



Consumer guarantees A guide for businesses

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The Australian Competition and Consumer Commission (the **ACCC**) has indicated that the number one consumer complaint relates to how people can enforce their rights when a product or service is faulty. Fittingly, improving industry compliance with the consumer guarantees regime was named as a compliance and enforcement priority for the ACCC in 2023/2024 (with a particular focus on high-value goods, including motor vehicles and caravans).

The regulator has frequently taken legal action against businesses for false or misleading representations and/or unconscionable conduct (which can both attract significant penalties) in relation to the consumer guarantees entitlements – even if there are no penalties, at present, for only failing to comply with the consumer guarantees regime.

The ACCC is advocating [law reform](#) to make non-compliance with consumer guarantees illegal. More penalties (in addition to existing penalties for breaching the false or misleading representations and unconscionable conduct provisions) could therefore be on the table in the near future.

With all this in mind, businesses should take action to familiarise themselves with the consumer guarantees regime and to ensure they have mechanisms in place to prevent non-compliance.

WHAT ARE CONSUMER GUARANTEES?

The Australian Consumer Law (the **ACL**) contains a series of consumer guarantees, which all goods and services sold in Australia to a ‘consumer’ (as defined in the ACL) must meet.

In effect, when consumers buy goods and services, they come with automatic guarantees that they will work and do what the consumer asked for. This includes a right to expect the product will be safe, which is currently under the umbrella of the guarantee for acceptable quality. The ACCC has also been [advocating](#) for the introduction of a separate general safety provision to prohibit the sale of unsafe goods in Australia.

Below is a summary of the consumer guarantees for goods and services:

GOODS

Guarantees	Example of recent decisions (where available)
<p>Acceptable quality</p> <p>Businesses guarantee that goods sold to consumers are of acceptable quality. Acceptable quality means the product:</p> <ul style="list-style-type: none"> ■ is safe, durable and free from defects; ■ has an acceptable appearance and finish; and ■ is fit for all purposes that similar products are commonly used for. <p>Whether a good is of acceptable quality is an objective question determined from the perspective of a reasonable consumer.</p>	<p><i>Edwards v Caravan & RV Central Pty Ltd</i></p> <p>A couple paid approximately \$63,000 for a new caravan, which suffered various problems during the first two years of ownership – including difficulties closing the external door; water leaks; cracks in the wall; and issues with the power, fridge, heater and hot water system.</p> <p>The New South Wales Civil and Administrative Tribunal rejected the seller’s argument that the problems were ‘teething issues’, finding that the caravan was not of an acceptable quality.</p> <p>The buyers chose to trade the faulty caravan in for another caravan supplied by a third party (despite being entitled to seek a refund from the seller). As a result, the seller was required to compensate the buyers for the caravan’s reduction in value and pay damages for foreseeable loss.</p>
<p>Match description</p> <p>Businesses guarantee that goods sold to the consumer match their description. Businesses cannot argue that a consumer should have inspected the goods and discovered the error in the product description before purchase.</p> <p>This guarantee does not apply to goods sold in auction.</p>	<p><i>Santini v Northern Trading Pty Ltd & Anor</i></p> <p>A new Subaru with extensive rusting less than two years after purchase was found not to match its description. The buyer had driven a similar Subaru as their precursor vehicle in comparable conditions without having similar corrosion/rust issues. The Queensland Civil and Administrative Tribunal accepted evidence that ‘<i>the similar Subaru vehicle was driven over steep, rutted, unsealed tracks and through water demonstrating its durability and sophistication</i>’. Such a description was found to be at odds with the newer vehicle being categorised as a virtual write-off within three years of purchase, due to corrosion/rust.</p>
<p>Match sample or demonstration model</p> <p>If businesses sell a product to a consumer based on a sample or demonstration model, the product sold to the consumer must have the same quality and features.</p>	<p><i>Shokrgozar v Abouloukme</i></p> <p>The seller supplied to the buyer tiles that were of a ‘<i>vastly different colour or quality</i>’ from the sample provided. It was found that while slight variations in colour expected in natural stone would not constitute a breach of the consumer guarantees, providing an entirely different product does.</p>

Guarantees	Example of recent decisions (where available)
<p>Express warranties</p> <p>Businesses that make ‘extra promises’ (ie express warranties) about the quality, state, condition, performance or characteristics of goods must meet these promises.</p> <p>Such warranties represent a binding contractual term.</p> <p>Express warranties against defects must be in a document that is transparent and include prescribed text mentioned in the ACL regulation.</p> <p>The rules around express warranties can be complex and generally require more in-depth legal advice.</p>	<p><i>Vautin v BY Winddown, Inc (No 4)</i></p> <p>A defective yacht manufactured in the US and sold to an Australian consumer was covered by an express warranty provided by the manufacturer through the Australian dealer. It said that the manufacturer would repair or replace defects in items manufactured by Bertram for two years, and the yacht’s hull and its fiberglass structural components for five years.</p> <p>The manufacturer’s refusal to rectify defects in the hull and fibreglass structures of the yacht meant that it did not comply with its express warranty and statutory guarantee.</p>
<p>Fitness for any specified purpose</p> <p>Businesses guarantee that their goods will be reasonably fit for any purpose they advertise or specify, or for any purpose the consumer specifies.</p>	<p><i>ADM Packaging Automation Pty Ltd v EST Group Pty Ltd</i></p> <p>An auger filler and stand-up packaging and stamping machine sold to a consumer was unable to correctly print the use-by/expiry date on the consumer’s plastic packaging. The New South Wales Civil and Administrative Tribunal found that this meant the goods were not fit for their disclosed purpose.</p>
<p>Title to goods</p> <p>Businesses guarantee that they have the right to sell the goods and pass clear title. If this is not the case, businesses must inform the consumer that they have ‘limited title’.</p>	<p><i>Coyte v Ozcorp Group Pty Ltd</i></p> <p>The buyer requested a refund for a vehicle purchased from the seller, claiming that it had tampered identification numbers and a forged compliance sticker. The vehicle was seized by the police and not returned. The New South Wales Civil and Administrative Tribunal ruled in favour of the buyer, stating that the seller had made false or misleading representations about the vehicle’s history.</p>
<p>Undisturbed possession of goods</p> <p>Businesses guarantee that no one will try to claim or repossess the goods, or prevent the consumer from using those goods. If this is not the case, businesses must inform the consumer before they buy the product.</p>	<p>-</p>
<p>No undisclosed securities on goods</p> <p>Businesses guarantee that goods bought by a consumer are free of any hidden securities or charges.</p> <p>If this is not the case, businesses must inform the consumer before they buy the product.</p>	<p>-</p>

Guarantees	Example of recent decisions (where available)
<p>Repairs and spare parts</p> <p>Manufacturers guarantee that repairs and spare parts will be available for a reasonable period post supply (except where unavailability is disclosed), and that the consumer is able to have repairs undertaken within a reasonable time frame and with a repairer that has facilities reasonably available to the consumer.</p>	-

SERVICES

Guarantees	Recent decisions (where available)
<p>Due care and skill</p> <p>Service providers guarantee that their services are provided with due care and skill. This means that they must:</p> <ul style="list-style-type: none"> ■ use an acceptable level of skill or technical knowledge when compared with a competent service provider providing similar services; and ■ take all necessary care to avoid loss or damage when providing the services. 	<p><i>MG Landscaping Pty Ltd v Aerolink Property Corporation</i></p> <p>The Victorian Civil and Administrative Tribunal determined that, among other things, Aerolink breached the guarantee that the services it provided to MG Landscaping would be rendered with due care and skill in two ways:</p> <ul style="list-style-type: none"> ■ through the actions of its concrete delivery driver, who reversed into the rear of the property of MG Landscaping’s client; and ■ because the concrete supplied by Aerolink in the construction of the client’s driveway was of a different colour from the concrete that had previously been supplied.
<p>Fit for purpose</p> <p>Service providers guarantee that their services and any resulting products are fit for any purpose they advertise or specify, or for any purpose the consumer makes known to the supplier.</p> <p>This guarantee does not apply to professional services provided by a qualified architect or engineer (maintaining an exemption granted by previous law).</p>	<p><i>Wade v J Daniels and Associates Pty Ltd</i></p> <p>The consumer hired the services provider, a debt management firm, to help her prevent a bank from exercising mortgagee rights over her home. However, it was determined that the services provider failed to provide a service that reasonably suited the disclosed purpose of helping the applicant keep her home. Instead, it deferred foreclosure, but the bank eventually sold the consumer’s house when she fell into arrears again. It was found that the services provider should have offered a service that either assisted with refinancing the home loan or provided an alternative realistic solution addressing the applicant’s home loan distress.</p>
<p>Reasonable time for supply</p> <p>Service providers guarantee that their services will be supplied within a reasonable time if there is no agreed time frame. What is ‘reasonable’ will depend on the nature of the services.</p>	<p><i>Gynaecare Services Pty Ltd v Health Staff Solutions Pty Ltd</i></p> <p>The supplier was determined to have failed to provide in a reasonable time the staff recruitment services it was contracted for. The supplier failed to successfully recruit two placements within a 20-month period, with one placement failing to complete the required 13 weeks of service and another failing to be filled at all.</p>

WHO IS PROTECTED BY CONSUMER GUARANTEES?

Consumer guarantees generally apply to goods and services purchased in 'trade or commerce' by 'consumers'.

A consumer is defined as an individual who purchases:

- goods or services with a cost of up to \$100,000;
- goods or services with a cost exceeding \$100,000 that are typically used for personal, domestic, or household purposes; or
- vehicles or trailers primarily used for transporting goods on public roads, regardless of the cost.

Second-hand, leased or hired goods are also covered by most of the consumer guarantees.

A consumer is not an individual who purchases goods in trade or commerce:

- for the purpose of resupply;
- to use or transform them through processing, production or manufacture; or
- to repair or treat other goods or fixtures on land.

'In trade or commerce' refers to activities conducted by suppliers or manufacturers in their business or professional capacity. The guarantees for title, undisturbed possession and undisclosed securities apply regardless of whether the goods are sold in trade or commerce.

When the consumer guarantees aren't met, consumers have legal rights to remedies. The type of remedy depends on the severity of the problem.

DOES YOUR BUSINESS NEED TO COMPLY WITH THE CONSUMER GUARANTEES?

Unless an exception applies, all 'suppliers' and 'manufacturers' of goods and services supplied to Australian consumers are required to comply with the consumer guarantees regime.

A 'supplier' includes someone who, in trade or commerce, sells goods or services and is commonly referred to as a 'trader', 'retailer' or 'service provider'.

A 'manufacturer' includes a person who:

- grows, extracts, produces, processes or assembles goods;
- holds themselves out to the public as the manufacturer of goods;
- causes or permits their name, business name or brand to be applied to goods they supplies;
- permits themselves to be held out as the manufacturer by another person; or
- imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.

There may be carve-outs and exceptions that can apply – these can be complex and require specific legal advice.

For example, activities of overseas manufacturers that do not have a place of business in Australia may not be covered by the ACL consumer guarantees in certain circumstances. However, there may still be contractual obligations to consumers that apply, in addition to other obligations to ensure goods are safe. Furthermore, importers for those overseas manufacturers may bear the manufacturer's responsibilities for the purposes of the consumer guarantees regime.

WHAT IS YOUR BUSINESS'S POTENTIAL LIABILITY?

If a good or service fails to meet a consumer guarantee, a consumer has rights against the supplier or, in some cases, against the manufacturer.

Where the failure is not major and can be remedied:

- for goods, the consumer may require the supplier to remedy the failure within a reasonable time. If the supplier fails to do that, **they can elect** to provide the consumer with a repair, replacement or refund for the goods.
- for services, the consumer may require the supplier to remedy the failure within a reasonable time. If the supplier fails to do that, the consumer may remedy the failure and claim reasonable costs or terminate the service contract.

Where the failure is major:

- for goods, **the consumer can elect** to have the supplier replace the item or provide a refund, or the consumer can retain the goods and recover compensation for the loss in value of the goods or services due to the failure, by action against the supplier.
- for services, the consumer may terminate the service contract, or retain the contract and recover compensation for any reduction in the value of the services below the price paid or payable, by action against the supplier.

Regardless of whether a failure is major or minor:

- the consumer is also entitled to recover damages directly from the supplier for any reasonably foreseeable loss or damage suffered by them because of the failure to comply with the guarantee. This is the case for a breach of a guarantee relating to goods or to services;
- when repairing electronic products, businesses must inform consumers about the potential loss of stored data and the use of refurbished parts; and
- if a business fails to repair the problem within a reasonable time frame or at all, consumers have the right to get it fixed elsewhere at the business's expense, receive a refund or replacement, or keep the product and be compensated for any loss in value caused by the problem.

MIND WHAT YOU SAY AND DO ABOUT CONSUMER GUARANTEES

Businesses can face serious financial and reputational repercussions for misrepresenting the consumer guarantees regime to consumers. Statements that falsely represent the non-existence or exclusion of the consumer guarantees may be considered to be a form of misleading or deceptive conduct or false representation.

Maximum civil penalties under the *Competition and Consumer Act 2010* (Cth) and the ACL for businesses were increased in 2022, to the greater of \$50 million, three times the value of the benefit obtained or 30% of adjusted turnover.

As a general rule, business should avoid signs and statements that modify, restrict or exclude consumer guarantees, or force consumers to agree that the law of another country applies to the contract or to any dispute.

The ACCC has also taken action under the unconscionable conduct provisions where businesses' dealings with consumers in relation to consumer guarantee entitlements (particularly with regards to complaints about defective products) have been considered particularly egregious.

As a general rule, businesses should ensure they deal with consumers in good faith and have mechanisms in place to resolve consumer complaints appropriately.

What you can't say / do	Examples
<p>Make blanket 'no refund' statements, as they imply that consumers are not entitled to a refund under any circumstances.</p> <p>However, businesses are entitled to refuse changes of mind.</p>	<p>Jetstar was ordered to pay \$1.95 million in penalties for stating that Jetstar Starter and Plus Fares were non-refundable, and implying that consumers would need to purchase an additional flight bundle at extra expense to be eligible for refunds.</p>
<p>Require consumers to notify the business / seek remedy for faulty products within an unreasonable time frame.</p>	<p>Booktopia was ordered to pay \$6 million in penalties for telling consumers they could only seek refunds, repairs, or replacements if they notified Booktopia within two business days of receiving a defective or incorrect product. This was found to be misleading.</p>
<p>Require consumers to accept refunds in the form not originally paid.</p>	<p>Sony was ordered to pay \$3.5 million in penalties for misleading conduct, including telling a consumer that it could provide a refund using virtual PlayStation currency instead of money.</p> <p>Sony had also represented to other consumers that it was not required to give a refund for a game once downloaded, or if 14 days had passed since it was purchased. This was also found to be misleading.</p>
<p>Deny consumers remedies for faulty products where repaired by a third-party repairer.</p>	<p>Apple was ordered to pay \$9 million in penalties for misleading conduct in telling consumers that they would not be eligible for a remedy if their device had been repaired by a third-party service provider.</p>
<p>Limit remedies available to the express manufacturer's warranty – entitlements under the consumer guarantees regime are separate from any express warranties that may be offered by manufacturers and will always be available to consumers.</p>	<p>LG was ordered to pay \$160,000 for misleading representations to two consumers who believed they had purchased faulty televisions, when it implied on phone calls that they had no rights other than those under LG's express manufacturer's warranties.</p> <p>However, representations made by LG merely outlining what remedies it was prepared to offer the consumer irrespective of any legal duties in circumstances where their own manufacturer's warranty had expired (and that did not deny the existence or application of the consumer guarantees regime) were found not to be misleading. (See our Insight: Clarity on what constitutes a misleading consumer guarantee representation.)</p>