

Australian Consumer Law Update 2 November 2010

The Australian Consumer Law Update is designed to keep industry associations and businesses across Australia up-to-date with the introduction of the Australian Consumer Law (ACL).

This issue focuses on consumer guarantees and what you need to know about the rights and obligations under the ACL.

Are you ready for the new Australian Consumer Law?

Effective **1 January 2011**, the ACL law aims to ensure there is fair trading across Australia and affects retailers, service providers, manufacturers, importers and other suppliers.

The benefits to business will vary depending on the size of your business and whether you trade locally, nationally or internationally but may include:

- reduced compliance costs
- reduced regulation burden and complexity for business
- certainty for business operating under a single national consumer law.

Enforcement and penalties

Australia's consumer protection agencies have a wider range of enforcement powers under the ACL and new pecuniary penalties can apply if you break the law. The maximum is \$220,000 for an individual and \$1.1million for a body corporate. Criminal penalties for the same amount may apply.

New consumer guarantees – what you need to know

The consumer guarantees in the ACL are similar to the existing conditions and warranties implied in agreements for goods and services by national, state and territory consumer laws. They do not create vastly different rights and obligations, but set out the rights and obligations in a clearer way.

The new consumer guarantees apply to goods and services bought on or after 1 January 2011 by a consumer from a supplier or manufacturer. They apply to:

- any type of goods or services costing up to \$40,000 (including second-hand, leased or hired goods)
- goods or services costing more than \$40,000 (including second-hand, leased or hired goods) which are normally used for personal, domestic or household purposes
- a vehicle or trailer. The cost of the vehicle or trailer is irrelevant.

Which goods are not covered?

Goods not covered by consumer guarantees include those:

- goods bought before 1 January 2011. These are covered by the implied warranties and conditions in state and territory fair trading laws and the *Trade Practices Act 1974*
- bought from one-off sales by private sellers, such as garage sales and fetes
- bought at auctions, where the auctioneer acts as agent for the owner
- costing more than \$40,000 that a person would normally buy for business use, for example, machinery and farming equipment
- a person buys to on-sell or re-supply
- a person wants to use, as part of a business to:
 - manufacture or produce something else – for example, as an ingredient
 - repair or otherwise use on other goods or fixtures.

Which services are not covered?

Services not covered by consumer guarantees include those:

- bought before 1 January 2011. These are covered by the implied warranties and conditions in state and territory fair trading laws and the *Trade Practices Act 1974*
- costing more than \$40,000 which are for commercial use – for example, installation of farm irrigation systems or factory machinery repairs
- for transportation or storage of goods for the consumer's business, trade, profession or occupation
- insurance contracts.

Warranties for financial services provided by the *Australian Securities and Investments Commission (ASIC) Act 2001* will continue to apply and will be administered separately by ASIC.

Who gives the consumer guarantees?

The supplier - the person or business who sold the consumer the goods or services.

The manufacturer – the person or business who:

- made the goods
- put the goods together
- has their name on the goods, or
- imported the goods, if the maker does not have an office in Australia.

Guarantees on goods

Both supplier and manufacturer guarantee that goods:

- are of acceptable quality - they will be safe, durable and free from defects. They will be acceptable in appearance and finish, and do the job such things are usually used for
- match the description – they will match any description given to the consumer
- match the sample or demonstration model.

A supplier also guarantees that the consumer is buying goods:

- with a clear title, unless the supplier told the consumer otherwise before the sale
- with a right to undisturbed possession – the supplier promises no-one has a legal right to take the goods away or prevent the consumer from using the goods
- that do not have any undisclosed securities – the goods do not have any hidden securities or charges
- that are fit for any disclosed purpose - the goods will do the job the consumer was told they would.

A manufacturer guarantees the reasonable availability of repairs and spare parts.

Express warranties and consumer guarantees

A manufacturer guarantees that any express warranties will be honoured. If there is no express warranty and the manufacturer has not met a consumer guarantee, the consumer can assert their rights under consumer guarantees.

Guarantees on services

A supplier guarantees to provide services:

- with due care and skill – they will use an acceptable level of skill or technical knowledge, and take care to avoid loss or damage
- which are fit for any particular purpose that was disclosed - the service will achieve the result the consumer was told it would
- within a reasonable time, if no timeframe was agreed.

Remedies available to consumers

If a good or service fails to meet a guarantee, a consumer will have rights against the supplier and/or, in some cases, the manufacturer, who will have to provide a 'remedy' - an attempt to put right a fault, deficiency or a failure to meet an obligation.

When the problem with the good or service is minor, the supplier can choose between providing a repair or offering the consumer a replacement or a refund. A minor problem is a problem that can normally be put right.

When there is a major failure, the consumer can reject the goods or services and either:

- choose a refund or a replacement, or
- ask for compensation for any drop in value of the goods or services.

A major problem is one that cannot be fixed or is too difficult to fix.

When the consumer chooses a refund

The supplier must repay any money paid by the consumer for the returned goods, and return any other form of payment made by the consumer – for example, a trade-in. If this is not possible, they must refund the consumer the value of the item.

When the consumer chooses a replacement

The supplier must provide goods of the same type and similar value. The consumer must return goods to the supplier. If this involves significant cost to the consumer, the supplier must collect the goods at their own expense.

Consumer guarantees that applied to the original goods will apply to the replacement. For, example: A consumer buys a new mobile phone. Due to a problem, the supplier replaces it. Consumer guarantees apply to the replacement phone as if it were a new mobile phone.

ACL Regulations update

The draft Regulations are being reviewed after the recent public consultation period and will be finalised in the coming weeks. View the [draft regulations](#).

The final Regulations will be available soon on www.consumerlaw.gov.au

National guides and resources update

ACL guides are being reviewed after the recent public consultation period and case studies are being developed which will be available soon on www.consumerlaw.gov.au

Here are a list of guides and resources available:

- Download [draft guides](#)
- Listen to an audio version of [A guide to the unfair contract terms law](#)
- [Subscribe to alerts](#)
- [Find out about upcoming events](#).

For more information

For more information, please visit the [Australian Consumer Law website](#).