

Australian Consumer Law - Consumer Guarantees

What is the Australian Consumer Law?

On 1 January 2011 the Australian Consumer Law ('ACL') commenced operation throughout Australia. The ACL replaced the former Trade Practices Act 1974 (Cth) and is contained in schedule 2 of the Competition and Consumer Act 2010 (Cth).

The ACL was designed to provide protection to consumers when dealing with businesses by giving consumers a number of guarantees that businesses must comply with and honour when they sell goods or services to consumers. The ACL is a Commonwealth law meaning that people throughout Australia all benefit from these guarantees, no matter where they are.

Who is a 'consumer'?

Whether someone is a consumer for the purpose of the ACL will depend upon whether that person is acquiring goods or services.

Goods

In order to be classed as purchasing goods, one of the following elements must be satisfied:

- The person paid no more than \$40,000 for the goods; or
- The person purchased a good that is of a kind ordinarily acquired for personal, domestic or household use or consumption (which can be greater than \$40,000); or
- The person purchased a good that consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads.

Use of the word goods is wide and includes a number of items and objects purchased by people every day and expressly includes the following:

- ships, aircraft and other vehicles;
- animals, including fish;
- minerals, trees and crops, whether on, under or attached to land or not;
- gas and electricity;
- computer software;
- second-hand goods;
- any component part of, or accessory to, goods.

It is arguable that someone who purchases an item such as a laptop, kettle, toaster, drink bottle, or even a pen falls within the definition of a consumer and have the benefit of the applicable consumer law guarantees. However, a person will not be a consumer if they acquired the goods for the purpose of re-supplying them or transforming them in:

- A process of production;
- A process of manufacture;
- Repairing the goods; or
- Treating other goods.

Services

In relation to services, a person is a consumer if the person acquired the services and the amount paid or payable for those services did not exceed \$40,000 or those services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

An example of a service may be engaging the services of a mechanic to fix the family car or engaging a plumber to fix an issue with plumbing.

In order to assist consumers with meeting the legal definition, people who acquire goods or services are presumed to be consumers. It is on the business to prove otherwise and this must be proved on the balance of probabilities.

What 'guarantees' do consumer have?

Depending upon whether a person acquires good or services as a consumer will depend upon what guarantees they have. For instance, when acquiring goods as a consumer the person will have the following guarantees (unless the exceptions apply):

1. Guarantee as to title.
2. Guarantee as to undisturbed possession.
3. Guarantee as to undisclosed securities.
4. Guarantee as to acceptable quality.
5. Guarantee as to fitness for any disclosed purpose.
6. Guarantee relating to the supply of goods by description.
7. Guarantee relating to the supply of goods by sample or demonstration model.
8. Guarantee as to repairs and spare parts.
9. Guarantee as to express warranties.

When acquiring services as a consumer the person will have the following guarantees (unless the exceptions apply):

1. Guarantee as to due care and skill.
2. Guarantee as to fitness for a particular purpose.
 - i. A 'door' where the purpose of the door was to prevent it from being 'kicked in' by an intruder;
 - ii. Contaminated food (not to be contaminated)
 - iii. Mechanical repairs.
 - iv. Motor vehicles.
3. Guarantee as to reasonable time for supply.

For further information on consumer guarantees, you can contact the Australian Competition and Consumer Commission on 1300 302 502 or visit their website at: <https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees>

You are also welcome to contact us on 07 4616 9700 and speak to a solicitor if you wish to discuss how the consumer law guarantees might apply to your situation.

This factsheet is for general information purposes only. You should seek independent legal advice in respect to your specific circumstances.

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