

Consumer guarantees

A guide for businesses and legal practitioners

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Introduction

About the Australian Consumer Law

- i. The Australian Consumer Law (ACL) aims to protect consumers and ensure fair trading in Australia.
- ii. It is a national, state and territory law from 1 January 2011 and includes unfair contract terms legislation introduced on 1 July 2010.
- iii. Under the ACL, consumers have the same protections, and businesses the same obligations and responsibilities, across Australia.
- iv. Australian courts and tribunals can enforce the ACL, including those of the states and territories. The regulators of this law include:
 - the Australian Competition and Consumer Commission (ACCC)
 - the Australian Securities and Investments Commission (ASIC)
 - each state and territory consumer protection agency.
- v. The ACL replaces previous Commonwealth, state and territory consumer protection legislation in fair trading acts. It is contained in a schedule to the *Trade Practices Act 1974*, which has been renamed the *Competition and Consumer Act 2010* (CCA).
- vi. Aspects of the ACL are reflected in the *Australian Securities and Investments Commission (ASIC) Act 2001* to protect consumers of financial products and services.

About this guide

- vii. Consumer protection agencies across Australia have developed this guide to help businesses and legal practitioners understand consumer guarantees.
- viii. This guide covers:
 - what consumer guarantees apply to certain goods and services
 - who is responsible for satisfying the requirements of these consumer guarantees
 - when remedies, such as a refund, repair and replacement, will be available.
- ix. It explains the law in simple language but is no substitute for the legislation. This guide provides general information and examples - not legal advice or a definitive list of situations where the law applies.
- x. The guide is based on material prepared by the New Zealand Ministry of Consumer Affairs about their legislation, the *Consumer Guarantees Act 1993*. Consumer guarantees within the ACL are very similar to this legislation.

xi. Other ACL guides cover:

- general law
- product safety
- unfair contract terms
- sales practices.

Consumer guarantees - relationship to implied warranties and conditions

- xii. Consumer guarantees are a comprehensive set of rights and remedies for defective goods and services.
- xiii. The consumer guarantees are based on the same core principles as implied warranties and conditions that previously existed in state and territory fair trading laws and the Commonwealth *Trade Practices Act 1974*. They do not create drastically different rights and obligations, but set out the rights and obligations in a clearer way.
- xiv. Existing case law and legal precedents that apply to the previous law may assist when interpreting and applying the consumer guarantees.
- xv. Warranties for financial services provided by the ASIC Act will continue to apply and will be administered separately by ASIC.
- xvi. Meanwhile, eligible goods and services bought before 1 January 2011 are covered by the implied warranties and conditions in state and territory fair trading laws and the *Trade Practices Act 1974*.

1. Consumer guarantees: who guarantees what?

1.1 Suppliers and manufacturers automatically provide guarantees on certain goods and services they sell, hire or lease to consumers. These rights exist regardless of any warranty provided by the supplier or manufacturer.

1.2 A *supplier* is anyone - including traders, retailers and service providers - who, in trade or commerce, sells goods or services to a consumer.

1.3 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.

1.4 A *supplier* and a *manufacturer* of goods guarantees that goods are of:

- acceptable quality
- matching description
- matching sample or demonstration model.

1.5 A supplier guarantees that a consumer is buying goods:

- that have clear title, unless otherwise stated
- that do not have undisclosed securities
- that are fit for any disclosed purpose
- with a right to undisturbed possession.

1.6 A supplier also guarantees that services are provided:

- with due care and skill
- which are fit for any specified purpose
- within a reasonable time (when no time is set).

1.7 A *manufacturer* guarantees:

- the availability of repairs and spare parts
- that any express warranties will be honoured.

1.8 Generally, consumer guarantees apply to goods and services bought on or after 1 January 2011 by a *consumer* from a supplier or manufacturer, in the course of trade. They apply to:

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

1.9 If a good or service fails to meet a guarantee, a consumer will have rights against the supplier and, 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.

1.10 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.

1.11 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.

1.12 Consumer protection agencies may take action on behalf of affected consumers when a supplier or manufacturer fails to meet obligations under the consumer guarantees.

1.13 **ACL reference:**

- Division 1 of Part 3-2 of the ACL sets out consumer guarantees that goods and services must meet when sold by a supplier or manufacturer.
- Part 5-4 of the ACL sets out the remedies available to consumers if a good or service fails to meet a guarantee.

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2. What do the consumer guarantees cover?

Which goods are covered?

2.1 Goods are covered by the consumer guarantees as long as they are sold in *trade or commerce* and bought by a *consumer*. Second-hand, leased or hired goods are also covered.

2.2 However, some consumer guarantees apply regardless of whether the goods are sold in trade or commerce. These are the guarantees as to title, undisturbed possession and undisclosed securities.

2.3 *Trade or commerce* means in the course of a supplier's or manufacturer's business or professional activity, including a non-profit business or activity.

2.4 A *consumer* is a person who buys:

- any type of goods or services costing up to \$40,000 (or any other amount set by the ACL in future) – for example, a photocopier or cash register
- a vehicle or trailer used mainly to transport goods. The cost of the vehicle or trailer is irrelevant
- goods or services costing more than \$40,000, which are normally used for personal, domestic or household purposes – for example, a car or landscaping design.

2.5 Australian courts have said that the following goods are *not* normally used for personal, domestic or household purposes:

- an airseeder (*Jillawara Grazing Co v John Shearer Ltd (1984) ATPR 40-441*)
- a large tractor (*Atkinson v Hasting Deering (Queensland) Pty Ltd (1985) 6 FCR 331*)
- a reduction photocopier (*Four Square Stores (Qld) Ltd v ABE Copiers Pty Ltd (1981) ATPR 40-232 at 43,115*).

2.6 Which goods are not covered?

Goods not covered by consumer guarantees include those:

- bought before 1 January 2011. These are covered by statutory implied conditions and warranties under the *Trade Practices Act 1974* and state and territory legislation in force before 1 January 2011
- bought from one-off sales by private sellers, such as garage sales and fêtes
- 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.

2.7 **Which services are covered by the consumer guarantees?**

Services sold in trade or commerce, that:

- cost up to \$40,000 (or any other amount set by the ACL in future), regardless of purpose or use
- cost more than \$40,000, and are normally acquired for personal, domestic or household purposes - for example, car repairs or legal services.

2.8 **Which services are not covered?**

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

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3. Can suppliers or manufacturers 'contract out' of the consumer guarantees?

3.1

Summary

Suppliers and manufacturers cannot:

- limit, restrict or exclude consumer guarantees, or
- avoid their obligations by getting the consumer to agree that the law of another country applies to the contract or to any dispute.

There are special allowances for recreational service providers.

ACL reference: Section 64

CCA reference: Section 139A

What can a supplier say about consumers' rights under the consumer guarantees?

3.2 A supplier must not tell a consumer that a consumer guarantee:

- does not exist
- may be excluded, or
- may not have a particular effect.

3.3 Consumers cannot surrender their rights by agreeing that the consumer guarantees do not apply.

'No refund' signs

3.4 Signs that state 'no refunds' are unlawful, because they imply it is not possible to get a refund under any circumstance - even when there is a major problem with the goods. For the same reason, the following signs are also unlawful:

- 'No refund on sale items'
- 'Exchange or credit note only for return of sale items'.

3.5 Signs that state 'No refunds will be given if you have simply changed your mind' are acceptable.

3.6 A supplier must not tell a consumer that they are required to pay for any rights equivalent to a consumer guarantee.

3.7 The maximum civil penalty for providing false or misleading information is \$1.1 million for a body corporate and \$220,000 for an individual. Criminal penalties for the same amounts may also be imposed.

Responsibility for ‘consequential loss’

3.8 ‘Consequential losses’ are the costs to the consumer in time and money because something went wrong with the goods or services.

3.9 If suppliers attempt to contract out of the consumer guarantees when selling goods or services to a consumer, they may be misleading the consumer about their legal right to compensation.

3.10 This misleading conduct is a breach of the ACL.

Allowances for recreational service providers

3.11 Under the CCA and some state and territory fair trading laws, suppliers of recreational services can exclude, limit or modify liability when they do not meet the consumer guarantees to provide services:

- with due care and skill
- fit for any particular purpose
- within a reasonable time (when no time is set).

3.12 Suppliers may only limit their liability for death or personal injury, including illness (mental or physical), but not for property loss.

3.13 Recreational service providers should get legal advice to establish whether they can limit their liability.

CCA reference: Section 139A

4. Consumer guarantees applying to goods

4.1

Summary

There is a guarantee that goods are of acceptable quality. The test for acceptable quality is whether a reasonable consumer would find the goods:

- safe, durable and free from defects
- acceptable in appearance and finish
- fit for all the purposes for which goods of that kind are commonly supplied.

This must take into account the nature and price of the goods, and any statements on packaging or labelling.

A supplier or manufacturer guarantees that goods will be reasonably fit for any purpose they told the consumer the goods would be fit for. They must also meet this guarantee when the consumer:

- told them, before purchase, what they wanted to use the goods for
- relied on their skill or judgement when deciding to buy the goods.

Suppliers and manufacturers guarantee that their description of goods (for example, in a catalogue or television commercial) is accurate.

They also guarantee that the supplied goods match any sample or demonstration model used to sell the goods. This applies even to unavoidable differences, if they are substantial. The consumer must be given a reasonable amount of time to compare the goods with the original sample.

A supplier guarantees they have the right to sell the goods (clear title), unless they alerted the customer before the sale that they had 'limited title'.

The supplier also guarantees that:

- no one will try to disturb the consumer's possession of the goods, except in specific circumstances
- the goods are free of hidden securities and charges.

Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities (a place that can fix the consumer's goods), for a reasonable time after purchase. What is 'reasonable' depends on the nature of the goods.

ACL references: Sections 51 - 59

Goods will be of acceptable quality

4.2 Suppliers and manufacturers guarantee that goods are of acceptable quality when sold to a consumer.

Test for acceptable quality

4.3 The test is whether a reasonable consumer, fully aware of the goods' condition (including any defects) would find them:

- fit for all the purposes for which goods of that kind are commonly supplied - for example, a toaster must be able to toast bread
- acceptable in appearance and finish - for example, a new toaster should be free from scratches
- free from defects - for example, the toaster's timer knob should not fall off when used for the first time
- safe – for example, sparks should not fly out of the toaster
- durable – for example, the toaster must function for a reasonable time after purchase, without breaking down.

4.4 This test takes into account:

- the nature of the goods – for example, a major appliance such as a fridge is expected to last longer than a toaster
- the price paid for the goods – for example, a cheap toaster is not expected to last as long as a top-of-the-range one
- any statements about the goods on any packaging or label on the goods – for example, the toaster box shows a special defroster function
- any representation made about the goods by the supplier - for example, the supplier said the crumb tray was easy to detach and clean
- any other relevant circumstances relating to supply of the goods.

4.5 *Second-hand goods – acceptable quality*

Second-hand goods sold in trade or commerce are covered by the guarantee of acceptable quality, but age, price and condition must be taken into account. For example:

A consumer buys a second-hand washing machine for \$250 from a shop. The supplier said it was two years old and in good condition but it breaks down after two months.

A reasonable consumer would expect to get more than two months' use from this machine. The consumer would be entitled to a remedy from the supplier.

4.6 *Leased or hired goods*

When a consumer hires or leases consumer goods, these must also be of acceptable quality. For example:

- A consumer hires a steam cleaner to clean her carpet but the machine does not generate steam and leaks. She is entitled to a remedy because the steam cleaner is not of acceptable quality.

- Two tourists hire a campervan to tour Australia. Fifty kilometres along the road, the van breaks down. A mechanic says the van has not been properly maintained or serviced for some time. The tourists would have the right to a remedy.

4.7 *The guarantee of acceptable quality does not apply when:*

- *the supplier alerts the consumer to any hidden defects*

Some goods may not be of acceptable quality due to problems already known to the supplier - for example, goods with cosmetic defects sold as 'seconds'.

Defective goods can be sold, usually for lower prices, if the consumer is alerted to the defects before sale. For instance, the supplier:

- tells the consumer before selling the goods, or
- displays a written notice with the goods. This must be clearly presented, legible and expressed in plain language.

It is not enough to simply describe the goods as 'seconds', 'sale' items or 'as is'. However, a consumer is assumed to be aware of defects if a written notice setting out the defects was displayed with the goods.

When a consumer is alerted to defects in goods before sale, they will not have the right to a remedy if those particular defects later cause problems with the goods.

However, the consumer may be entitled to a remedy for a different fault. For example:

A consumer finds a bargain in a shoe shop - shoes labelled as 'seconds'. A tag attached to the shoes advises there is a problem with the stitching. He buys the shoes.

When the stitching splits, he cannot claim the shoes were not of acceptable quality. However, he may be entitled to a remedy if another fault develops, such as the sole cracking.

4.8

- *the consumer examines the goods*

A consumer is not entitled to a remedy if they had an opportunity to examine the goods before purchase and did not find defects that they should have noticed. For example:

Second-hand goods and antiques are often sold on an 'as-is' basis. An antiques dealer is not required to give a remedy for defects that a consumer should have noticed when examining the goods, such as chipped surfaces or faded paint.

The amount of effort that a consumer should take examining goods, if given the opportunity, depends on the nature of the goods. For new goods, very limited or no examination would be expected.

However, a consumer may be entitled to a remedy for defects that they would not have found with even the most careful inspection.

4.9

- *the consumer uses the goods in an 'abnormal' manner*

Goods are not expected to be indestructible; a consumer's use of goods can affect the durability of those goods.

The guarantee of acceptable quality will not apply if the consumer:

- uses the goods abnormally
- causes the quality of the goods to become unacceptable
- fails to take reasonable steps to avoid the quality becoming unacceptable.

The law does not define 'abnormal use'. However, examples of abnormal use include:

- a mobile phone is dropped in water or is left out in the rain
- a television is broken by an object hitting the screen
- a laptop is picked up by the corner of its screen, which then cracks down the middle.

Goods will be fit for any specified purpose

Purpose specified by the supplier

4.10 A supplier guarantees that goods will be reasonably fit for any purpose that they told the consumer the goods would be fit for. For example:

A keen diver buys a watch, which the supplier says will be suitable for diving. A couple of weeks later, she goes for her first dive wearing the new watch, only to surface and see the dial filled with water. She would have the right to a remedy from the supplier.

Purpose specified by the consumer

4.11 Consumers might want goods to do a specific job or achieve a specific purpose, different from the normal use or purpose of those goods.

4.12 A supplier guarantees that goods will be fit for such a special job or purpose if the consumer, before buying the goods:

- expressly or implicitly told the supplier what they want to use the goods for, and
- relied on the supplier's knowledge or expertise when deciding whether the goods were suitable for that use or purpose.

4.13 For example:

- A consumer tells a car dealer that he wants a car capable of towing his boat. The dealer sells him a car that the dealer says will do that job. The car's normal purpose is to transport people but, as the consumer has told

the dealer that he wants to use the car to tow a boat, then the car must be able to do so.

- A consumer buys a middle-of-the range lawnmower, but does not mention to the supplier that she wants to use it to mow four hectares of land each week. Because she did not disclose her intended purpose, the lawnmower would only be expected to mow the lawn of an ordinary suburban house for several years without any significant problems. She cannot claim the lawnmower is not fit for purpose.

When the 'fit for any specified purpose' guarantee does not apply

4.14 A supplier does not have to provide a remedy if they can show that:

- the consumer did not rely on the supplier's skill or judgment when buying the goods
- under the circumstances, it was unreasonable for the consumer to have relied on the supplier's skill or judgment (or lack of it).

4.15

For example:

- A consumer tells a fellow customer at a discount department store that he wants a television capable of showing all available digital channels. The other customer tells the consumer that a particular television "looks like one my dad bought, which I think does what you want". After buying the television, the consumer discovers that it is analogue and will not capture digital signals.

The consumer did not rely on the supplier when buying the goods, so is not entitled to a refund or exchange.

Goods will match description

4.16 Suppliers and manufacturers guarantee that their description of goods (for example, in a catalogue or television commercial) is accurate. This does not apply to goods bought at auction.

4.17 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.

4.18 A supplier or manufacturer cannot argue that the consumer inspected the goods before purchase and should have picked up any errors in the description.

4.19 Goods must also match any sample or demonstration model shown to the consumer.

Goods will match sample or demonstration model

4.20 Suppliers and manufacturers guarantee that when a consumer buys goods based on their model or sample, the goods will match the sample or demonstration model and any description provided. For example:

A sample of fabric is used to sell a couch but the couch delivered to the consumer is a different colour from the sample. The consumer has a right to a remedy.

4.21 This does not apply to goods bought at auction.

No hidden defects

4.22 Goods sold by relying on a sample or demonstration model must not have any hidden defects. If the consumer does notice any defects, these must not be serious enough to make the goods of unacceptable quality.

Unavoidable differences

4.23 The guarantee that goods will match any sample or demonstration model applies even if the differences are unavoidable, provided they are substantial. For example:

If shading, piling or colouring in an installed woollen carpet is substantially different from the sample used to sell it, the consumer may be entitled to remedy.

Legal reference: *Cavalier Marketing (Australia) Pty Ltd v Rasell* (1990) 96 ALR 375)

Reasonable time to compare the goods

4.24 The consumer must be given a reasonable amount of time to compare the goods with the original sample. This does not apply to demonstration models. For example:

A car dealer does not need to keep a demonstration model to allow the consumer to compare their car to that model. However, a furniture retailer should keep a sample of the fabric used to sell a couch, to allow a consumer to compare it with the couch supplied.

4.25 If the supplier shows a sample or demonstration model to the consumer and provides a description of the goods, the goods must also match that description.

Express warranties

4.26 Suppliers and manufacturers often make extra promises (sometimes called 'express warranties') about such things as the quality, state, condition, performance or characteristics of goods.

4.27 They also guarantee the goods will be free from defects for a set period (see *Warranties against defects* p35).

In doing so, they guarantee the goods will satisfy these warranties.

4.28 For example:

A supplier tells the consumer that a bed will last for 10 years. If the bed only lasts for six years, the consumer will be entitled to a remedy.

Title to goods

4.29 A 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'.

4.30 If goods are sold with limited title, any other person with ownership rights - for example, a person owed money by the previous owner - can ask a court for permission to take the goods back from the consumer.

4.31 This happens most often when goods are sold from deceased estates. People owed money by the deceased, who pledged the goods as security, may try to repossess the goods.

Undisturbed possession of goods

4.32 A supplier guarantees that no one will try to repossess or take back goods bought by a consumer, or prevent the consumer from using those goods, except when:

- a consumer has not met their obligations under the sale, hire or lease contract
- before the sale, the supplier told the consumer that another person had a security interest over the goods
- the consumer hired or leased the goods and the hire or lease period has ended
- at the time of buying the goods, the consumer was aware the supplier only had limited title.

No undisclosed securities on goods

4.33 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:

- placed on the goods with the consumer's permission
- brought to the consumer's attention in writing before they bought the goods.

4.34 A supplier who makes it clear to the consumer there is limited title before sale can claim to have disclosed all known securities or charges over the goods.

4.35 For example:

A financier claims to be owed money by the former owner of some goods, who may have used the goods as security for a loan. If the consumer did not know about the outstanding debt when buying the goods, the supplier would have to provide a remedy – for example, replacement goods.

Repairs and spare parts

4.36 Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities (a place that can fix the consumer's goods), for a reasonable time after purchase. For example:

A consumer drops his digital camera, which he bought new a year ago for \$2000. He contacts the importer and asks where he can get it repaired. The importer advises they no longer supply parts for that model of camera.

A reasonable consumer would expect a one-year-old camera to be repairable. The supplier has not taken reasonable steps to provide spare parts or facilities.

How much time is 'reasonable'?

4.37 This will depend on the type of goods. For instance:

- it would be reasonable to expect that tyres for a new car will be available for many years after its purchase
- it may not be reasonable to expect that spare parts for an inexpensive children's toy are available at all.

When the guarantee on repairs and spare parts does not apply

4.38 A manufacturer or importer does not have to meet the guarantee on repairs and spare parts if they advised the consumer in writing, at the time of purchase, that repair facilities and spare parts would not be available after a specified time.

5. Consumer guarantees applying to services

5.1

Summary

A supplier must meet the consumer guarantees of providing services:

- with due care and skill
- which are fit for any specified purpose
- within a reasonable time (when no time is set).

This means they must:

- 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.

Suppliers guarantee that services will be reasonably fit for any purpose specified by the consumer and any products resulting from the services are also fit for that purpose.

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.

The supplier also guarantees to supply the service within a reasonable time. What is 'reasonable' will depend on the nature of the services.

ACL reference: Sections 60 - 63

Due care and skill

5.2 Suppliers guarantee their services are provided with due care and skill.

This means they must:

- 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.

5.3 For example:

A consumer hires a painter to paint her house. Before starting the job, the painter does not remove all of the old, flaking paint. Six months later, the new paint starts to flake. The painter has not met the 'due care and skill' guarantee.

While painting the consumer's house, the painter knocks over a can of paint, which spills over her newly paved driveway. The painter has not met the guarantee.

Fit for a particular purpose

Services must achieve the consumer's stated purpose

5.4 Suppliers guarantee that services will be reasonably fit for any purpose specified by the consumer and any products resulting from the services are also fit for that purpose.

5.5 For example:

A consumer asks a carpenter to build a carport to cover his 4WD vehicle, which is two metres wide. If the carpenter builds a 1.8m-wide carport that does not cover the car, the carpenter will not have met the 'fit for purpose' guarantee.

Services must be of sufficient quality as to achieve desired results

5.6 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.

5.7 For example:

A consumer tells her eye surgeon that she wants to be able to drive without glasses. She is assessed as suitable for laser surgery and undergoes the procedure. If her vision does not meet the standard for driving without glasses, the surgeon will not have met the 'fit for purpose' guarantee.

When the consumer does not rely on the supplier in choosing the services

5.8 This 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.

5.9 For example, it may not be reasonable for a consumer to rely on a receptionist in a large service company for advice about which service is suitable.

Are there any industries where this guarantee does not apply?

5.10 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.

5.11 However, an architect or engineer who provides a service outside their area of professional expertise (for example, building services) must still meet the guarantee.

5.12 Architects or engineers must provide services with due care and skill.

Services must be supplied within a reasonable time (if no time set)

5.13 A contract or agreement for the supply of services usually states when the services will be provided and the date they will be completed.

5.14 If not, the supplier guarantees they will supply the service within a reasonable time.

5.15 What is 'reasonable' will depend on the nature of the services. For example, the time needed to build a house will be longer than the time required to lop a tree.

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6. When goods or services do not meet a consumer guarantee

6.1

Summary

A consumer has the right to a remedy if goods or services do not meet a consumer guarantee.

The consumer guarantees apply to both major (serious) and minor problems.

The type of remedy, and who must provide it, will depend on the problem and which consumer guarantee was not met.

Gift recipients have the same rights as a consumer who has bought goods directly.

ACL reference: Division 1 of Part 5-4

Who can the consumer claim a remedy from?

6.2 The *supplier*, if goods do not meet the consumer guarantees as to:

- fitness for any disclosed purpose
- matching sample or demonstration model
- title
- undisturbed possession
- undisclosed securities.

6.3 The *manufacturer*, if goods do not meet the consumer guarantees as to repairs and spare parts, and any express warranty.

6.4 Both the *manufacturer* and the *supplier*, if goods do not meet the consumer guarantees as to acceptable quality and matching description.

6.5 The *supplier*, if services do not meet the consumer guarantees as to:

- reasonable care and skill
- fitness for particular purpose
- completion within a reasonable time (where no time was set).

6.6 For further information on remedies available from a manufacturer, see *Consumer claims against the manufacturer*, p36.

Consequential loss

6.7 A consumer may also seek compensation from the supplier or manufacturer for any consequential or associated loss or damage resulting from failure to meet the consumer guarantees. The loss or damage must have been reasonably foreseeable and not caused by something outside human control, such as a hurricane. For example:

A faulty toaster sets fire to a consumer's house or burns the consumer's hand. The consumer is entitled to compensation to make up for that loss and damage, not just to a refund for the faulty toaster.

6.8 For more information, see *Compensation for consequential loss*, p34.

What sort of problems do the consumer guarantees deal with?

6.9 Consumer guarantees apply to both major and minor failures with goods and services.

6.10 *Major* problems cannot be fixed or are too difficult to fix. *Minor* problems can normally be put right.

What is a major failure?

6.11 A major problem with *goods* is when:

- a reasonable consumer would not have bought the goods if they had known about the problem. For example, no reasonable consumer would buy a washing machine if they knew the motor was going to burn out after three months
- the goods are significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a red bicycle from a catalogue, but the bicycle delivered is green
- the goods are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time. For example, a ski jacket is not waterproof because it is made from the wrong material
- the goods are substantially unfit for a purpose that the consumer told the supplier about, and cannot easily be made fit within a reasonable time. For example, a car is not powerful enough to tow the consumer's boat because its engine is too small – despite the consumer telling the supplier they needed the car to tow a boat.
- the goods are unsafe. For example, an electric blanket has faulty wiring.

6.12 A major problem with *services* is when:

- a reasonable consumer would not have acquired the services if they had known the nature and extent of the problem. For example, a reasonable consumer would not pay to have acrylic nails attached if they knew the nails would fall off within an hour
- the services are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time. For example, a carpet-cleaning service changes the colour of the consumer's carpet in some places
- the consumer told the supplier they wanted the service for a specific purpose but the services, and any resulting product, do not achieve that purpose and cannot easily or within a reasonable time be made to achieve it. For example, a consumer tells a pay TV company they want to watch the Olympics. They sign up to a 24-month contract but the Olympics are over before the company installs the service
- the consumer told the supplier they wanted a specific result but the services, and any resulting product, do not achieve that result and cannot easily or within a reasonable time be made to achieve it. For example, a consumer asks a technician to increase the memory capacity of the consumer's computer. When installing an extra drive, the technician damages the hard drive. Repairs will take six weeks but the consumer needs the computer within a week.
- the supply of the services has created an unsafe situation. For example, an electrician incorrectly wires wall sockets in a consumer's new kitchen, which makes the electrical outlets unsafe.

Rights of gift recipients

6.13 Gift recipients have the same rights and responsibilities and are entitled to the same remedies as a consumer who has bought goods directly.

Are there any situations where the consumer is not entitled to a remedy?

6.14 A consumer is not entitled to a remedy when a supplier does not meet one of the consumer guarantees due to something:

- someone else said or did (excluding the supplier's agents or employees), or
- beyond human control that happened after the goods or services were supplied.

6.15 For example

It takes a qualified painter three weeks to paint a house but the job has taken four weeks. The sole reason for the delay was the weather, which is outside the painter's control. The consumer would not be entitled to a remedy.

6.16 This exception does not apply when a supplier has not met the guarantee of due care and skill.

7. Types of remedies available to consumers

7.1

Summary

If a good or service fails to meet a guarantee, a consumer will have rights against the supplier and, 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.

When there is a major failure, the consumer can:

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

ACL reference: Division 1 of Part 5-4

Remedies for major problems with goods

7.2 If the problem is major, the consumer can:

- reject the goods and get a refund
- reject the goods and get an identical replacement, or one of similar value if reasonably available, or
- keep the goods and get compensation for the drop in value caused by the problem.

7.3 The consumer gets to choose, not the supplier or manufacturer.

Is the consumer entitled to a refund for changing their mind?

7.4 A supplier does not have to give a refund when a consumer simply changes their mind about the goods or services.

7.5 But a supplier can have a store policy to offer a refund, replacement or credit note when this happens. If so, they must abide by this policy.

Consumer responsibilities when rejecting goods

7.6 A consumer must advise the supplier if they intend to reject goods, and explain why. 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.

When a consumer cannot reject goods

7.7 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 attached to other property and cannot be removed without damage. For example, removing wallpaper will damage it
- too much time has passed. The right to reject the goods runs from the date of supply to the consumer, until 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, and
 - the amount of use the goods could reasonably be expected to tolerate before the problem or fault became apparent.

Responsibility for the goods

7.8 When the consumer notifies the supplier they are returning the goods, the goods become the supplier's property. The supplier is responsible for any loss or damage to the goods from this time.

Who is responsible for returning goods to the supplier?

7.9 The consumer must return the goods to the supplier unless the cost of returning, removing or transporting is significant - for example, the size makes transportation costly.

7.10 If so, the supplier must collect the goods at their own expense and within a reasonable time.

7.11 Examples of goods a supplier would have to collect:

- a 127 cm LCD TV
- a bed
- a swimming pool filter connected to a pool by fixed pipes
- an extension ladder stuck in the extended position.

When the consumer chooses a refund

7.12 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.

7.13 If this is not possible, they must refund the consumer the value of the other form of payment.

7.14 A supplier must not:

- 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.

Services connected to returned goods (linked service contracts)

7.15 Consumers often buy goods linked to certain services. An example is a mobile telephone, often linked to a contract for network services.

7.16 A consumer who has returned goods within a reasonable time and is entitled to a refund, may also cancel the linked service contract. They can do this when returning the goods, or within a reasonable time.

7.17 Such contracts do not terminate automatically.

For example:

A consumer signs up for a package that includes a modem and internet access. She rejects the modem because it turns out to be faulty but chooses to keep her internet connection. Alternatively, she could reject the faulty modem and cancel the connection.

7.18 A consumer who cancels a linked service contract is entitled to a refund or can refuse to pay for any services not yet received.

7.19 The supplier does not have to give a refund for any services the consumer has received up to the time they reject the related goods.

For example:

A consumer subscribes to 12 editions of a cooking magazine for \$200, including \$80 for delivery. She receives only three editions in six months, so cancels the subscription and delivery. The supplier must refund \$150 for nine magazines not received - \$90 for the magazines and \$60 for delivery.

When the consumer chooses a replacement

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

7.21 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 (see above).

7.22 The consumer guarantees that applied to the original goods will apply to the replacements.

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.

Remedies for major failures with services

7.23 When there is a major failure with a service, a consumer can choose to:

- cancel the service contract with the supplier and get a refund, or
- keep the contract and get compensation for the difference in the service delivered and what they paid for.

7.24 For example:

A consumer has signed a building contract that sets out the specifications for her new house. When the house is completed, the consumer notices a few windows are not in the right place. Because the builder has not met the standard required by the contract, the consumer is entitled to compensation.

How can a consumer cancel services?

7.25 A contract for services ends when the consumer tells the supplier of their intention to cancel the services - verbally, in writing or, if this is not possible, by any other means.

7.26 A consumer can cancel a contract for services at any time.

Refunds for cancelled services

7.27 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.

7.28 For example:

A hairdresser has cut and permed a consumer's hair. The cut is good but the perm has 'fallen out' after a day. The consumer must pay for the cut but not for the perm, as another hairdresser will not need to cut her hair to fix the problem.

What happens to goods connected with cancelled services?

7.29 When a consumer cancels a contract for services that includes goods, these are also rejected. The consumer is entitled to a refund of any money or other type of payment made for the goods.

7.30 To get a refund, the consumer must return the goods to the supplier. If this involves significant cost to the consumer, the supplier must collect the goods at their own expense.

Remedies for minor problems with goods

7.31 If a failure of goods is not major and can be repaired within a reasonable time, the consumer cannot reject the goods and demand a refund.

7.32 They can ask the supplier to fix the problem. The supplier may choose to:

- provide a refund
- replace the goods
- fix the title to the goods, if this is the problem
- repair the goods.

7.33 It is the supplier's responsibility to return goods to the manufacturer for repair.

7.34 For example:

- *Fixing problems with title*
When there is a problem with the title to goods, the supplier may deal with the problem, for example, by paying money owed to the person who has a security interest in the goods.
- *When replacement may be preferable*
If the cost of repairing the goods is more than the value of the goods, the supplier might instead offer the consumer a replacement.

Reasonable costs

7.35 If the consumer has no option but to take goods elsewhere for repair, they do not have to get the original supplier's agreement or provide quotes. However, the supplier only has to pay the 'reasonable costs' of repair.

7.36 A reasonable cost would be within the normal range charged by repairers of such goods, and include:

- the cost of the repair
- any other associated costs incurred by having the goods fixed elsewhere, such as transport costs.

7.37 For example:

The zip on a pair of trousers breaks after one week. The retailer tells the consumer the repair will take a month. The consumer explains he needs the trousers for work urgently but the retailer offers no other option. The consumer gets the zip replaced by a tailor for \$35. When the consumer asks the retailer to pay for this, the retailer says that their dressmaker would have done it for \$15. If the higher price is a normal price for a tailor (not a dressmaker) to fix the trousers, the retailer would have to reimburse the consumer.

What if the supplier is unable to repair the goods?

7.38 If a supplier cannot repair the goods (for instance, because the supplier does not have the requisite parts) or cannot do so within a reasonable time, the consumer can:

- reject the goods and seek either a refund or replacement, or
- have the goods fixed elsewhere and claim reasonable costs from the supplier.

7.39 For example:

Several buttons came off a consumer's new shirt due to poor stitching. The tailor who made the shirt could not supply matching buttons. The consumer is entitled to ask for a replacement or refund.

How long does a supplier have to fix the goods?

7.40 The supplier must fix the problem within a reasonable time. What is 'reasonable' will depend on the circumstances.

7.41 For example:

A supplier would be expected to respond quickly to a request for a repair to an essential household item, such as a water heater. For goods used less often, such as a lawnmower, the reasonable time for repair would be longer.

When the supplier refuses, or takes too long to repair the goods

7.42 If the supplier refuses or takes more than a reasonable time to repair the goods, the customer can:

- take the goods elsewhere to be fixed and ask the supplier to pay reasonable costs of this repair
- reject the goods and ask for a refund, or
- reject the goods and ask for a replacement, if one is reasonably available to the supplier.

7.43 Restrictions on rejecting goods also apply to repairable problems. See *When a consumer cannot reject goods*, p28.

7.44 Refunds cannot be reduced if the consumer has brought the goods back without their original packaging. See *When the consumer chooses a refund*, p28.

7.45 Consumer guarantees will also apply to replacement goods. See *When the consumer chooses a replacement*, p29.

Prescribed requirements for repairs of consumer goods

7.46 A *repairer* of goods (whether or not this is the supplier) must notify the consumer of particular information before accepting the goods for repair, as follows:

- The repairer must tell the consumer if the repairer intends to provide refurbished goods of the same type, rather than repairing the problem with the original goods. The ACL Regulations prescribe certain wording about refurbished goods.
- 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, photos, telephone numbers and electronic documents.

7.47 Repairers that fail to comply may face:

- a civil penalty of \$50,000 for a body corporate and \$10,000 for an individual
- a criminal penalty for the same amount
- an infringement notice
- legal action (for example, an injunction) by either a consumer protection agency or the consumer.

Remedies for minor problems with services

7.48 If a minor problem with a service can be fixed, the consumer cannot cancel and demand a refund immediately.

7.49 They must give the supplier who provided the services an opportunity to fix the problem:

- free of charge and
- within a reasonable time. This depends on the circumstances (see *How long does a supplier have to fix the goods?* p32).

7.50 For example:

A reasonable time to fix a problem with a haircut would be much shorter than the reasonable time to fix a problem with a landscaping project.

7.51 If the supplier refuses to fix the problem or takes too long, the consumer can:

- get someone else to fix the problem (deliver the services) and ask the supplier to pay reasonable costs, or
- cancel the contract and get some or all of their money back, if they have already paid. A consumer who has not yet paid, or only partly paid, can refuse to pay for the defective services at all, or pay less than the agreed price.

When does cancellation take effect?

7.52 A service is cancelled when the consumer notifies the supplier that they want to cancel it.

Compensation for consequential loss

7.53 Consequential loss is the cost to a consumer of a problem with goods or services. It is usually financial but can include other costs, such as lost time or productivity.

7.54 A consumer can claim compensation for consequential loss from a supplier who failed to meet one or more of the consumer guarantees.

Is the supplier required to pay for all losses?

7.55 A supplier will have to pay for losses that:

- 'could have been expected to result' from a failure to meet a consumer guarantee, and
- are 'reasonably foreseeable'.

7.56 In other words, a consumer can recover losses that would *probably* result from the supplier's failure to meet the guarantee.

7.57 Suppliers do not have to pay for

- problems unrelated to their conduct or the goods they supplied
- losses caused by something completely independent of the supplier, after the goods left their control.

7.58 For example:

- A consumer recently bought a car, which leaked oil on her driveway. A neighbour's dog ran through the oil and into her house, dirtying the carpet. The car dealer would not have to pay for carpet cleaning, as the dealer could not predict that a dog would run through the oil and into the house – the cost was not 'reasonably foreseeable'.
- A consumer's washing machine breaks down due to a fault. As a result, there is water damage to carpet in part of the house. The supplier will be responsible for the cost of replacing the carpet damaged by flooding from the faulty washing machine.

Putting a value on consequential loss

7.59 It can be hard to put a dollar figure on consequential loss.

7.60 Compensation should put the consumer in the position they would have been in if the goods or services had met the consumer guarantees.

- 7.61 For example:
A consumer used a liquid cleaner according to instructions on the pack to remove a stain on his new curtains. The product badly damaged a curtain in the living room.
As the curtain was new, the supplier would probably have to meet the cost of replacement. Compensation would be less for curtains in poorer condition.

Warranties against defects

- 7.62 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
 - defects will entitle the consumer to repair, replacement, refund or other compensation.
- 7.63 This is called a 'warranty against defects'.
- 7.64 The ACL Regulations require a warranty against defects to be in writing and to:
- be expressed in a transparent way
 - 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 sit alongside the consumer guarantees, which cannot be excluded.
- 7.65 Failing to meet these criteria may lead to a maximum civil penalty of \$50,000 for a body corporate and \$10,000 for an individual. Criminal penalties for the same amounts also apply.
- 7.66 When goods covered by a warranty against defects fail to meet a consumer guarantee, a consumer can insist that the warranty be honoured.

ACL reference: Sections 59, 102, 192.

8. Consumer claims against the manufacturer

8.1

Summary

Consumers will usually deal with suppliers but may sometimes ask the manufacturer to fix a problem. Manufacturers are responsible for meeting certain consumer guarantees.

A manufacturer includes a person or business that:

- makes or puts goods together
- has their name on the goods, or
- imports the goods (if the maker does not have an office in Australia).

ACL reference: Division 2 of Part 5-4

When is a manufacturer responsible?

8.2 A manufacturer must provide remedy when goods fail to meet the consumer guarantees for:

- acceptable quality
- matching description
- repairs and spare parts
- express warranties.

Manufacturer responsibility for express warranties

8.3 A manufacturer must also honour any additional promise or representation they made about the goods – for example, an express warranty.

8.4 The manufacturer must honour consumer's rights under consumer guarantees, regardless of whether the goods are covered by any other warranty.

Manufacturer failure to honour an express warranty

8.5 If the manufacturer refuses to honour an express warranty or fails to do so within a reasonable time, the consumer can take legal action to enforce the warranty in a tribunal or court.

8.6 The consumer can also:

- assert their rights under consumer guarantees
- ask for compensation for consequential loss due to the manufacturer's failure to meet the warranty (see *Compensation for consequential loss*, p34).

What if there is no express warranty?

8.7 If there is no express warranty and the manufacturer has not met a consumer guarantee, the consumer can assert their rights under consumer guarantees.

How much compensation does the manufacturer have to pay?

8.8 A consumer is entitled to ask for an amount covering any drop in the value of the goods. This is calculated using the average retail price of the goods at the time of purchase.

8.9 For example

A consumer bought goods for \$30. The average retail price at the time was \$28. The goods are worth only \$10 due to failure to meet a consumer guarantee. The manufacturer must pay the consumer \$18.

8.10 The consumer can also ask for compensation for any 'reasonably foreseeable' loss suffered due to the manufacturer's failure to meet the consumer guarantees.

8.11 'Reasonably foreseeable' costs include the cost of inspecting and returning the goods to the manufacturer. See *Compensation for consequential loss* on p34.

What if the manufacturer did not cause the problem?

8.12 Manufacturers are not responsible for problems with goods beyond their control.

8.13 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 an employee or agent of the manufacturer). For example:
A mechanic, not employed by the manufacturer, uses the wrong engine oil in a car. This damages the engine. The mechanic, not the manufacturer, would have to compensate the consumer
- a cause independent of human control that occurs *after* the goods left the manufacturer's control. For example:
The day after a supplier finishes building a gazebo for a consumer, gale force winds lift two sheets of iron off the gazebo roof
- the supplier charging a higher price than the recommended or average retail price for the goods. This covers situations where there is a higher standard of acceptable quality expected of goods due to their price. Manufacturers will be held to the standard required if the goods were sold at the recommended retail price or the average retail price.

Goods bought directly from the manufacturer

8.14 Manufacturers and importers act as suppliers when they sell goods directly to consumers and have the same responsibilities under consumer guarantees.

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9. Limits on compensation for non-household goods or services

9.1 Suppliers and manufacturers can limit their liability under the consumer guarantees for goods or services not used for personal, domestic or household purposes.

9.2 They can limit remedies to:

- replacing or repairing goods
- reimbursing the consumer for repairing or replacing the goods
- re-supplying services
- reimbursing the consumer for paying someone else to supply the services.

9.3 For example:

A supplier has a contract to provide accounting software to a large Australian company. The supplier may insert a term into the contract providing that, in the event of a problem with the software, the supplier is only required to replace the software for free. This means they would not have to – for example – provide a refund.

9.4 A supplier or manufacturer can only do this if it is fair or reasonable. What is 'fair and reasonable' will depend on the circumstances, including whether:

- the consumer had no choice but to agree to limit compensation
- the consumer was given something in return for buying the goods or services from that particular supplier or manufacturer, at the expense of buying from someone else
- the consumer knew or should have known about the limit on compensation
- the goods were a special order for the consumer.

ACL reference: Section 275

10. When a supplier fixes a problem that is not their fault (manufacturer's indemnity)

10.1 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.

10.2 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.

How long does a supplier have to ask for reimbursement?

10.3 A supplier has three 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.

Are there any limits on reimbursement?

10.4 Manufacturers cannot contract out of this obligation to reimburse the supplier.

10.5 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, or
- repairing the goods.

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

ACL reference: Sections 274, 276A

11. Displaying signs about consumer guarantees

11.1 Suppliers can display a sign, at the point of sale, alerting consumers to their rights under the consumer guarantees. Online suppliers also have this option.

11.2 Consumer protection agencies have developed a standard sign but suppliers may develop their own.

11.3 It is not compulsory to display a sign. However, the Commonwealth Minister responsible for administering the ACL can make this mandatory and specify the content, size, form and positioning of the sign to ensure consumers notice it.

ACL reference: Sections 66 and 169

12. Receipts and other 'proof of purchase'

12.1 A consumer who wants to make a claim about faulty goods or services against a supplier or manufacturer will generally need to show that they obtained the goods or services from that supplier or manufacturer.

12.2 Businesses are understandably concerned to ensure that claims made to them about goods and services are genuine.

12.3 The best proof of purchase is a tax invoice or receipt, and consumers are strongly advised to obtain one and keep it.

12.4 A number of other forms of evidence are also generally acceptable. Among these are:

- a lay by agreement
- a confirmation or receipt number provided for a telephone or internet transaction
- a credit card statement
- a warranty card showing the supplier's or manufacturer's details and the date or amount of the purchase
- a serial or production number linked with the purchase on the supplier's or manufacturer's database.

12.5 If a consumer cannot show that they bought the goods or services, a supplier or manufacturer may still choose to accept the consumer's claim.

12.6 If a dispute arises about proof of purchase, the consumer may seek the opinion of an Australian court or tribunal.

12.7 For example:

A consumer buys a well-known brand of toaster using cash at a medium-sized store. The toaster malfunctions within the first week.

The consumer takes the toaster back to the supplier but has lost the receipt. The supplier has no record of the transaction and declines to provide a replacement or repair.

The consumer contacts the manufacturer, who identifies the serial number of the toaster as one of a recent batch and agrees to accept the claim.

Had the toaster been part of an older product line (three or four years old), it may have been difficult for the manufacturer to know whether the problem was a malfunction or due to wear and tear by the consumer.

For information about supplier responsibilities when issuing proof of purchase, see *Sales practices: a guide for businesses and lawyers*.

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Glossary and abbreviations

Glossary

Term	Definition
acquire	to take possession of something by hiring, leasing or buying it, and by exchange or gift
body corporate	includes a company registered under the <i>Corporations Act 2001</i> , an incorporated association, a cooperative or an owners' corporation.
buy	see 'acquire'
consumer	<p>a person who buys:</p> <ul style="list-style-type: none"> • any type of goods or services costing up to \$40,000 (or any other amount stated in the ACL Regulations) • goods or services which would normally be for personal, domestic or household use, or • goods which consist of a vehicle or trailer used mainly to transport goods on public roads. <p>Australian courts have said that the following are not normally used for personal, domestic or household purposes:</p> <ul style="list-style-type: none"> • an airseeder • a large tractor • a reduction photocopier
consumer goods	goods intended, or likely, to be used for personal, domestic or household use or consumption
goods	<p>includes, among other things:</p> <ul style="list-style-type: none"> • animals • gas, electricity and water • computer software • second-hand goods • ships, aircraft and other vehicles • minerals, trees and crops, whether on or attached to land • any component part of, or accessory to, goods
liability	an obligation to put right a problem - for example, fixing a defective product, providing compensation or taking other action
manufacturer	<p>includes a person who:</p> <ul style="list-style-type: none"> • grows, extracts, produces, processes or assembles goods • holds him/herself out to the public as the manufacturer of goods • causes or permits his/her name, business name or

Term	Definition
	brand mark to be applied to goods he/she supplies <ul style="list-style-type: none"> • permits him/herself 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
remedy	an attempt to put right a fault, deficiency or a failure to meet an obligation
services	duties, work, facilities, rights or benefits provided in the course of business, for example: <ul style="list-style-type: none"> • dry cleaning • installing or repairing consumer goods • providing swimming lessons • lawyers' services
supplier	someone who, in trade or commerce, sells goods or services and is commonly referred to as a 'trader', 'retailer' or 'service provider'
supply	includes: <ul style="list-style-type: none"> • in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and • in relation to services – provide, grant or confer

Abbreviations

ACL – Australian Consumer Law

ACCC – Australian Competition and Consumer Commission

ASIC – Australian Securities and Investments Commission

CCA – Competition and Consumer Act 2010

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South Australia

Office of Consumer & Business Affairs

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ocba.sa.gov.au

Australian Capital Territory Office of Regulatory Services

GPO Box 158
Canberra ACT 2601
Tel: (02) 6207 0400
ors.act.gov.au

Tasmania

Office of Consumer Affairs & Fair Trading

GPO Box 1244
Hobart TAS 7001
Tel: 1300 654 499
consumer.tas.gov.au

New South Wales NSW Fair Trading

PO Box 972
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Consumer Affairs Victoria

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Tel: 1300 55 81 81
consumer.vic.gov.au

Northern Territory Office of Consumer Affairs

GPO Box 1722
Darwin NT 0801
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Department of Commerce

Locked Bag 14
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Tel: 1300 30 40 54
commerce.wa.gov.au

Queensland Office of Fair Trading

GPO Box 3111
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fairtrading.qld.gov.au

Australian Securities and Investments Commission

PO Box 9827
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