



**Courtice Neilsen
Lawyers**

ALERT

FEBRUARY, 2005

FINANCIAL SERVICES REFORM LEGISLATION EXTENDED VEHICLE WARRANTIES

We welcome your comments. If you have any comments or suggestions concerning this topic or further topics, please contact us.

Disclaimer:

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact the firm for detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by any of the partners or staff of this firm. No part of this document may be included in any document, circular or statement without our written approval.

The Australian Securities & Investment Commission ("ASIC") has made its intentions clear in relation to the extended vehicle warranty industry.

Show cause notices have been delivered to a number of extended vehicle warranty product companies recently with a demand by ASIC that the companies cease trading until such time as they obtain an Australian Financial Services Licence with appropriate authorisations.

ASIC's position now seems clear. Despite the posturing within the industry and the utilisation of various mechanisms such as service contracts and administration agreements, ASIC has formed the view that the provision of an extended vehicle warranty, whether or not it is offered as a service contract, administration agreement or as a warranty product, will constitute a financial service under the Financial Services Reform Legislation.

For motor dealers as well as consumers, the writing is now on the wall. If you are a motor dealer, you must ask your extended motor vehicle warranty provider whether or not it holds an Australian Financial Services Licence in its own right (if it is providing a non-underwritten product). If the company is providing an underwritten product then you must ask whether or not it is a "corporate authorised representative" of an insurer who itself is the holder of an Australian Financial Services Licence.

Whilst the regime is confusing and it is certainly the case that the industry is in some turmoil in relation to licensing obligations, ASIC's position is now clear. ASIC has told us that enforcement action will be taken in relation to companies engaged in a financial services business without an appropriate Australian Financial Services licence. From a motor dealer's perspective and for that matter an end consumer, it is more important than ever that you satisfy yourself that the company with which you are dealing holds all appropriate licences and authorities.

If you do not take this approach then there will always be a risk that the consumer will look to you for recompense if the warranty provider is unable to fulfil its obligations either because of enforcement action by ASIC or because of financial difficulties.

The point to always bear in mind in relation to the new financial service regime is that it is designed to regularise and regulate the industry and that must surely be for the benefit of dealers and consumers alike. If the licensing regime does nothing but force rogue traders to cease their operations, then the process will have been a success.

180 Main Street
Kangaroo Point 4169
P.O. Box 7168 East Brisbane 4169
Phone: 3391 8866
Facsimile: 3391 0387
Email:
lawyers@courticeneilsen.com.au