

Current Legal Issues for Suppliers

Consumer Guarantees Act (CGA)

Who has liability under the CGA and what for? Liability under the CGA may be wider than you think. Recent product recalls (recalls of Electrolux multifunction duo ovens and Takata airbags, for example) bring the subject of liability sharply into focus.

The CGA applies to supplies in trade of goods and services to consumers. It applies where the goods or services are of a kind ordinarily acquired for personal, domestic and household use. For example, purchasers of vehicles from a dealer will be protected under the CGA; so will the owner of a vehicle when he or she takes it in for repair.

The supplier's promises regarding the goods or services supplied are many. In the case of goods the supplier is, by law, treated as having guaranteed that it is able to sell them free of encumbrances/third party interference. The supplier is also treated as having guaranteed that the goods supplied are of an acceptable quality and fit for their purpose. Liability will fall on the supplier where it fails to meet these guarantees.

Persons other than the supplier might also be liable. Take for example the recent Takata airbag recall. Who is liable?

Registered motor vehicle dealers are plainly liable. So is the manufacturer. So is any person who imports the vehicle. So is any person who distributes the vehicle. Essentially, liability extends to any person in the supply chain. This would include a freight forwarder if it is the consignee of the vehicle or has an ownership stake in it at the time the vehicle is entered for import, though I fully expect freight forwarders would take steps in their terms of trade to avoid that.

Auctions and competitive tenders are an exception; they are not caught by the CGA. Nor are business to business supplies caught by the CGA so long as there is agreement that the goods or services are being acquired for business purposes.

Where these exclusions do not apply the CGA overrides the principle of caveat emptor (buyer beware). It substitutes it with caveat venditor (let the seller beware).

Protection Against Liquidation Event

The recent liquidation of construction companies formerly part of the Hawkins Group is another illustration of the risks facing suppliers. In that case, reportedly about a thousand creditors are owed \$41m. What can a supplier do to protect itself against these sorts of events?

Essentially the alternatives are:

- a. Cash only terms, or maximum credit terms;
- b. Provision of goods on a reserved title basis, the supplier's interests registered on the Personal Property Securities Register (**PPSR**);
- c. A performance bond put on trust by the customer;
- d. Guarantees from persons other than the customer (the shareholders for example).

Claims may exist in law against the directors of a failed company. Always worth exploring.

Don't hesitate to contact me for further information.