of purchase make you more likely to purchase an extended warranty? What period of time would you need to consider whether to opt out once at home? What benefit would you see in ten day period as compared to a five day period?
- Would the introduction of a requirement for consumers to confirm the purchase of an extended warranty to within a limited period (such as ten days) make you more likely to purchase an extended warranty? (This would mean you could decide not to go through with the purchase of the extended warranty, but if you did want the warranty you would need to confirm this with the business).
- How likely are you to purchase an extended warranty for a good after the point of sale?

### For businesses and other stakeholders

- What is your preferred option? Please explain why.
- What are the costs and benefits or disadvantages associated with the current arrangements and your preferred option?
- Do you believe there are other, better options to help consumers make more informed decisions about extended warranties? What are they and what are the costs and benefits or disadvantages associated with these other options?
- How should extended warranties be defined in the consumer law?
- What would be the costs to businesses of providing general and specific disclosure (see discussion on general and specific disclosure under Option 2)?
- In your view, would greater and better disclosure change, in practice, outcomes for consumers?

**For businesses and other stakeholders (continued)**

- For retailers, do you train your staff to promote the additional protections available under an extended warranty compared to the consumer law and any manufacturer's warranty provided? If yes, how much does this training cost?
- How many claims are made as a percentage of extended warranties sold? How would each of the options affect this?
- For businesses, what differences would arise for you if a five day versus a ten day cooling off period was introduced?
- For businesses, what differences would arise for you if a five day versus a ten day opt-in period was introduced?
- In considering purchasing an extended warranty, should consumers have access to additional or improved information about rights they have under any manufacturer warranty? Why/why not?
- How much would it cost for your business to develop the written disclosure material?
- How much would it cost for your business to train staff to comply with the proposed options?
- How much would it cost your business to put in place a process to allow consumers to purchase an extended warranty for a good after the point of the sale?