



CONSUMER GUARANTEES FOR GOODS

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General Information

The Australian Consumer Law (**ACL**) protects consumers by implying certain guarantees against suppliers of goods and services, as well as against manufacturers or importers of goods. If a supplier or manufacturer tries to exclude or restrict a consumer's rights under ACL guarantees, or exclude their own liability, it is generally unlawful.

What goods and services are protected by the ACL guarantees?

The guarantees under the ACL apply to goods or services purchased on or after 1 January 2011 by a consumer from a supplier or a manufacturer. However, consumers have similar rights under previous legislation for goods or services purchased before 1 January 2011.

The guarantees apply to:

- any goods or services purchased for less than \$40 000;
- goods or services that are ordinarily acquired for domestic, personal or household use or consumption; or
- a vehicle or trailer that is principally used for transporting goods on public roads.

What goods are excluded from the guarantees?

Not all purchases will be covered by the ACL guarantees. Goods are excluded if:

- they were bought before 1 January 2011 (but similar guarantees may apply under other legislation);
- they were purchased at auction (if the auctioneer is an agent for the owner of the goods);
- the goods or services that cost more than \$40 000 (unless the goods or services are ordinarily acquired for domestic or household purposes use or consumption);
- the purchaser intends to on-sell the goods; or
- the purchaser intends to use the goods as part of a business in the course of producing or manufacturing another item, or in the course of repairing or treating another item.

What guarantees does the ACL provide in relation to goods?

1. The goods are of acceptable quality at the time they are sold to the consumer

What is acceptable quality?

Goods are of "acceptable quality" if a reasonable consumer who is fully aware of the goods' condition finds them:

- fit for all the purposes for which goods of that kind are commonly supplied (for instance, an electric kettle must be capable of boiling water);
- acceptable in appearance and finish;
- free from defects;
- safe, for instance there should be no exposed wires; and
- durable.

When deciding whether or not goods are of acceptable quality, you must consider the nature and price of the goods, as well as any statements about the goods made on its packaging, representations made by the supplier or manufacturer about the goods and any other relevant factors relating to their supply.

The guarantee of acceptable quality does not apply to a particular defect if the consumer was aware or was informed of that defect before the sale. A consumer is assumed to be aware of defects that were included in a written notice displayed with the goods.

The goods do not fail to be of acceptable quality if the consumer causes them to be of unacceptable quality or damages them by abnormal use. The same applies if a consumer has examined the goods before purchase in a way which should reasonably have revealed that they were not of acceptable quality.

2. The goods will be reasonably fit for any purpose that the consumer or supplier specified

When will the guarantee apply?

The guarantee that goods are reasonably fit for purpose only applies if the supplier must have known before the sale that the consumer intended to use the goods for a particular purpose. The consumer must have stated or implied his or her intention to use the goods for a particular purpose to the supplier, salesperson, or the manufacturer (either directly or through the supplier or salesperson). The consumer must also have relied on these parties' knowledge and skill to decide whether the goods would serve the purpose that he or she indicated.

The guarantee will not apply if it can be shown that it was unreasonable for the consumer to rely on the supplier's, salesperson's, or manufacturer's knowledge and skill in the circumstances, or that the consumer did not in fact rely on the supplier's, salesperson's, or manufacturer's knowledge and skill.

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3. The goods match any description, demonstration model or sample provided by the supplier

When will the guarantee apply?

The supplier guarantees that the goods match any description that was given by the supplier, for instance in a catalogue or on television. A common situation may be where the size or colour of the goods is different to that described.

Goods sold on the basis of a sample or demonstration model must be of a corresponding quality, state or condition. The guarantee will still apply even where differences between the sample or demonstration model and the goods the consumer received are unavoidable, so long as the differences are substantial. For example, you have grounds to complain where you have floor boards installed and the shading of your floor boards is considerably different to the shading of the sample that the supplier showed you.

A supplier must allow the consumer a reasonable time to compare the goods they received with the sample that was used to sell them.

However, the supplier does not have to do so if the goods were sold on the basis of a demonstration model. In this case, the supplier may sell the demonstration model and not keep it for a consumer's comparison.

A supplier who sells goods sold by description **and** by reference to a sample or demonstration model has to comply with both guarantees.

4. The supplier is entitled to sell the goods

When will the guarantee apply?

The supplier guarantees that they have clear title over the goods – ie, that they have the right to sell the goods to the consumer.

However, in circumstances where a third party also has ownership rights over the goods, the supplier has what is called 'limited title'. The guarantee as to 'clear title' does not apply if the supplier informed the consumer of their limited title to the goods.

This guarantee does not apply to supply by way of hire or lease.

5. That the consumer will have undisturbed possession of the goods

When will the guarantee apply?

A supplier guarantees that the consumer will be able to possess and use the goods without interference from the supplier or a third party as long as it is not supplied by way of limited title as described under heading 4. This guarantee does apply to supply by way of hire or lease.

Exceptions:

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The guarantee may not apply in circumstances where:

- the consumer has breached his or her contract with the supplier;
- the consumer was told before the sale that a third party had an interest in the goods; or
- the consumer contracted to hire the goods and the hire term has expired.

6. That the goods are not encumbered by any hidden securities or charges

When will the guarantee apply?

A supplier guarantees that the goods the consumer purchased do not have any hidden securities or charges attached to them as long as it is not a supplied by way of limited title as described under heading 4.

Exceptions:

The guarantee may not apply if the consumer consented to have the charge placed on the goods, or if the supplier gave the consumer written notice that the goods were affected by the charge.

This guarantee does not apply to supply by way of hire or lease.

7. That the manufacturer will take reasonable steps to supply spare parts or repairs for a reasonable time after the purchase.

When will the guarantee apply?

The supplier guarantees that the manufacturer will ensure the availability of repair facilities and spare parts for a reasonable time after supply.

This will also apply to importers who import goods into Australia and at the time of importation the manufacturer of the goods does not have a place of business in Australia.

What constitutes a 'reasonable time' depends on the nature of the goods. A 'reasonable time' may be longer for goods that are expensive or expected to be used for a significant period of time. On the other hand, the supplier may have a very limited obligation to provide repairs or spare parts for cheap items or items that would not usually be used for a long time.

Exceptions:

The guarantee may not apply if the manufacturer or importer gave the consumer written notice that they would not supply repairs and spare parts after a particular date. This notice must have been given at the same time or before the consumer purchased the goods.

8. Express warranties

When will the guarantee apply?

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The manufacturer or supplier guarantees that the goods will comply with any express warranty given or made by the manufacturer in relation to the goods or services.

9. What remedies are available to a consumer if the goods do not comply with one or more of the ACL guarantees?

A consumer may have a remedy against the supplier or manufacturer if there is a major or a minor failure with the goods.

A major failure can occur in the following ways:

- the goods are significantly different from the description, sample or demonstration model;
- the goods are substantially unfit for their **normal** purpose and cannot easily be made fit in a reasonable period of time.
- if the consumer informed the supplier that the goods were needed for a **specific** purpose, there may be a major failure where the goods are substantially unfit for that purpose and cannot be made fit in a reasonable period of time.
- a reasonable consumer would not have purchased the goods had he or she known about the defects; or
- the goods are unsafe.

If there is a **major** failure with the goods the **consumer** can choose between having the goods replaced by the supplier, having the supplier refund them the price of the goods or keeping the goods and being compensated for the decreased value of the goods. It is the **consumer** who chooses.

If there is only a **minor** failure, the **supplier** can choose either to provide a repair or to replace the goods, or provide a refund.

10. Damages

A consumer may also get damages from the supplier or manufacturer of goods for any reasonably foreseeable loss or damage resulting from failure to meet the consumer guarantees.

11. When will a remedy not be available?

A remedy may not be available in circumstances where the failure was caused by the actions of a third party or by an event that was outside human control and occurred after the goods were supplied.

A consumer will not be entitled to reject goods if:

- the consumer destroyed, damaged or disposed of the goods after they were delivered;
- the goods are attached to other property and removal would cause damage to them; or
- the consumer has waited too long to reject the goods. This depends on the nature of the goods.