

# Factsheet No.18

## Consumer Guarantees and the Australian Consumer Law



*This factsheet looks at consumer guarantees.*

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### Introduction

The Australian Consumer Law provides a set of guarantees for consumers who acquire goods or services from Australian suppliers, manufacturers or importers.

The guarantees cannot be excluded.

The guarantees apply to goods and services purchased on or after 1 January 2011.

Where a guarantee is not met, you are entitled to a remedy. The type of remedy depends on the circumstances, but may include a repair, replacement, refund or having the service performed again.

### When do the guarantees apply?

You are covered by the guarantees if the goods or services you purchase cost less than \$40 000. If they cost more but are normally used for personal, domestic or household purposes, the guarantees will still apply.

### When do the guarantees not apply?

The guarantees do not apply to:

- insurance and financial services
- contracts for the transportation or

storage of goods for the business, trade, profession or occupation of the person for whom the goods are transported or stored

- supply of gas, electricity or a telecommunications

### Guarantees relating to the supply of goods

When you buy goods, the seller guarantees the following things.

#### Acceptable quality

There is a guarantee that goods are of acceptable quality.

Goods are of acceptable quality if they are:

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

In deciding whether this guarantee is met, you should consider the nature of the good, the price, and any information provided with the product.

The definition is subject to a 'reasonable consumer' test, such that goods are considered to meet those standards if a reasonable consumer, who is fully acquainted with the state and condition of the goods, would regard them as acceptable.

Consumers sometimes want to buy "seconds" goods or goods that have defects, particularly if such goods are available for lower prices. The guarantee of acceptable quality applies to such products and goods will be taken to be of 'acceptable quality' if the defect (or reason they are not of acceptable quality) was specifically

drawn to the consumer's attention.

### ***Fitness for any disclosed purpose***

Goods must be reasonably fit for a purpose that a consumer, expressly or by implication, makes known to the supplier or manufacturer.

There is an exception for situations in which it is unreasonable for the consumer to rely on the skill or judgment of a supplier or manufacturer.

### ***Supply of goods by description***

Goods must correspond with their description. This guarantee applies irrespective of the fact that goods were displayed and selected by the consumer.

### ***Supply of goods by sample or demonstration model***

Where goods are supplied by reference to a sample:

- the goods must correspond with the sample
- the consumer will be given a reasonable opportunity to compare the goods with the sample
- the goods must be free from any defect that is not apparent from reasonable examination of the sample

### ***Repairs and spare parts***

A manufacturer must take reasonable steps to make repairs and spare parts reasonably available for a reasonable period after the goods are supplied.

### ***Express warranties***

In addition to the consumer guarantees, some manufacturer's may offer an express or manufacturer's warranty. There is no obligation on a manufacturer to offer an express warranty, but where such a warranty is offered, there is a guarantee that the warranty (ie additional promises) is met.

### ***Title***

Consumers have a guarantee that the supplier has the right to sell the goods to the consumer.

### ***Undisturbed possession***

Consumers should not be inconvenienced by others seeking to reclaim the goods, for example, because the goods have been pledged as security for a loan. If the consumer is told about securities, charges or encumbrances that relate to the goods, the guarantee to undisturbed

### ***Undisclosed securities***

Goods must be free from any security, charge or encumbrance that was not disclosed to the consumer or created with their consent.

### ***Guarantees relating to the supply of services***

When you buy services, the provider guarantees the following things.

### ***Due care and skill***

Due care and skill means the provider must:

- use an acceptable level of skill or technical knowledge when providing the services. Their work must be at least as good as what a competent person with average skills and experience would provide
- take all necessary care to avoid loss or damage when providing the services

### ***Fitness for a particular purpose***

Services must be reasonably fit for a purpose that a consumer, expressly or by implication, makes known to the supplier.

Services must also be of a nature, quality, state and condition such that they can be expected to achieve a result that the consumer makes known to the supplier.

There is an exception for situations where it is not reasonable for the consumer to rely on the skill or judgment of a supplier or where the supplier tells you the service won't meet your purpose.

This guarantee doesn't apply to professional services provided by qualified architects or engineers.

### **Reasonable time for supply**

Services must be provided to consumers within a reasonable time if the time is not otherwise fixed in a contract or agreed between the consumer and supplier.

The time period that is reasonable would depend on the particular type of services and the circumstances applicable to the agreement.

### **What if I am told the guarantees do not apply?**

A person may not exclude any of the guarantees provided for in the Australian Consumer Law. It is a contravention of the Australian Consumer Law to make false or misleading representations in relation to the existence or effect of these guarantees.

However, suppliers may exclude liability in respect of personal injury or death that results from the supply of recreational services. Recreational services include sporting activity or similar leisure-time pursuit, or any other activity that involves a significant degree of physical exertion or physical risk that is undertaken for the purposes of recreation, enjoyment or leisure.

### **What remedies are available?**

When a guarantee has not been met, the consumer is entitled to a remedy.

The type of remedy depends on the circumstances but may include a repair, replacement, refund or having the service performed again. A consumer can seek a remedy directly from the manufacturer or supplier. If a consumer is unable to resolve their complaint with the manufacturer or supplier they can file a claim with the NSW Civil and Administrative Tribunal. See RLC's factsheet on Applying to NCAT for further guidance.

### **Further information**

The ACCC has released a publication called Consumer Guarantees – A guide for consumers which provides further guidance on the guarantees.

*Produced by Redfern Legal Centre in September 2016.*

*This factsheet is no substitute for legal advice. If you have a consumer law problem please seek legal advice from your local community legal centre or fair trading / consumer affairs agency.*

