

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Virginia Surety Company, Inc. ARBN 080 339 957.

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Virginia Surety Company, Inc. ARBN 080 339 957(VSC), for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

2. Background

Warranty Plans Industry

- 2.1 The Australian Consumer Law (ACL), being Schedule 2 to the CCA contains guarantees in Division 1 of Part 3-2 which provide consumers with a basic, guaranteed level of protection for goods and services which they acquire (the **consumer guarantees**). Consumers who are supplied with goods and services that fail to meet the consumer guarantees are entitled to certain remedies under Part 5-4 of the ACL, including a repair, replacement or refund depending on the circumstances.
- 2.2 Most retailers of electronic and household appliances offer extended warranties cover or customer care plans (**Warranty Plans**) at the point of sale. Warranty Plans generally give consumers contractual rights (for a defined period) to certain remedies such as a repair or a replacement of faulty goods and to some consequential losses, subject to certain exclusions.
- 2.3 The ACCC considers that there is an overlap between some of the rights available under Warranty Plans and the rights and remedies already available to consumers under the consumer guarantees, in the event that goods prove to be faulty (whether a minor or major failure to comply with the consumer guarantees) in a relevant period (the **Overlap**).
- 2.4 The ACCC is concerned about the marketing practices in the industry for the supply of Warranty Plans in Australia (the **Industry**), including the content of the Warranty Plans terms and conditions provided to consumers at the point of sale.
- 2.5 Specifically, the ACCC is concerned about the following practices which have the potential to confuse or in some cases mislead consumers if information provided to consumers is not sufficiently clear:

Insufficient disclosures

- 2.6 The promotion of Warranty Plans in a way that does not identify with sufficient clarity:
 - a) the degree of the Overlap; or
 - b) the contractual rights being provided that go beyond those rights and remedies already available to consumers under the consumer guarantees.

Value Representations

- 2.7 The use of representations that Warranty Plans provide some benefits which may overlap with the consumer guarantees – in circumstances where those benefits do overlap.
- 2.8 The use of representations to the effect that rights under a Warranty Plan are additional to rights and remedies available to consumers under the ACL – in circumstances where those features overlap with those ACL rights and remedies.

Price Representations

- 2.9 The use of representations to the effect that the price of the Warranty Plan does not include any cost attributable to the rights and remedies available to consumers under the

ACL – in circumstances where certain costs may have been for rights that overlap with the rights and remedies already available under the consumer guarantees.

Virginia Surety Company, Inc

- 2.10 VSC is incorporated in Illinois in the United States and registered in Australia as a foreign registered company.
- 2.11 VSC provides underwriting and procures marketing and administration services for a range of extended warranty contracts offered at the point of sale to consumers by retailers of consumer electronics, domestic appliances and white goods (**Extended Warranty Plans**).
- 2.12 These Extended Warranty Plans cover consumers for the cost of repair or replacement of faulty products, and some associated costs. The terms and conditions of cover are published in brochures provided to consumers at point of sale. In some cases the brochures are also published on the retailers' websites.
- 2.13 VSC has cooperated with the ACCC in achieving industry reform.
- 2.14 VSC acknowledges that:
 - a) the advertising and promotion practices outlined in paragraphs 2.6 to 2.9 have occurred in the Industry from time to time; and
 - b) the standards and content of disclosures made in Warranty Plans should be improved to address the conduct of concern outlined above.
- 2.15 In recognition of its position as a market participant, VSC has offered this Undertaking to the ACCC in order to help set a new industry benchmark for the promotion and supply of Warranty Plans.

3. Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when:
 - a) this Undertaking is executed by VSC; and
 - b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 3.2 Upon the commencement of this Undertaking VSC undertakes to assume the obligations set out in Part 4 for the purposes of section 87B of the CCA for a period of 2 years.

4. Undertaking

Information for consumers about ACL rights

- 4.1 VSC undertakes that it will within 30 days of the Commencement Date, commence engaging with retailers to change the terms of the Extended Warranty Plan brochures and use reasonable endeavours to procure its retailers to publish, within 150 days of the Commencement Date changes to the Extended Warranty Plan brochures (made available in print form and online) to include, as a minimum, the information consistent with Annexure A of this Undertaking (the **essential information**).
- 4.2 VSC further undertakes to provide the ACCC with a copy of the revised Extended Warranty Plan brochures no later than 7 days after being published.
- 4.3 For the avoidance of doubt, if there are any changes to the rights provided by the Extended Warranty Plan during the term of the undertaking, VSC may, without ACCC approval, amend the essential information to reflect those changes provided the changes do not materially affect the content of the essential information.

Compliance training

- 4.4 In this part, a reference to '**Compliance Training**' means training which:
 - (a) covers the essential information; and

- (b) explains that the making of representations inconsistent with the essential information may be false or misleading and contravene the ACL and should not be made, including, for example, any representation that a consumer may not have rights or remedies outside the manufacturer's warranty period; or that a consumer is required to purchase an extended warranty product to have rights or remedies for faulty goods.

4.5 VSC undertakes that it will:

- (a) at its own expense, within 90 days of the Commencement Date, develop and implement annual Compliance Training for VSC's representatives (whose role includes advising retailers about Extended Warranty Plans);
- (b) at its own expense, within 120 days of the Commencement Date, develop an online Compliance Training course and within 150 days of the Commencement Date distribute it to retailers' store managers or appropriate representatives of each retailer that are involved in the sale of the Extended Warranty Plans;
- (c) at its own expense, include Compliance Training in the regular product and sales training that VSC provides to retailer store managers or other retailer training personnel; and
- (d) use reasonable endeavours to encourage and facilitate retailers to, on an ongoing basis, have their store managers and relevant sales staff complete the online Compliance Training course referred to above in paragraph 4.5(b) or incorporate the content of that online Compliance Training course into the retailers' own compliance training programs, or otherwise train their relevant sales staff in that regard.

Compliance monitoring

- 4.6 VSC undertakes that it will develop within 150 days of the Commencement Date a program designed to monitor whether representations made by retailers' staff in relation to the sale of Extended Warranty Plans are consistent with the content of the Compliance Training (**Compliance Monitoring Program**).
- 4.7 VSC undertakes that the Compliance Monitoring Program will include the following features:
 - (a) a measurement mechanism to assess whether retailers, through their staff, are making representations to consumers inconsistent with the essential information (**measure of compliance**); and
 - (b) anonymous visits to a sample of retail stores that offer the Extended Warranty Plan (**mystery shopping deployments**) to ascertain satisfactory compliance with the measure of compliance, to be conducted annually by a suitably qualified independent third party.
- 4.8 VSC undertakes that it will use reasonable endeavours:
 - (a) to commence implementation, in conjunction with any participating retailers, of the Compliance Monitoring Program within 200 days of the Commencement Date and to include more participating retailers in a Compliance Monitoring Program as soon as reasonably practicable after that date;
 - (b) in conjunction with the retailer to take remedial action (such as undertaking supplementary training) in the event of failure to comply with the measure of compliance by the retailer; and
 - (c) in the event of material persistent systemic failure to comply with the measure of compliance by a retailer cause the cessation of trading by that retailer of the Extended Warranty Plan until such failure is satisfactorily addressed.
- 4.9 VSC undertakes that it will provide the ACCC within 150 days of the Commencement Date with details of the content of the Compliance Monitoring Program and the names of the retailers that have been approached to participate, and those retailers that have agreed to participate, in the implementation of the Compliance Monitoring Program.

Compliance reporting

4.10 VSC undertakes to report to the ACCC:

- (a) within 200 days of the Commencement Date, on the status of the development and distribution to retailers of the online training course referred to in paragraph 4.5(b) above;
- (b) yearly, starting within 260 days of the Commencement Date on :
 - (i) the proportion of retailer stores to whom the training of the kind referred to in paragraphs 4.5 (c) above has been provided;
 - (ii) a summary of the results of the mystery shopping deployments including the list of retailers participating;
 - (iii) a summary of actions of VSC and/or the retailers (where known) taking any actions of the kind referred to in paragraph 4.8(b); and
 - (iv) any instances of VSC and/or the retailers (where known) taking any actions of the kind referred to in paragraph 4.8(c) above.

4.11 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries of VSC in respect of its compliance with this Undertaking, including in relation to the reporting provided to the ACCC pursuant to paragraph 4.10, and VSC will respond to such inquiries within a reasonable period of time.



5. Acknowledgments

5.1 VSC acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Virginia Surety Company, Inc. ARBN 080 339 957 by its duly authorised agent in Australia:

	
Signature	Signature
THAVA SITHRASENAN	GERALD GRAY
Name (print)	Name (print)

Date	Date
04/11/2016	04-11-2016

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

7/11/2016
Date

and signed on behalf of the Commission:


Chairman

7 November 2016
Date

Annexure A.

Essential Information

Summary of the consumer's relevant rights and remedies under the ACL

The Australian Consumer Law ("ACL") protects consumers by automatically giving them basic, guaranteed rights for goods they purchase ("Consumer Guarantees") at no charge. For example, the ACL requires that, taking account of the nature of goods, the price, any representations made by the supplier or manufacturer and other relevant circumstances, the goods must be free of defects, do what they are meant to do, be safe, durable and acceptable in appearance and finish, be fit for any particular purpose that the consumer makes known and comply with any description given or any demonstration model used.

In the event of a breach of a Consumer Guarantee where there is a major failure of the goods, consumers are entitled to reject the goods and choose a replacement or refund and claim compensation for any reasonable foreseeable loss or damage suffered by consumers as a result of the failure. Where the failure does not amount to a major failure, consumers are entitled to have the supplier repair or replace the goods (at the supplier's choice). Whether a specific failure breaches a Consumer Guarantee and a consumer is entitled to a remedy under the ACL will depend on the circumstances.

Consumer Guarantees have no set time limit but generally last for an amount of time that is reasonable to expect in the circumstances, given factors including the cost and quality of the goods, the use made of the goods or any representation made by the supplier or manufacturer. Consumer Guarantees may continue even at the expiry of the Manufacturer's Warranty for the goods or this Product Protection Plan. The exact amount of time that Consumer Guarantees last in the case of a specific purchase varies depending on the circumstances.

Consumers with a claim for breach of a Consumer Guarantee should contact the supplier of the goods at first instance. If You are unable to reach resolution with the supplier as to the remedy, You should seek independent advice and/or contact the ACCC (contact details below) or Your state/territory fair trading body.

A comparison of these rights and remedies and the features provided by the customer care plan

The following table is a summarised comparison of Consumer Guarantees and the protections offered by this Product Protection Plan. Please note that this table is a summary only and is not a substitute for obtaining legal advice on the ACL and reading the full Terms and Conditions of the Product Protection Plan contained in this document, as certain limitations and exclusions apply in certain circumstances, including an exclusion if You fail to use Your Item in accordance with the manufacturer's care instructions or if the Item is accidentally damaged. In addition, You can visit www.accc.gov.au for more information on the Consumer Guarantees. Please note that, in addition to the protections below, You may have additional rights against a manufacturer under a Manufacturer's Warranty.

Protection	ACL rights and remedies	Rights under the Product Protection Plan
Am I protected if the Item is defective?	Protection where the Item is not of 'Acceptable Quality', 'Fit for Purpose', or does not 'match the description'. This includes protection against defects such as mechanical or electrical failure.	Protection (beyond the Manufacturer's Warranty) against mechanical or electrical failure, irrespective of whether it is due to manufacturer defect or fair wear and tear.

How long does the protection against defects last?	<p>A reasonable period from the date of delivery until the defect becomes apparent. What is reasonable will depend on the circumstances including nature of the Item, the price, the way it is used and any statements or representations made about the Item.</p> <p>In certain circumstances, taking into account the factors listed above, this reasonable period may cover the period of time that protection is available under the Product Protection Plan.</p>	The number of years of protection available to You (beyond the Manufacturer's Warranty) in the Product Protection Plan. This may be one, two, three or four years for the relevant Item You seek to cover.
What remedies are available if the Item is defective?	Repair, refund, replacement and/or damages for consequential loss. The exact remedy will depend on the specific circumstances.	<p>Automatic repair or replacement if the Item is uneconomical to repair. Automatic replacement if the Item is \$400 or less.</p> <p>No Lemon Guarantee - automatic replacement if Your Item requires more than 3 repairs</p>
Who is obliged to provide the remedy for a defective Item?	Supplier (if seeking a repair, refund or replacement, or claiming damages). Manufacturer (if claiming damages).	[insert name of retailer] via Product Protection Plan Administrator contactable on [insert Administrator's phone number]
Cost of coverage	No cost	The cost of the Product Protection Plan.
Is a Technical Assistance Helpline available to help with my product?	Not required under the ACL but some suppliers and manufacturers do provide a helpline.	Yes.

Is a loan product available whilst my Item is being repaired?	No. However, if you decide to organise and obtain a loan product from a rental company or other company, the cost you incur may, in certain circumstances, be recoverable as a consequential loss caused by the defect.	Where Your Item is a laptop or tablet device, a loan product will be provided if the repair period takes longer than 5 days
Is there a guarantee that any repair will be carried out in a reasonable time?	The Item must be repaired within a reasonable time or you are entitled to a replacement or a refund.	Your Item will be replaced if repair takes longer than 21 days.
What happens if I receive a remedy for a defective product?	Any repaired product continues to be covered. Any replacement product will also be covered.	Any repaired Item continues to be covered. If You receive a replacement Item or a Credit Voucher the Product Protection Plan ends.
Food Spoilage	Entitled to compensation for consequential loss caused by the defect, which may, in certain circumstances, include food spoilage.	Up to \$300 for food spoilage caused by the failure.
Laundry Cover	Entitled to compensation for consequential loss caused by the defect, which may, in certain circumstances, include laundry costs.	Up to \$110 for laundry service if the appliance cannot be used.

Additional benefits under the Product Protection Plan not available under the ACL

We appreciate that You may want the certainty of knowing that if Items You buy are faulty they are covered for a specific time period.

When You purchase the Product Protection Plan You are obtaining certainty as to the period of coverage and the remedy You will receive and the convenience of having the repair and/or replacement process managed for You under the Product Protection Plan.

You will be entitled to the benefits set out below that are not available under the ACL, subject to the terms of Your Product Protection Plan:

- Certainty as to the exact period of Cover You have for Your Covered Item;
- Certainty of an automatic replacement (or refund by way of Credit Voucher) for an approved claim where the Purchase Price of the Covered Item is under \$400 for a Breakdown of a minor nature;
- Even if the failure is minor, when the Purchase Price of Your Covered Item is more than \$400, You have certainty of an automatic replacement (or refund by way of Credit Voucher) should the Item have been repaired for three different minor faults, and it fails again;

- Where Your Covered Item is a laptop or tablet device you will be provided with the loan of a laptop or tablet device if the repair takes longer than 5 days;
- Specific repair time guarantee;
- If a Covered Item in Your possession suffers a Breakdown while you are temporarily overseas, for an eligible claim We will authorise You to arrange for the Covered Item to be repaired while overseas at Our cost;
- You are covered if the Covered Item suffers a Breakdown due to a power surge;
- Should an item be found not to be faulty You will not be charged an assessment fee;
- Your Cover is transferrable if You sell the Covered Item.

The ACCC's contact details

Australian Competition and Consumer Commission

1300 302 502

Indigenous Infoline: 1300 303 143

www.accc.gov.au
