

# Bulletin

## Farm and Industrial Machinery Dealers Association and Motorcycle Industry Division



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### ACCC Agriculture machinery - Pre-purchase checklist

Members of the VACC Farm and Industrial Machinery Dealers Association (FIMDA) and the VACC Motorcycle Industry Division (MID) are advised of a recently released Australian Competition and Consumer Commission (ACCC) guideline [Agriculture machinery-Pre-purchase checklist](#).

#### What is the purpose of the ACCC guideline?

The purpose of the ACCC guideline is to remind consumers of important issues they should be aware of before they purchase a specific piece of agricultural machinery. Those considerations are:

- What to do if a fault develops in their piece of agriculture machinery.
- What a manufacturer's warranty actually is and what these types of warranties do not cover.
- Clarity on what is an express or extended warranty.
- The extent to which the Australian Consumer Law guarantees apply to agriculture machinery.
- What to do if the consumer has an issue with their agricultural machinery purchase.

#### What should dealers do with the guidelines?

Best practice would be for dealers to provide consumers with the ACCC guideline before the point of purchase. Barring this, FIMDA and MID members are encouraged to have a printout of the ACCC guideline as part of a deal pack, or visible to consumers in your dealership.

Dealers are also urged to ensure that all their manufacturers are abiding by their legal obligations with regards to the ACL. If not, you should email such concerns to your manufacturer. Please include VACC in any such email exchange.

VACC is happy to communicate with your manufacturer on your behalf if you have a reluctance to do so.

#### What about the ACL and agricultural machinery?

The ACCC advise in their preamble to the guideline that the ACL consumer guarantees generally will not apply to agricultural machinery because most agricultural machinery costs more than \$100,000 and is not of a kind ordinarily acquired for domestic use or consumption.

VACC members are urged to seek their own legal advice or call VACC well before advising a customer that the ACL guarantees do not apply to their agriculture machinery purpose.

For further information, FIMDA and MID members should encourage all their dealership staff to visit the ACCC [Consumer Guarantees](#) page for further information about the ACL consumer guarantees. This link will also explain as to what consumer facing remedies are available.

## What about the manufacturer?

FIMDA and MID members are reminded that in the event when a dealer is liable to a consumer for a breach of consumer guarantees, the dealer has a right of indemnity against the manufacturer to recover its losses provided that the consumer guarantee that has been breached is one of the following:

- acceptable quality (ACL s 54)
- fitness for a disclosed purpose which the consumer made known to the manufacturer either directly or indirectly or indirectly through the supplier or a person with whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made<sup>16</sup> (ACL s 55), or
- supply by description (ACL s 56).

Dealers are reminded that they have 3 years with which to make an indemnity claim against the manufacturer under s 274(4) of the ACL.<sup>[1]</sup>

Under no circumstances should a dealer allow a manufacturer to deviate away from their obligations to you and your consumer under the ACL. VACC is seeking further evidence-based examples of such manufacturer behavior.

Please feel free to contact me at VACC for any further issues.

**Michael McKenna MBA**  
Industry Policy Advisor

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[1] Teresa Torcasio, HWL Ebsworth Lawyers, *Australian Consumer Law – Suppliers and manufacturers – who is ultimately liable to consumers for defective goods?* 12 February 2019.