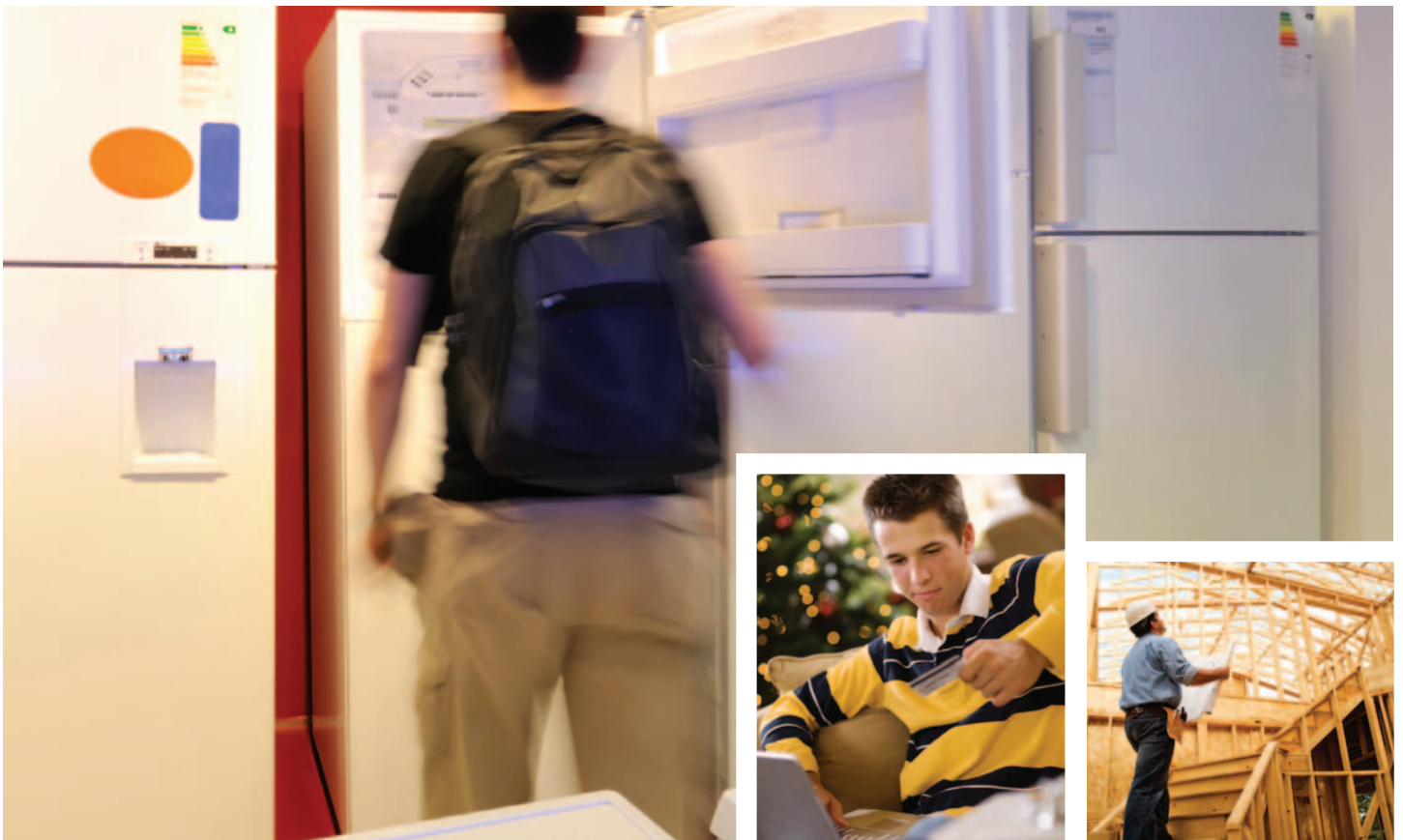


Business snapshot

consumer guarantees



Australian
Competition &
Consumer
Commission



The *Competition and Consumer Act 2010* (the Act) contains a number of rules that businesses must abide by in their dealings with consumers. These rules are collectively known as the Australian Consumer Law (ACL). The ACL brings together a number of national, state and territory laws and is enforced by the Australian Competition and Consumer Commission (ACCC) and state and territory consumer protection agencies.

The ACL provides all consumers with certain guarantees when they purchase goods and services. These are known as the **consumer guarantees**.

The consumer guarantees also outline the circumstances where a business is required to provide a remedy to a consumer.

If a good or service does not meet any of the consumer guarantees, then the consumer may take action to obtain a remedy—for example, a refund, replacement, repair or having an unsatisfactory service performed again—from the seller, service provider or in some cases the manufacturer or importer.

Many businesses choose to offer extra warranties or promises—often called voluntary or extended warranties—in relation to their goods or services. However, consumer guarantees automatically apply regardless of any voluntary or extended warranty given by a seller or manufacturer of goods and services. The guarantees also have no set time limit—depending on the type and quality of the good, businesses may be obligated to provide a remedy after any voluntary or extended warranty, for example a manufacturer's warranty, has expired.

Business snapshot—consumer guarantees

Who must comply with the consumer guarantees?

Every business who provides goods—by selling, leasing or hiring—or services to consumers automatically gives certain guarantees.

Businesses that make the goods, put them together or have their name on them also give certain guarantees. Importers give these same guarantees, if the maker does not have an office in Australia.

If a consumer has a problem with a good they are free to approach the seller, manufacturer or importer to obtain a remedy—and businesses cannot tell them otherwise.

Who is a consumer?

A person—or in some cases a business—will be considered a consumer if:

- the goods or services they purchase cost less than \$40,000
- the goods or services cost more than \$40,000, but they are of a kind ordinarily acquired for domestic, household or personal use or consumption
- the goods are a commercial road vehicle or trailer used primarily to transport goods on public roads.

If goods are purchased to be resold or to be transformed into a product that is sold, the consumer guarantees will **not** apply.

Are there any exceptions to the consumer guarantees?

There are some exceptions to the consumer guarantees—for example, the guarantees don't apply to financial products and services or contracts for insurance.

Certain guarantees also don't apply to sales that don't occur in trade or commerce, goods purchased at a traditional auction, or to professional services provided by a qualified architect or engineer.

Selling goods to consumers

What are the consumer guarantees?

Acceptable quality

Goods are of acceptable quality if a reasonable consumer would consider that they are:

- safe, durable and free from defects
- acceptable in appearance and finish
- do all the things that the goods are ordinarily used for.

The consumer should take into account the nature and price of the goods, and any statements made about them on packaging or labelling.

Example

A consumer purchases a television which won't turn on six months after purchase. The television is not of acceptable quality as a reasonable consumer would expect a television to last much longer than six months.

If the television broke down after 10 years it would be much more likely that the television is of acceptable quality and the consumer would not be entitled to a remedy under the consumer guarantees.

Fit for any disclosed purpose

Goods must be fit for any purpose that you told the consumer they would be fit for prior to them purchasing the goods. Goods must also be fit for any purpose that the consumer made known to you before purchasing the goods. Consumers can make their purpose known either **expressly**—by saying what they want to use the good for—or the purpose can be **implied** from the circumstances. The purpose will be implied from the circumstances if it is so obvious that the consumer does not need to say what they will use the goods for—a fridge is used to store food and drink, an iron is used to iron clothes and, a dress is to be worn.

Example

A consumer goes to a furniture store looking to purchase a bookcase capable of holding heavy appliances. The consumer explains to the sales assistant that each shelf needs to be able to hold at least 30kg. The sales assistant recommends a particular model.

The consumer finds that each shelf can only hold 10 kg and breaks a few months after purchase. This bookshelf is not fit for the purpose specified by the consumer.

Description

Any description of a good—through verbal statements made to the consumer or representations made on packaging or labels—must be accurate.

Example

A consumer purchases a new set of blue towels online based on a colour chart available on the website. When the towels are delivered they are red. The towels do not match the description given by the seller.

Sample or demonstration model

Just like all descriptions of goods must be accurate, all goods must match any sample or demonstration shown prior to the time of sale.

Example

A consumer test drives a new car and confirms that the model they have purchased is the same as the demonstration model. When the new car is delivered it has a lesser capacity engine than the demonstration model. The car does not match the demonstration model shown to the consumer.

Express warranties

Sellers must abide by any express warranty that they make about goods.

Example

A consumer purchases an iron and is told by the sales assistant that it will last for at least two years. If the iron breaks within this time, the seller must honour this warranty **in addition** to the other consumer guarantees.

Clear title, freedom from securities and charges, uninterrupted possession

Sellers guarantee that the goods come with a clear title, unless the consumer was told otherwise before the sale, and do not carry any hidden securities or charges. Sellers also guarantee that no-one has a legal right to take the goods away or prevent the consumer from using the goods.

What if the guarantees aren't met?

If a seller does not meet any of the guarantees, the consumer is entitled to a remedy—either a repair, replacement, refund or compensation for any drop in value from the original price paid—depending on the circumstances.

Generally, sellers will be able to choose whether they remedy the problem with a replacement, repair or refund. However, if the problem is **major** or cannot be or is not fixed within a **reasonable time**, the consumer may choose to:

- reject the goods and obtain a full refund or replacement; or
- keep the goods and seek compensation for the difference between the amount paid for the goods and the value of the goods with the problem.

A **major** failure to comply with a consumer guarantee is one where the failure was so severe that a reasonable consumer would not have purchased the goods had they known of the full extent of the problem, the goods differ significantly from any description, sample or demonstration model or the goods are not of acceptable quality because they are unsafe.

Example

A consumer purchases a ski jacket and pants for the upcoming ski season which are described as '100% waterproof'. After a few runs the consumer realises that the jacket and pants are not waterproof and they cannot wear them while skiing.

The ski jacket and pants are not of acceptable quality, fit for their purpose and don't match the description given to them.

As the consumer would not have purchased the jacket and pants had they known they weren't waterproof, this is a **major** failure to comply and the consumer is entitled to reject the goods and obtain a full refund.

The consumer's rights would be different if the ski jacket and pants were waterproof but the jacket had some minor loose stitching. In this situation the jacket would be fit for its purpose and would match the description but it may not be of acceptable quality.

This would be a minor failure to comply and so the seller could decide whether they want to provide a refund, replace the jacket or repair it.

Sellers' rights against manufacturers

It is important to remember that if a seller doesn't comply with a consumer guarantee, their customers have a right to take action against them. This is the case even if the problem with the good was caused by the manufacturer.

The consumer guarantees do, however, provide sellers with rights against manufacturers or importers of goods if the seller provides a remedy to a consumer for a problem which is caused by the manufacturer or importer.

Example

A consumer purchases an air conditioner which has a manufacturing fault causing it to leak and damage the carpet and paint. The seller replaces the air conditioner, pays for it to be installed and provides compensation to the consumer for the damage to their property. As this is a manufacturing fault, the seller is entitled to take action against the manufacturer to recover the costs of the air conditioner, the installation and the compensation for damage to the paint and carpet.

If the goods are not of a kind ordinarily acquired for domestic, household or personal use, the manufacturer may be entitled to limit their liability to the seller to the cost of replacing the goods, having the goods repaired or obtaining equivalent goods (whichever is lowest).

Manufacturing goods for consumers

What are the consumer guarantees?

Just like sellers, manufacturers and importers guarantee that goods are of acceptable quality, they match any description given by or on behalf of the manufacturer or importer and that they will abide by any express warranty they make about their goods.

Manufacturers also guarantee that they will make repair facilities and spare parts reasonably available for a reasonable period of time. This applies unless they make it clear to consumers that repair facilities and/or spare parts will not be available after a specified period.

Example

A consumer purchases an expensive bicycle to use during training and competitions. One year after purchase the consumer attempts to replace the chain on the bike but is told that spare parts are not available in Australia and it will take twelve months to order them from Europe.

If the manufacturer did not take reasonable steps to explain this to the consumer prior to them purchasing the bike, the manufacturer will not have complied with the guarantee to make spare parts reasonably available.

What if the guarantees aren't met?

If a manufacturer does not meet any of these guarantees, the consumer is entitled to take action against the manufacturer to recover compensation for any loss or damage suffered because of the failure to comply with the guarantee.

Do consumers have any obligations?

Consumers' rights are not limitless and the consumer guarantees do not require you to provide a remedy unless one of the guarantees has not been complied with.

For example, you may not be obligated to provide a remedy if a consumer:

- simply changes their mind, decides they do not like the purchase or has no use for it
- discovers they can buy the goods or services more cheaply elsewhere
- is unhappy with a service that they insisted on having carried out in a particular way
- has damaged the goods by using them in a way that was unreasonable or unintended.

Providing services to consumers

What are the consumer guarantees?

Care and skill

Service providers must carry out all services using an acceptable level of skill and/or technical knowledge. Service providers must also take reasonable steps to avoid loss or damage when providing the services.

Example

A consumer goes to a hairdresser and asks for a cut and colour. The hairdresser accidentally uses peroxide instead of the consumer's desired colour and bleaches their hair.

In this case the hairdresser has not used care and skill when colouring the customer's hair.

Fit for any disclosed purpose

Services, and any good resulting from the service, must be fit for any purpose or achieve any result that the consumer made known to you prior to agreeing to the services. Consumers can make their purpose known either **expressly**—by saying what they want—or the purpose can be **implied** from the circumstances.

Example

A consumer contracts with a gardener to landscape their backyard. The consumer explains to the gardener that they want to leave sufficient space to build a swimming pool in the backyard. The gardener ignores this and plants a number of expensive trees throughout the garden and creates a tiled gazebo in the centre.

In this case the landscaping does not achieve the result that the consumer made known to the gardener.

If the consumer did not mention that they wanted to build a swimming pool the services are likely to have achieved their desired result.

Reasonable time

If the contract does not specify a time frame for the services to be completed, services must be completed within a reasonable time. What is 'reasonable' will depend on the type of services and other relevant factors such as weather and availability of parts.

Example

A plumber agrees to fix a consumer's pipes. The consumer and the builder agree verbally on a price but do not discuss how long it will take to complete the repairs. The plumber starts the repairs but then does not come back to the consumer's house for over a fortnight.

In this case, the repairs were not completed within a reasonable time.

What if the guarantees aren't met?

If a service provider does not meet any of the guarantees listed above, the consumer is entitled to a remedy—either fixing the problem with the services, a refund or compensation for any drop in value from the original price paid—depending on the circumstances.

Generally, a service provider will be able to fix the problem with the services. However, if the problem is **major** or cannot be or is not fixed within a **reasonable time**, the consumer may choose to:

- terminate the contract for services and obtain a full refund; or
- seek compensation for the difference between the value of the services provided compared to the price paid.

A **major** failure to comply with a consumer guarantee is one where the failure was so severe that a reasonable consumer would not have agreed to the services had they known of the full extent of the problem.

Example

A consumer contracts with a printing business to have an assignment laminated and bound the day before it was due. The laminator overheats and discolours the assignment so that the consumer cannot submit it.

This is a major failure and the consumer would be entitled to terminate their contract with the printer and obtain a full refund.

Misleading consumers about their statutory rights

The consumer guarantees cannot be changed, limited or refused by a seller, manufacturer or importer.

It is also against the law for a seller to do anything that leads consumers to believe their rights are limited, or do not apply—for example, by claiming that no refunds will be given under any circumstances.

Any misleading claims a business makes about consumers' rights under the consumer guarantees are invalid and do not affect a consumer's right to obtain a remedy under the consumer guarantees. These claims are also likely to breach provisions of the ACL relating to misrepresentations or misleading and deceptive conduct.

The ACCC's role in relation to consumer guarantees

The Australian Competition and Consumer Commission (ACCC) has several roles in relation to the consumer guarantees.

The ACCC can:

- 1) Provide guidance on the consumer guarantees and the ACL more broadly to assist businesses in complying with the rules.
- 2) Investigate complaints and take action against sellers who have breached the ACL – for instance, by making misrepresentations about consumers' rights under the consumer guarantees.
- 3) Take action on behalf of individuals who have been adversely affected by business' failing to comply with the consumer guarantees.

The ACCC's decision to take enforcement action against sellers who have breached the ACL or have failed to comply with the consumer guarantees will be made in accordance with the ACCC's *Compliance and enforcement policy*.

Where can I get more information?

The ACCC has developed an online education module for store owners, managers and sales staff to help them understand the consumer guarantees. This can be viewed on the ACCC website:

www.accc.gov.au/consumerguarantees.

You can also visit www.consumerlaw.gov.au for an overview of the ACL.

Detailed guidance on consumer guarantees and other parts of the ACL is available from this site.

The ACL is supported by the *Competition and Consumer Regulations 2010* (the Regulations). The Regulations contain some specific requirements for businesses to comply with the ACL, in particular the provisions relating to warranties against defects and repair notices.

Some of the Regulations commence on a date later than 1 January 2011. These transitional arrangements allow businesses time to comply with the new law. All businesses must ensure they comply with the ACL and the Regulations by the required date.

Further information on the Regulations can also be obtained from www.consumerlaw.gov.au.

ACCC contacts

Infocentre 1300 302 502

Website www.accc.gov.au

For information in languages other than English, call 131 450 and ask for 1300 302 502

TTY service for people with hearing or speech difficulties: 1300 303 609 www.accc.gov.au

© Commonwealth of Australia 2010

Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011. For more information on the Australian Consumer Law changes see www.consumerlaw.gov.au

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

ISBN 978 1 921887 15 4

ACCC 11/10_43460_192