

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 2012

15 – 17 February 2012

Question: **AET 1242-1243**

Topic: **Consumer Law – Repair Notices**

Hansard Page: **15 Feb 2012, pg 131**

Senator RYAN asked:

Senator RYAN: What are the acceptable modes of conveying a repair notice? Can it be emailed? Does it have to be a particular format like an invoice? Is there a standard set of information that must be included? This is a relatively large document with some terms that are not very specifically defined. I am thinking of the one-person software installer that suddenly realises that, if they do not give someone the correct repair notice, they are liable to a fine of up to \$50,000.

Mr Ridgway: As with a range of the provisions that are associated with the new Australian consumer law requirements extending to guarantees and information for consumers, the ACCC's approach to guidance required by the provisions is one where we look at the practicality and the circumstances—of course, notwithstanding the particular prescriptive requirements. To give further information, I am going to have to take that question on notice.

Senator RYAN: If you could also take on notice: does the consumer have to acknowledge they have received, read and understand the repair notice, or is it sufficient to hand over a one-page repair notice that includes the relatively general features in this? Does there have to be an acknowledgement from the consumer?

Mr Ridgway: Subject to any further detail, my immediate understanding is that the provision of the notice is sufficient, but clearly we would expect the information to be in a form that could be understood by the consumer at the point of transaction.

Senator RYAN: If I have multiple—let's say my laptop and my phone—in at the Apple store because they are not working properly, am I required to get multiple repair notices or one repair notice listing multiple devices?

Mr Ridgway: Once again, from the perspective of the ACCC's approach and those of our fellow regulators at the state and territory fair trading agencies, we look at the practical obligations or the practical needs of the consumer in the transaction. It would vary.

Senator RYAN: Yes. I think you will appreciate that I am looking at the practical needs of what might not be Apple but might be a small operation for certainty around complying with the law. Can you be, either on notice or now, more specific about a question regarding two devices going in—is one repair notice required listing multiple devices, or are multiple notices required?

Mr Ridgway: We can do that

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Answer:

Conveying a repair notice

Where goods for repair are accepted in person, the consumer must be provided with a written repair notice. It is not sufficient for repairers to refer consumers to a sign at their business premises; the consumer must be given a copy of the repair notice.

Where there is no face-to-face contact, for example, where a consumer sends the goods to the repairer, they must be given a written copy (for example, by email, mail or facsimile) before the business accepts the goods for repair.

When the repair notice is provided by mail, the repairer must allow a reasonable time for the consumer to receive the notice before accepting the goods for repair. What is reasonable will depend on the circumstances, but the repairer should allow sufficient time for the consumer to receive and consider the notice.

Information that should be provided in a repair notice

User-generated data

The ACL does not require a particular form of words for a notice relating to the repair of goods that are capable of retaining user-generated data. However, a notice must include advice to the effect that the repair of goods may result in the loss of the data. For example, the repair notice could say:

- *The repair of your goods may result in the loss of any user-generated data. Please ensure that you have made a copy of any data saved on your good; or*
- *During the process of repair, some or all of your stored data may be lost. Please ensure that you have saved this data elsewhere prior to repair.*

Refurbished goods or parts

If a repairer sometimes uses refurbished parts (rather than new parts) to fix defective goods, or sometimes replaces defective goods with a refurbished version, they must also give the consumer a repair notice before accepting goods for repair. Unlike the notice for goods capable of storing user-generated data, the notice must include specific wording required by the ACL.

The mandatory wording is:

Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

A repair notice can be included in another document provided by the repairer (for example in the terms and conditions document for the repair) so long as it clearly

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distinguishes the notice from other information in the document and is not hidden or otherwise obscured within the document (for example, in fine print) and provided before the repairer accepts the goods for repair.

Acknowledgement from the consumer

In accordance with the requirements of section 103 of the Australian Consumer Law and Regulation 91, the consumer does not have to acknowledge that they have received and read and understood the repair notice. The consumer must simply be provided with a written repair notice.

The ACCC has been advising repairers that it is good business practice for them to tell consumers verbally about the risk of user-generated data being lost and seek the consumer's consent to the repair before accepting the goods and commencing any repairs.

This would ensure that the consumer is actually made aware, and will be able to take the necessary steps to either back up their data or decide whether they would like repairs to take place with the use of refurbished goods or parts.

Provision of multiple repair notices

Whether multiple repair notices will need to be provided will depend on when the goods were taken to the repairer.

Where multiple goods are taken at the same time to the repairer, this could be deemed to constitute one transaction. In these circumstances, one notice would be sufficient to inform the consumer, rather than providing two physically separate notices stating the same information.

Where the consumer takes their goods to the repairer on separate occasions – that is, there are two separate transactions – then the repairer should provide two separate repair notices: one for each transaction, before accepting the goods for repair.