

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Domestic & General Services Pty Limited ABN 73 127 221 032.

1 Persons giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Domestic & General Services Pty Limited ABN 73 127 221 032 (**DGSP**), 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 There is typically an overlap between some of the rights available under these 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, including the content of the 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.
- (a) The promotion of Warranty Plans in a way that does not identify with sufficient clarity:
 - (i) the degree of the Overlap; or
 - (ii) the contractual rights being provided that go beyond those rights and remedies already available to consumers under the consumer guarantees.
 - (b) The use of representations that the Warranty Plans provide some benefits which may overlap with the consumer guarantees - in circumstances where those benefits do overlap.
 - (c) The use of representations to the effect that the rights under a Warranty Plan are additional to rights and remedies available to consumers under the ACL – in circumstances where some of those features overlap with those ACL rights and remedies.
 - (d) 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.

The ACCC believes that addition of a summary comparative table consistent with the one set out in Annexure A would help address the above concerns.

Domestic & General Services Pty Ltd

- 2.6 DGSP is a company incorporated in New South Wales, Australia.
- 2.7 DGSP provides administrative, claims management and other services to retailer clients who offer their own extended warranty contracts at the point of sale to consumers who purchase consumer electronics, domestic appliances and white goods (collectively, **Retailer Warranty Plans**). Some of these Retailer Warranty Plans offer protections from the date of purchase of the product. DGSP is not currently directly involved in the sale or marketing of retailer clients' Retailer Warranty Plans to consumers.
- 2.8 These retailer clients' Retailer 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 retailer clients' websites.
- 2.9 DGSP is willing to cooperate with the ACCC in achieving industry reform in regard to the marketing practices of entities, including retailers, involved in the marketing of Retailer Warranty Plans, as set out below.
- 2.10 DGSP acknowledges the ACCC's concern that:
- (a) the advertising and promotion practices outlined in paragraph 2.5 have occurred in the broader 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.
- 2.11 In recognition of its position as a market participant, DGSP has offered this Undertaking to the ACCC in order to help promote transparency in the broader industry and 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 DGSP; and
 - (b) this Undertaking so executed is accepted by the ACCC (the Commencement Date).
- 3.2 Upon the commencement of this Undertaking, DGSP 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 DGSP undertakes that within 60 days of the Commencement Date, it will finalise engagement with retailer clients using reasonable endeavours to procure retailer clients to change the terms of any Retailer Warranty Plan brochures that retailer clients propose to distribute to consumers to include, as a minimum, information substantively consistent with Annexure A of this Undertaking (the **essential information**). For the avoidance of doubt, the essential information for a particular retailer client may differ from the information in Annexure A to reflect the terms of the relevant Retailer Warranty Plan.
- 4.2 DGSP further undertakes that it will within 60 days of the Commencement Date provide the ACCC with copies of any updated draft Retailer Warranty Plan brochures to give the ACCC the opportunity to review the essential information agreed with retailer clients following engagement in accordance with paragraph 4.1 above.

- 4.3 DGSP further undertakes that following the ACCC's review of the essential information provided to the ACCC in accordance with paragraph 4.2 above, DGSP will use reasonable endeavours to procure retailer clients to publish, within 150 days of the Commencement Date the updated Retailer Warranty Plan brochures including the essential information in a form which addresses any reasonable concerns advised by the ACCC.
- 4.4 DGSP further undertakes to provide the ACCC with a copy of any updated Retailer Warranty Plan brochures no later than 21 days after being published on the retailer client's website.
- 4.5 DGSP further undertakes that where it becomes aware of any material change which has been made to the essential information in the version of a Retailer Warranty Plan brochure that has been provided to the ACCC pursuant to paragraph 4.4, it will inform the ACCC no later than 21 days after becoming aware of the change.

Compliance training

- 4.6 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 will not have rights or remedies outside the manufacturer's warranty period; or that a consumer is required to purchase a warranty product to have rights or remedies for faulty goods.
- 4.7 DGSP currently provides its staff with training on consumer rights under the ACL. DGSP further undertakes that it will, at its own expense, within 120 days of the Commencement Date, develop Compliance Training materials and, within 150 days of the Commencement Date, make the Compliance Training materials available to retailer clients or appropriate representatives of each retailer client and use reasonable endeavours to encourage retailer clients to have their store managers and relevant sales staff study the Compliance Training materials.

Compliance monitoring

- 4.8 DGSP undertakes, for each retailer client, to use reasonable endeavours to procure retailer clients to participate in the following activities:
- (a) the joint development of a program within 150 days of the Commencement Date, designed to monitor whether representations made by a retailer client's staff in relation to the sale of Retailer Warranty Plans are materially consistent with the essential information by conducting mystery shopping deployments to a sample of retailer stores of retail clients that offer the Retailer Warranty Plan (**Compliance Monitoring Program**); and
 - (b) the joint implementation of the Compliance Monitoring Program to commence within 200 days of the Commencement Date.
- 4.9 DGSP undertakes to use reasonable endeavours to procure a participating retailer client to take remedial action (such as requiring supplementary training) if the mystery shopping deployments conducted pursuant to paragraph 4.8 has identified any material inconsistency between the sales practices of a participating retailer client and the essential information.
- 4.10 In the event of persistent systemic sales practices by a participating retailer store which are materially inconsistent with the essential information, DGSP undertakes to use reasonable endeavours to work jointly with the retailer client to cause a suspension of trade in the Retailer Warranty Plan by that retailer store **until** these practices are satisfactorily improved.

Compliance reporting

- 4.11 DGSP undertakes to report to the ACCC within 200 days of the Commencement Date and on the anniversary of that date thereafter, in accordance with the period described in paragraph 3.2:
- (a) the identity of retailer clients that have agreed to include the essential information in their brochure promoting their Retailer Warranty Plan;
 - (b) the status of the distribution to retailer clients of the Compliance Training materials referred to in paragraph 4.7 above; and
 - (c) details of the content of the Compliance Monitoring Program and a list of retailer clients participating in the mystery shopping deployments.
- 4.12 DGSP undertakes further to report to the ACCC within one year of the Commencement Date and on the anniversary of that date thereafter, in accordance with the period described in paragraph 3.2:
- (a) the number of retail stores and visits that were involved in the mystery shopping deployments conducted in accordance with paragraph 4.8;
 - (b) a summary of the results of the mystery shopping deployments including the number of occasions where one or more representations were made by a representative of a participating retailer client that were materially inconsistent with the essential information; and
 - (c) a summary of DGSP and/or the retailer client(s) taking any actions of the kind referred to in paragraphs 4.9 or 4.10.
- 4.13 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries of DGSP in respect of its compliance with this Undertaking and DGSP will respond to such inquiries within a reasonable period of time.

5 Acknowledgments

- 5.1 DGSP 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 Domestic & General Services Pty Limited ABN 73 127 221 032:

_____)	_____)
<i>Ross</i>)	<i>Miles Parkin</i>)
Signature of director)	Signature of director/company secretary)
)	(delete as appropriate, or entire column if sole)
)	director company))
_____)	_____)
<i>ROSS LITTLEWOOD</i>)	<i>MILES PARKIN</i>)
Name of director (print))	Name of director/company secretary (print))
))
))
Date <i>4. MAY. 17</i>)	Date <i>4 May 2017</i>)
))

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

Date
and signed on behalf of the Commission:
Delia Ann Rickard

Delia Ann Rickard
Acting Chair
11/05/2017

Date

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 the 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 or 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 or provide a refund (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 Retailer Warranty 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 Retailer Warranty Plan

The following tables are a summarised comparison of Consumer Guarantees and the protections offered by this Retailer Warranty Plan. Please note that this table is a summary only and You must not rely on this summary as a substitute for obtaining legal advice on the ACL and reading the full Terms and Conditions of the Retailer Warranty Plan contained in this document, as certain limitations and exclusions apply in certain circumstances to Your rights under the Retailer Warranty Plan (as summarised below), 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.

Example Comparison table for Retailer Warranty Plan

Protection	ACL rights and remedies	Rights under the Retailer Warranty Plan
Am I protected if the Product is defective?	Protection where the Product is not of 'Acceptable Quality', 'Fit for Purpose', or does not 'match the description'. This includes protection against mechanical or electrical failure resulting from a defect in the Product.	Protection against Mechanical or Electrical Failure.
How long does the protection against defects last?	A reasonable period from the date of delivery until the defect becomes apparent. What is reasonable will depend on the circumstances including the nature of the Product, the price, the way it is used and any	The number of years (beyond the Manufacturer’s Warranty) for which the Customer Care Plan is offered.

Protection	ACL rights and remedies	Rights under the Retailer Warranty Plan
	<p>statements or representations made about the Product.</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 Retailer Warranty Plan.</p>	
<p>What remedies are available if the Product is defective?</p>	<p>Repair, refund, replacement and/or damages for consequential loss. The exact remedy will depend on the specific circumstances.</p> <p>Consequential loss may include the cost of collecting larger items and delivery and/or installation of the replacement product.</p>	<p>Repair (at our sole discretion) or replacement with a product of the same or similar specifications if the Product is unable to be repaired or if a repair is uneconomical. If a replacement of the same or similar specifications is unavailable, we will provide store credit for the estimated cost to us of a Product with the same or similar specifications which will not exceed the Original Purchase Price.</p> <p>Courier costs associated with the repair are covered. In-home repairs for Larger Items in most cases.</p> <p>Instant replacement if the Product is under \$250 (at our sole discretion) without the need to send it to a repairer.</p> <p>No Lemon Guarantee – replacement at your request if the Product requires more than 3 repairs.</p> <p>You must pay the delivery and/or installation costs of the supplier in respect of the replacement product.</p>
<p>Who is obliged to provide the remedy for a defective Product?</p>	<p>Supplier (if seeking a repair, refund or replacement, or claiming damages). Manufacturer (if claiming damages).</p>	<p>Supplier via Customer Care Administrator [insert claim phone number on customer care plan]</p>
<p>Cost of coverage</p>	<p>No cost</p>	<p>The cost of the Customer Care Plan.</p>
<p>Is a Technical Assistance Helpline available to help with my Product?</p>	<p>Not required under the ACL but some suppliers and manufacturers do provide a helpline.</p>	<p>Yes.</p>
<p>Is a loan product available whilst my Product is being assessed?</p>	<p>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</p>	<p>No.</p>

Protection	ACL rights and remedies	Rights under the Retailer Warranty Plan
	as a consequential loss caused by the defect.	
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 refund	Your Product will be replaced if the repair is not completed within 30 days from the date we first inspect it or, if the Product is couriered to us, the date of which we receive Your Product.
What happens if I receive a remedy for a defective Product?	Any replacement product or repair will be covered for a reasonable period depending upon the circumstances in the same way described above under the heading "How long does the protection against defects last?"	Any repair product or refurbished replacement product continues to be covered. If you receive a new replacement product, the Customer Care Plan ends immediately.
Food Spoilage	Entitled to compensation for consequential loss caused by the defect, which may, in certain circumstances, include food spoilage.	Up to \$250 for food spoilage for each Mechanical or Electrical Failure.
Laundry costs	Entitled to compensation for consequential loss caused by the defect, which may, in certain circumstances, include laundry costs.	Up to \$150 laundry costs for each Mechanical or Electrical Failure if it is out of service for more than 10 consecutive days.

Additional benefits under the Retailer Warranty 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 Retailer Warranty Plan You are obtaining certainty and peace of mind 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 Retailer Warranty Plan.

You will be entitled to the benefits set out below that are not available under the ACL, subject to the terms of Your Retailer Warranty Plan.

- Certainty as to the exact period of cover
- Convenience of having experienced operational and technical staff to manage the repair and/or replacement process
- Specified days for repair time guarantee
- Technical assistance

The ACCC's contact details

Australian Competition and Consumer Commission
1300 302 502
Indigenous Infoline: 1300 303 143
www.accc.gov.au