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Submitted to CAANZ consultation on 'unsafe' and 'reasonable durability' draft guidance

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About you

1 Please provide:

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Organisation:

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Position title/Role:

Senior Research Analyst

2 Are you happy to be contacted by email if CAANZ would like more information about your feedback?

Yes

'Reasonable durability' guidance questions

3 Please select the response that best matches your opinion about the 'reasonable durability' guidance:

Please select your level of agreement or disagreement with the following statements about the 'reasonable durability' guidance: - It's easy to understand:

Disagree

Please select your level of agreement or disagreement with the following statements about the 'reasonable durability' guidance: - The guide will help me to decide whether a good is 'reasonably durable':

Strongly disagree

Please select your level of agreement or disagreement with the following statements about the 'reasonable durability' guidance: - The examples are clear:

Strongly disagree

Please select your level of agreement or disagreement with the following statements about the 'reasonable durability' guidance: - I still have unanswered questions about when a good is 'reasonably durable':

Strongly agree

4 How can we improve the 'reasonable durability' guidance? Do you have any other comments about this guidance?

free text field:

Guidance notes on 'reasonable durability' in regards to highly travelled second-hand vehicles are noticeably lacking and require development.

A key example is a vehicle that is 15 years old, has 290,000 kilometres on the odometer, is long absolved of any manufacturer warranty and has gone beyond what is determined as its useful life and has been traded many times over with no reliable history of use or service history. Such vehicles are typically sold by second-hand car dealers at very low prices (e.g. \$3000).

If after 8 months the original automatic transmission fails on such a vehicle, how does 'reasonable durability' apply? Such cases are open to vastly different interpretation by courts, tribunals, dealers and consumers, and having effective guidance notes critical.

In the above example, short of completely dismantling the transmission and examining the state of its component parts, it is not possible to determine its durability through simple assumptions, a visual inspection or casual drive of the vehicle. The complex nature of this item makes the guarantee of 'reasonable durability' difficult, particularly when the product has exceeded its expected lifespan. This places an unreasonable impost on dealers and gives rise to unrealistic expectations amongst consumers.

VACC has long argued that appropriate technical information needs to be developed as reference point for the guidance of decision makers in complex disputes pertaining to the durability of highly travelled, second hand motor vehicles. Better guidance on 'reasonable durability' would also help consumers and businesses to better manage expectations in such matters and help reduce any costly and unnecessary litigation.

'Unsafe' guidance questions

5 Please select the response that best matches your opinion about the 'unsafe' guidance:

quality of unsafe guidance - It's easy to understand:

Neither agree or disagree

quality of unsafe guidance - The guide will help me to decide whether a good is 'unsafe':

Disagree

quality of unsafe guidance - The examples are clear:

Disagree

quality of unsafe guidance - I still have unanswered questions about when a good is 'unsafe':

Agree

6 How can we improve the 'unsafe' guidance? Do you have any other comments about this guidance?

Improving unsafe guidance - free text:

The fact that the concept of 'unsafe' is not defined in the Australian Consumer Law (ACL) and has its ordinary meaning in accordance with 'community expectations' is problematic.

'Community expectations' is a nebulous concept that is open to the vagaries of interpretation by courts. When coupled with the fact that this can be also be linked to claims for damages through consequential loss, it is inconceivable that a definition of 'unsafe' does not exist in the ACL.

The draft guidance material provides some information on manufacturer guidance relating to a good's normal use, consumable components and instructions and warnings. What is missing however is guidance material on manufacturing faults that arise well after the expiry of the warranty period. In particular, manufacturing faults on highly travelled second-hand vehicles.

Guidance material concerning manufacturer responsibilities for such goods needs to be provided to help businesses and consumers better ascertain where the chain of responsibility lies, especially for manufacturing faults that are safety related.