

International agencies

- Independent oversight by the World Bank and others of structural and regulatory reforms, transitional measures and ongoing regulation.
- Refocusing from predisposition to privatisation to consideration of the available options to meet economic and social needs.
- Independent research expertise, through the International Energy Agency or others, to evaluate whether target benefits are being delivered.
- Aid from experienced partner countries in developing the capacity of regulators and advocacy bodies to be effective.
- Sponsorship of cross-border regional regulatory forums.

If there is a refocusing of effort to these measures, I am optimistic that reforms can proceed to the benefit of the people of developing economies.

Extended warranties

This article by Darren McMillan of the Commission's Brisbane office examines some possible trade practices issues associated with the offering of extended warranties on various goods in Australia. The article seeks to highlight some of the problem areas associated with extended warranties, as evidenced from the complaints the Commission regularly receives. In particular, it focuses on a recent investigation by the Brisbane office into extended warranties offered by Brashs Pty Ltd which raised some important consumer protection concerns.



What is an extended warranty?

An extended warranty may be defined as an agreement between a purchaser of a particular

good and another party under which that party assumes the cost of repair or replacement of that good resulting from mechanical defect or breakdown, wear and tear, deterioration and/or other reasons.

It is known as an extended warranty because it typically extends any express or 'voluntary' warranty offered by the manufacturer or supplier of that good. An extended warranty may or may not offer protection to the consumer above and beyond the implied warranty provisions of the Trade Practices Act. The implied warranty provisions, which are considered later in this article, apply regardless of any express or extended warranty offered by the manufacturer or supplier.

A party offering an extended warranty might be the manufacturer, the vendor of the goods (owner, dealer etc.) or a third party (stranger) to the sale. The extended warranty is normally offered at a cost to the purchaser, similar to a premium levied on a standard insurance contract.

In Australia, extended warranties are offered on a wide range of goods, but particularly on used motor vehicles, household electrical and white goods and computers. The following matter outlines one such extended warranty that was offered by Brashs Pty Ltd.

Brashs Pty Ltd

The Commission's Brisbane office recently conducted an investigation into Brashs Pty Ltd's 'five year extended warranty', which it offered on its range of appliances including TVs, audio equipment and computers. Brashs offered the extended warranty to its customers for a fee of roughly 10 per cent of the good's purchase price, to extend the manufacturer's own warranty period to a maximum of five years. The extended warranty commenced upon the expiry of the manufacturer's warranty, covering the cost of parts and labour for mechanical and electrical defects that occurred in the product up to five years from the date of purchase. From late 1997 the extended warranty envelope represented that the contract was administered and underwritten by American Home Assurance Company Limited (AHAC).

In March 1998 the Commission received a complaint from a consumer who had contacted the Brashs information line regarding his extended warranty, only to be told that his policy was not valid as Brashs had not entered into a contract with AHAC to administer the extended warranties. At the time, Brashs had been placed under administration, meaning that some 12 000 consumers, each of whom had paid approximately \$100–200 for an extended warranty, stood as unsecured creditors with policies which were effectively worthless.

The Commission was concerned that Brashs may have engaged in conduct which was misleading and/or deceptive in contravention of the Trade Practices Act, because it represented to consumers that its extended warranty was underwritten by AHAC when, ultimately, this did not in fact occur. The Commission was unable to successfully determine the precise nature of any initial agreement that may have been entered into between Brashs and AHAC at the time Brashs printed the envelopes and, as a result, did not pursue the matter further. The fact that Brashs went into liquidation soon after also limited any further inquiries by the Commission into the matter. However, the matter did highlight a number of concerns, some of which are discussed below.

Extended warranties — some possible trade practices issues

The frequent complaints that the Commission receives from consumers and businesses about extended warranties point to some potentially significant trade practices issues. While extended warranties may serve a useful purpose in many instances, consumers need to be aware of the following when weighing up the advantages of taking out an extended warranty.

Overlap with the implied warranty provisions

The Trade Practices Act provides some basic implied warranty rights in consumer purchases, which generally cannot be excluded or modified by suppliers. These provisions require that:

- consumers obtain clear title to goods (any legal restrictions on ownership must be fully disclosed prior to sale);

- goods must correspond with any description given or sample shown to the consumer;
- goods must be of merchantable quality (i.e. they must meet the basic level of quality and performance that it would be reasonable to expect of them, bearing in mind the price and the way they were described);
- goods must be fit for the particular purpose (where the purpose is alluded to by the consumer prior to sale or should be clear from the circumstances of the sale); and
- services must be carried out with due care and skill.

Where any of these provisions are not met, consumers are entitled to an appropriate remedy, including a refund, repair or replacement of the good and possibly compensation for consequential loss or damage.

It is very possible that consumers, in paying for an extended warranty, are purchasing rights that they are already afforded under the implied warranty provisions — which apply irrespective of the existence of any voluntary warranty. The fact that a manufacturer's one-year or two-year voluntary warranty has expired does not necessarily mean that the implied warranty provisions will not apply in the particular circumstances.

Taking the Brashs extended warranty as an example, had a consumer purchased an expensive television that required major repairs after two years, when presumably the extended warranty would have had effect, it is possible that the consumer would have been protected anyway under the implied warranty provisions.

Businesses offering extended warranties need to be aware that, where such a warranty affords no greater protection than the implied warranty provisions, they could be at risk of contravening ss 52 and 53(g) of the Trade Practices Act.

Terms and conditions of extended warranties

The Commission regularly receives complaints from consumers who are confused by the terms and conditions that apply to an extended

warranty. For example, it has received complaints about extended warranties that:

- do not cover 'moving parts';
- do not cover either parts or labour;
- do not cover the first 30 days after purchase; and
- apply at the 'absolute discretion' of the warranty provider.

Another common complaint is consumers alleging they were led to believe that their extended warranty applied for a specific number of years after the manufacturer's warranty expired, when in fact the extended warranty period included the manufacturer's warranty period.

While consumers need to carefully read the terms and conditions to ensure they know exactly what they are buying, the onus is also on the business concerned to ensure that the consumer fully understands the terms and conditions of the warranty. Failure to do so may place businesses at risk of breaching the misleading and/or deceptive conduct provisions of the Act.

Whether an extended warranty is underwritten

One of the major concerns arising from the Brashs matter was that Brashs sold a considerable number of extended warranties, worth over \$1 million, without a requirement to underwrite these warranties. The Commission's inquiries revealed that insurance legislation requires an extended warranty provider to underwrite its warranties only where it is deemed to be engaging in 'insurance business'. Case-by-case treatment under the legislation so far indicates that many extended warranty providers have not been bound by the insurance legislation, such that they are not required to underwrite their extended warranties. The Commission is aware that several providers of extended warranties on used motor vehicles have not underwritten these warranties.

While this is not directly a trade practices issue, it is a concern from a consumer protection perspective that companies could offer an extended warranty policy which may turn out

to be worthless to consumers if the company were to go out of business. Consumers should be aware of this when considering whether to purchase an extended warranty and should check the terms and conditions of the warranty document or ask an appropriate authority of the business if the extended warranty is underwritten.

Conclusion

The issues raised above suggest that consumers should exercise some caution when considering whether to purchase an extended warranty. Further, those businesses offering extended warranties need to ensure that the terms of these warranties do not place it at risk of contravening the Trade Practices Act.