

Background

The Australian Consumer Law (ACL) is a national law that protects consumers and outlines business responsibilities in Australia. It applies uniformly across the country, ensuring that all businesses adhere to the same rules, regardless of their location. The ACL is the common name for the Competition and Consumer Act 2010 (Cth) and was enacted on 1 January 2011, replacing previous consumer protection legislation. It is administered by the Australian Competition and Consumer Commission (ACCC) and aims to simplify the understanding of consumer rights and business obligations.

The ACL replaces all previous federal, state and territory consumer protection legislation such as the federal Trade Practices Act 1974 (TPA) and all the state Fair trading Acts (FTA). All states and territories call up the ACL within their own legislation.

The Consumer Guarantees are not a new concept. They have been incorporated within the ACL and replace the implied terms outlined in the previous federal and state legislation.

What does it cover?

The ACL contains 9 guarantees that apply to the supply of goods and 3 that apply to the supply of services (refer to summary table 1 on the next page). It also regulates sales practices, product safety, unfair business practices, unfair contracts and compliance and enforcement of the law.

Trade or commerce refers to the course of a supplier's or manufacturer's business or professional activity, including a non-profit business or activity.

Who does the ACL apply to?

The Guarantees are implied in any supply of goods or services made by a supplier or manufacturer when they sell, hire or lease goods or supply services to a consumer.

A supplier is anyone, including a trader, a retailer or a service provider, who, in trade or commerce, sells goods or services to a consumer.

A manufacturer is a person or business that makes or puts goods together or has their name on the goods. It includes the importer if the maker does not have an office in Australia.

What are the Consumer Guarantees?

These are set out in the table at the end of this fact sheet.

When do the Consumer Guarantees apply?

The Consumer Guarantees apply from 1 January 2011. They apply to:

- Any type of goods or services costing up to \$100,000;
- Goods or services costing more than \$100,000, which are normally used for personal, domestic or household purposes; and
- A vehicle or trailer without limit on cost.

The goods and services not covered are:

- Those bought before 1 January 2011 (they are covered by implied warranties under the TPA and FTAs).
- Bought from one-off sales by private sellers.
- Bought at auctions, where the auctioneer acts as an agent for the owner, costs more than \$100,000 and would normally be purchased for business use – for example, machinery and farming equipment.
- A person buys to on-sell or re-supply.
- A person wants to use it, as part of a business, to manufacture or produce a product, repair or reform.

Can a manufacturer or supplier limit or exclude the Consumer Guarantees?

A manufacturer or supplier cannot exclude or limit the Consumer Guarantees implied by the ACL. There are penalties if a supplier or manufacturer tells a consumer that:

- The Guarantees do not exist, may be excluded or may not have a particular effect.
- They must pay for rights that are equivalent to the Consumer Guarantees.

Consumers cannot agree to forgo their rights under the Guarantees. While it is not necessary to do so, suppliers can erect a sign at the point of sale notifying consumers of their rights. It is intended that various consumer protection agencies will have a standard sign. There is provision in the law to make a sign mandatory. "No refund" signs are considered to be unlawful because under the Consumer Guarantees, refunds must be given in certain circumstances, nor can a consumer be advised that they are only entitled to a credit note or exchange. Notice can be given that there is no refund if a person changes their mind.

	Supplier	Manufacturer
Goods	<ul style="list-style-type: none"> • Acceptable quality. • Fitness for any disclosed purpose. • Matching sample or demonstration model. • Matching description title. • Undisturbed possession or undisclosed securities. • Express warranties. 	<ul style="list-style-type: none"> • Acceptable quality. • Matching description. • Express warranties. • Repairs and spare parts.
Services	<ul style="list-style-type: none"> • Due care and skill. • Fitness for particular purpose. • Completion within a reasonable time (where no time is set). 	

Table 1: Warranty Claims

What remedies are there for a consumer?

A consumer will have rights against the supplier and, in some cases, the manufacturer if goods fail to meet a Guarantee. Depending on the type of problem the supplier or manufacturer will have to provide a remedy. The ACL identifies a minor failure and a major failure.

A major failure in supply of goods or services occurs when:

- A reasonable consumer would not have bought the goods or services.
- The goods are significantly different from their description or demonstration model.
- The goods or services are unfit for their purpose and cannot easily be remedied in a reasonable time.
- Goods or services are unfit for the purpose made known to the supplier and cannot be remedied within a reasonable time.
- Not of acceptable quality because they are unsafe or the service creates an unsafe situation.
- The services are not of a nature, quality, state or condition that might reasonably be expected to have been achieved that the consumer made known to the supplier.

Goods

Major Failure

- Consumer can reject the goods and choose a refund, replacement or repair.
- Consumer can keep the goods and receive compensation for the difference in value or cost to rectify.

Minor failure

Supplier or manufacture may at their option:

- Provide a refund.
- Replace the goods.
- Fix the title to the goods (if this is the problem).
- Repair the goods.

Repair must be completed in a reasonable time. If not the consumer can:

- Reject the goods and require a replacement.
- Have the repair carried out with the supplier meeting the reasonable cost.

If the problem cannot be fixed it becomes a major failure.

Services

Major Failure

- Consumer can cancel the contract and get a refund for services not already provided.
- Consumer can seek a refund for any loss of value or cost of having the service completed.

Minor failure

Supplier or manufacturer may at their option:

- If problem can be fixed then fix it.
- If not fixed in a reasonable time the consumer can:
 - Terminate the contract and get a refund.
 - Get the problem fixed and get the supplier to pay the reasonable costs.

Goods and Services

Consumer can seek damages for consequential loss caused by the failure to comply with the Guarantees. The damages are limited to what is reasonably foreseeable.

What are a consumer's obligations if they reject goods?

When rejecting goods, a consumer must contact the supplier if they intend to reject goods, and give a reason for rejecting the goods. They must:

- Return the rejected goods to the supplier; or
- Ask the supplier to collect the rejected goods, if the goods cannot be returned without significant cost to the consumer.

While a consumer may have agreed to a repair, they may still reject the goods and request a refund or replacement at any time.

When does a consumer not have the right to reject goods?

A consumer cannot reject goods when:

- The goods have been thrown away, destroyed, lost or damaged through no fault of the supplier, after delivery to the consumer.
- The goods have been incorporated in other property and cannot be removed without damage.
- The goods are not rejected within the time the fault or problem would reasonably be expected to appear.
- This depends on:
 - The type of goods.
 - How a consumer is likely to use the goods.
 - The length of time the goods could reasonably be used.
 - The amount of use the goods could reasonably be expected to tolerate before the problem or fault became apparent.

Even though the consumer may have lost the right to reject the goods, they will still have the right to keep the goods and ask for compensation for any drop in the goods' value.

What happens if 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 other form of payment. A supplier cannot:

- Offer a credit note, exchange card or replacement goods instead of a refund.
- Refuse a refund, or reduce the amount, because the goods were not returned in the original packaging or wrapping.

Ordinarily a supplier can require proof of purchase.

What happens if the consumer chooses a replacement?

The supplier must provide goods of the same type and similar value. If a replacement is not reasonably available, the consumer may choose a repair or a refund.

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.

The consumer guarantees that applied to the original goods will apply to the replacements as if they were a new item.

What happens if the consumer chooses repair?

A repairer of goods (whether or not this is the supplier) must notify the consumer of certain information before accepting the goods for repair. The repairer must:

- Inform the consumer if the repairer intends to replace defective goods with refurbished goods of the same type rather than repairing the problem with the original goods, or to use refurbished parts to repair the goods.

As from 1 July 2011, there are Regulations that repairers must give a repair notice that includes information such as:

- They intend to repair using refurbished goods; and
- For goods capable of storing data created by the user of the goods (user-generated data), the repairer must advise the consumer that repairing the goods may result in loss of the data. User-generated data includes, for example, songs, photos, telephone numbers and electronic documents.

Repairers who fail to comply face civil and criminal penalties.

What about a consumer cancelling services?

A supplier does not have to give a refund when a consumer simply changes their mind about the services. If they have a policy to offer a refund or credit note when this happens they must do so.

A consumer can cancel a contract for services at any time. A contract for services ends when the consumer tells the supplier of their intention to cancel the services. It can be verbally, in writing or any other means.

Cancelling a contract for services gives the consumer the right to a refund. The amount will depend on whether some or all of the services provided were unsatisfactory, or provided at all. Where the consumer terminates the services and there is no reason other than they have changed their mind, the supplier can charge for the work done and any loss of profit on the work to be completed. If there is a breach of a Consumer Guarantee, the supplier must rectify or compensate the consumer to rectify the problem or the loss incurred.

What are a manufacturer's liabilities?

A consumer is entitled to ask for an amount covering any drop in the value of the goods. This amount must be equal to or less than the difference between the current value of the goods and the lowest of either: the average retail price of the goods at the time of purchase, or the actual price paid.

The consumer can also ask for compensation for any reasonably foreseeable loss suffered due to the manufacturer's failure to meet the consumer guarantees. Manufacturers and importers act as suppliers when they sell goods directly to consumers and have the same responsibilities under Consumer Guarantees.

Some goods may not be of acceptable quality due to a manufacturing defect, may not match a description given by the manufacturer or are unfit for a purpose specified to the manufacturer. A consumer may ask a supplier, not the manufacturer, to deal with the problem. If so, the manufacturer must reimburse the supplier. The amount can include any compensation paid to the consumer for reasonably foreseeable consequential losses. A supplier has 3 years to ask the manufacturer for reimbursement, from the date that:

- They fixed any problems with the consumer's goods; or
- The consumer took legal action against the supplier.

Manufacturers cannot contract out of this obligation to reimburse the supplier. However, when goods are not used for personal, domestic or household purposes and it is fair and reasonable to do so, the manufacturer can limit their liability to the lowest cost among the following:

- Replacing the goods.
- Obtaining equivalent goods.
- Repairing the goods.

Suppliers and manufacturers can also make an agreement about what they will each cover, as this does not affect the consumer's rights.

What if the manufacturer did not cause the problem?

Manufacturers are not responsible for problems with goods beyond their control. They do not have to pay damages if goods do not meet the Consumer Guarantees due to:

- An act, default, omission or representation made by some other person (excluding their employee or agent).
- A cause independent of human control that occurs after the goods left the manufacturer's control.
- The supplier charging a higher price than the recommended or average retail price for the goods. This covers situations where a higher standard of acceptable quality is expected of goods due to a higher than usual or recommended selling price charged by the supplier. Manufacturers will be only held to the standard required if the goods were sold at the recommended retail price or the average retail price.

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Australian Consumer Law:
A Summary on the Consumer Guarantees



	Guarantee	Manufacturer	Comment	Act Ref
1	The supplier guarantees they have the right to sell the goods (clear title), unless they alerted the consumer before the sale that they had ‘limited title’	This is a guarantee the supplier will pass good title to the goods.		Sch 2 s 51
2	The supplier guarantees that no one will try to repossess or take back goods, or prevent the consumer using the goods, except in certain circumstances (undisturbed possession)	This means a consumer gets undisturbed possession of the goods.		Sch 2 s 52
3	The supplier guarantees that goods are free of any hidden securities or charges and will remain so, except in certain circumstances	<p>A supplier guarantees that goods bought by a consumer are free of any hidden securities or charges and will remain so, unless the security or charge was either:</p> <ul style="list-style-type: none"> placed on the goods with the consumer’s permission brought to the consumer’s attention in writing before they bought the goods. 		Sch 2 s 53
4	The supplier and manufacturer guarantee that goods are of acceptable quality when sold to a consumer	<p>The test is whether a consumer, fully aware of the goods condition (including any defects) would find them:</p> <ul style="list-style-type: none"> fit for all the purposes for which goods of that kind are commonly supplied; acceptable in appearance and finish; free from defects; safe; durable. <p>Consumer goods leased or hired to a consumer must be of acceptable quality.</p>	<p>This test takes into account:</p> <ul style="list-style-type: none"> the nature of the goods the price paid for the goods any statements about the goods on any packaging or label on the goods any representation made about the goods by the supplier any other relevant circumstances relating to supply of the goods 	Sch 2 s 54
5	The supplier guarantees that goods will be reasonably fit for any purpose the consumer or supplier has specified	<p>A supplier guarantees that goods will be fit for a special job or purpose if the consumer, before buying the goods:</p> <ul style="list-style-type: none"> expressly or implicitly tells the supplier what they want to use the goods for, and the consumer relied on the supplier’s knowledge or expertise when deciding whether the goods were suitable for that use or purpose. 	<p>A supplier does not have to provide a remedy if they can show that:</p> <ul style="list-style-type: none"> the consumer did not rely on the supplier’s skill or judgment when buying the goods; or under the circumstances, it was unreasonable for the consumer to rely on the supplier’s skill or judgment (or lack of it). 	Sch 2 s 55

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Australian Consumer Law: A Summary on the Consumer Guarantees



	Guarantee	Manufacturer	Comment	Act Ref
6	The supplier and the manufacturer guarantee that goods are accurately described.	A consumer who buys goods that do not match the description – for example the goods are a different colour or size– is entitled to a remedy.	A supplier or manufacturer cannot argue that the consumer inspected the goods before purchase and should have picked up any errors in the description.	Sch 2 s 56
7	The supplier guarantees that goods will match any sample or demonstration model and any description provided.		This guarantee does not apply to goods bought at auction.	Sch 2 s 57
8	Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities for a reasonable time after purchase.	What is a reasonable time will depend on the type of goods.	A manufacturer or importer does not have to meet the guarantee on repairs and spare parts if the consumer was informed in writing, at the time of sale, that repair facilities and/or spare parts would not be available after a specified time.	Sch 2 s 58
9	The supplier and manufacturer guarantee that the goods will satisfy any extra promises made about them.	<p>Suppliers or manufacturers may provide a warranty that promises consumers that goods or services will be free from defects for a certain period of time and the consumer is entitled to repair, replacement, refund or other compensation – this is a defect's warranty or manufacturer's warranty,</p> <p>Suppliers may also give a warranty promises about the goods such as appearance, performance, use and life. These are express warranties.</p> <p>Sometimes a warranty against defects may contain an express warranty.</p> <p>A supplier or manufacturer who makes any extra promise about the goods is bound to honour that warranty or promise</p>	<p>From 1 January 2012, a warranty against defects must be in writing and:</p> <ul style="list-style-type: none"> • be expressed in a transparent way – in plain language, legible and presented clearly • contain the warrantor's name, business address, phone number and email address (if any) set out relevant claim periods or procedures, and • include a statement that rights under the warranty are additional to the consumer guarantees, which cannot be excluded. <p>Failing to meet these criteria may lead to a civil penalty.</p>	Sch 2 s 59, 102 and 192

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Australian Consumer Law: A Summary on the Consumer Guarantees



	Guarantee	Manufacturer	Comment	Act Ref
10	Suppliers guarantee their services are provided with due care and skill.	<p>This means they must:</p> <ul style="list-style-type: none">• use an acceptable level of skill or technical knowledge when providing the services; and• take all necessary care to avoid loss or damage when providing the services.		Sch 2 s 60
11	Suppliers guarantee that services will be reasonably fit for any purpose specified by the consumer and any product resulting from the services are also fit for that purpose.	Suppliers guarantee that services, and any resulting products, are of a standard expected to achieve the desired results that the consumer made known to the supplier.	<p>The guarantee will not protect the consumer if they did not rely, or it was unreasonable for them to rely, on the supplier’s skill or judgment in agreeing to particular services.</p> <p>The guarantee that services will be fit for a purpose, or for achieving a result made known to the supplier, does not apply to professional services provided by a qualified architect or engineer.</p>	Sch 2 s 61
12	The supplier guarantees to supply the service within a reasonable time.	What is ‘reasonable’ will depend on the nature of the services.	This will apply where no date for supply is specified.	Sch 2 s 62