

# Consumer Guarantees and not-for-profit organisations

Legal information for community organisations

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## This fact sheet covers:

- ▶ what are the Consumer Guarantees?
  - ▶ how do they apply to not-for-profits?
  - ▶ when are not-for-profits considered consumers under the ACL?
  - ▶ when are not-for-profits considered manufacturers or suppliers under the ACL?
  - ▶ what about supplying and receiving gifts and Consumer Guarantees?
  - ▶ when will a consumer have a remedy under the Consumer Guarantees?
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**The Australian Consumer Law (ACL) is a national law that aims to protect consumers and ensure fair trading throughout Australia. It is enforced by the Australian Competition and Consumer Commission (ACCC) at a national level, and by mirror legislation enforced by the fair trading bodies in the States and Territories.**

The ACL contains some very important statutory protections for consumers, called 'Consumer Guarantees' (**Consumer Guarantees**). These protections are automatic and cannot be excluded, restricted or modified by contract:

- the Consumer Guarantees place obligations on manufacturers and suppliers of goods, and providers of services. They also apply where a single person supplies goods or provides services – for example, a bundled good (such as a fridge), and service, (such as installation of the fridge), and
- the Consumer Guarantees also give certain rights to consumers who buy those goods or receive those services

## What are the Consumer Guarantees?

The Consumer Guarantees are a comprehensive set of consumer rights that automatically apply when consumers buy certain goods or services in Australia.

If a supplier, manufacturer or service provider doesn't meet the requirements of the guarantees, the consumer will have rights to a remedy under the ACL (with the precise remedy depending on whether the failure to meet the relevant requirement is 'major' or 'minor'). Possible remedies include the right to a repair (at no cost), replacement or refund as well as compensation for damages and loss and being able to cancel a faulty service.

The guarantees and rights under the Consumer Guarantees are compulsory and apply regardless of whether you offered them to the customer at the point of sale, or you sought to limit or exclude their operation in a contract.



## Goods and services covered by Consumer Guarantees

The Consumer Guarantees only apply to goods and services purchased by a 'consumer' as defined under the ACL including:

- goods and services bought on or after 1 January 2011 (a statutory warranty scheme applies to goods purchased before that date)
- goods or services costing up to \$40,000 (the individual unit cost of the goods or services is counted, not the total cost if multiple goods or services are purchased)
- goods or services costing more than \$40,000 which are normally used for personal, domestic or household purposes (ie. goods worth more than \$40,000 which are purely for business use, such as machinery or farming equipment, are **not** subject to the consumer guarantees), and
- any vehicle or trailer used to transport goods on public roads (irrespective of cost)

**(Consumer Guarantee Goods and Services, or CG Goods and Services)**

**Note** – For goods and services supplied from 1 July 2021, the above threshold of \$40,000 will increase to \$100,000.

The supply of second hand goods will be subject to the Consumer Guarantees if it meets the requirements of the CG Goods and Services set out above.



### Related resources

The Australian Competition and Consumer Competition website has [further information on Consumer Guarantees](#) including a detailed [guide for consumers](#) and a [guide for businesses](#).

## How do the Consumer Guarantees apply to not-for-profits?

The Consumer Guarantees have two implications for not-for-profit organisations:

- if a not-for-profit supplies goods or services 'in trade or commerce', those goods or services may be covered by **the Consumer Guarantees** where the supply is to a consumer, and
- when a not-for-profit **buys CG Goods and Services**, it will be also be **protected by the Consumer Guarantees**



### Example

A consumer tells a car dealer that she wants a car capable of towing her boat. The dealer sells her a car that he says will do the job. The car's normal purpose is to transport people but, as the consumer has told the dealer that she wants to use the car to tow a boat and the dealer has told her the car sold is suitable for this purpose, then the car must be able to do so.

If the car is not capable of towing her boat, the consumer will be able to exercise her right to a remedy such as a replacement or refund under the ACL, and may also have a claim for false or misleading conduct.



## When is a not-for-profit organisation subject to the Consumer Guarantees under the ACL?

The Consumer Guarantees will apply to a not-for-profit organisation when it:

- operates in trade or commerce, such as when the not-for-profit carries out a business or professional activity, and
- manufactures or supplies goods or provides services that are CG Goods and Services



### Note

By supplying goods or services, or manufacturing goods, a not-for-profit organisation will be engaging in trade or commerce, even though it is not operating for profit.

## What are the Consumer Guarantees in relation to 'suppliers' of goods and services?

A not-for-profit organisation is a 'supplier' under the ACL, if it:

- supplies goods (including re-supplies) by way of sale, exchange, lease, hire or hire-purchase, or
- provides services, and
- those goods or services are CG Goods and Services

The Consumer Guarantees require suppliers to make and honour guarantees to a consumer.

### Supplying goods

The Consumer Guarantees require suppliers to guarantee that the goods they are supplying to consumers:

- are of acceptable quality, including being fit for purpose for which they are commonly supplied, acceptable in appearance and finish
- are free from defects, and are safe and durable
- match descriptions given by a salesperson, on packaging and labels, and in promotions or advertising
- match any demonstration model or sample
- are reasonably fit for any disclosed purpose
- are not encumbered with security interests or charges, unless otherwise disclosed
- have spare parts and repair facilities reasonably available for a reasonable time after purchase unless otherwise disclosed
- can be sold with clear title, unless otherwise disclosed, and
- will not be repossessed, except in limited circumstances

Suppliers also guarantee that any express warranties will be honoured.



### Related Not-for-profit Law resources

For further information on security interests see [our fact sheet – Protecting Your Assets on the Personal Properties Security Register](#).

### Supplying services

The Consumer Guarantees require suppliers to guarantee that the services they are supplying to consumers:



- will be provided with due care and skill
- are reasonably fit for any disclosed purpose, and
- will be provided within a reasonable time (when no time limit is set)

## What are the Consumer Guarantees in relation to ‘manufacturers’ of goods?

A not-for-profit organisation is a ‘manufacturer’ under the ACL if it grows, produces, assembles, processes, imports (if the actual manufacturer does not carry on business in Australia) or has its name, brand or mark on goods, or otherwise holds themselves out as the manufacturer of the goods.

### Manufacturing goods

The Consumer Guarantees require suppliers and manufacturers to make guarantees to a consumer that:

- are of acceptable quality, including being fit for purpose for which they are commonly supplied, acceptable in appearance and finish free from defects, safe and durable
- match any descriptions provided
- have a reasonable availability of repairs and spare parts, and
- will comply with any express warranties given in relation to the goods

The Consumer Guarantees can take into account the age, price and condition of the good or service.

For the acceptable quality guarantee to not apply, defects need to be pointed out to a consumer at the time of sale. For example, a dent in a boxed appliance needs to be pointed out to the consumer at the time of sale for the acceptable quality guarantee to not apply in respect of any defect to the appliance inside the dented box.

If a CG Good or Service fails to meet one of the Consumer Guarantees, the not-for-profit organisation may have to repair or replace the goods or refund what the consumer paid for the goods or services, and provide compensation for any losses by the consumer.



### Note

Second-hand goods or goods sold as ‘seconds’ must have the defects specifically disclosed to the consumer before they purchase the goods.

## What about gifts?

Gift recipients are entitled to the same rights as consumers who bought the gifts directly.

If an organisation, including a not-for-profit, supplies gifts or makes donations (for example, food hampers or donated mobile phones), that organisation may still have obligations to the consumer of the gift or donation, under the ACL.

If a not-for-profit organisation received donated goods, then that organisation can enforce the Consumer Guarantees against the supplier or manufacturer of the goods, rather than the donor of the goods.



### Example

If a not-for-profit organisation purchased mobile phones to give to refugees for free, the refugees would not be able to enforce the Consumer Guarantees against the not-for-profit organisation as a supplier, but they could enforce the guarantees against the manufacturer of the phones, as well as, the company that the not-for-profit organisation purchased the phones from (if this is not the same company as the manufacturer).



### Caution

The Consumer Guarantees apply to goods or services that are donated or gifted if they are provided for 'promotional purposes'. For example, a not-for-profit organisation that gives out branded merchandise at a fundraising event will be considered to be a 'supplier' of the goods and the Consumer Guarantees will apply.

## When is a not-for-profit organisation protected by the Consumer Guarantees?

If a not-for-profit organisation buys CG Goods and Services, then it will be a 'consumer' under the ACL and the not-for-profit organisation will have rights and remedies available to it under the Consumer Guarantees.

## What happens when goods or services don't meet the requirements of the Consumer Guarantees?

Where CG Goods or Services fail to meet the requirements of the Consumer Guarantees, there are a number of actions a consumer can take against a supplier or manufacturer.

However, before taking action against the supplier or the manufacturer, a consumer is usually required to prove that the product or service was purchased from the supplier or manufacturer, by showing a tax invoice, receipt or gift receipt. The options available to a consumer seeking to take action against a supplier or manufacturer depend on the nature of the breach of the Consumer Guarantees.

Under the ACL, a breach of the Consumer Guarantees is classified as either being '**major**' or '**minor**'.

Whether a problem (also known as a failure) with CG Goods or Services is 'major' or 'minor' will depend on the circumstances, however, generally:

- a 'major' problem will be one where you would not have bought the goods or services if you had known about the problem, and
- a 'minor' problem will be able to be repaired



### Tip

Consumers have the right to seek a remedy through the Consumer Guarantees for a 'reasonable time' after the good or service is received.

What is reasonable will depend on the good or service.

Whether the consumer or the supplier or manufacturer or service provider gets to choose the remedy will depend on whether the problem is 'major' or 'minor'.

### Minor problem

A problem or failure with Consumer Goods or Services will be a 'minor' if the problem or failure can be fixed within a reasonable period of time.



### Example

An example of a minor problem might be if your organisations bought a number of t-shirts for workers to wear. The t-shirts were missing buttons. The t-shirts would still be fit for purpose and the missing buttons are something that could be easily fixed.

## Major problem

A problem or failure with **Consumer Goods** will be a 'major' if:

- a reasonable consumer would not have purchased the goods if they had been fully aware of the problem
- the goods significantly do not match the description, sample or demonstration model shown to the consumer at the time of purchase
- the goods are substantially unfit for their normal purpose and cannot easily be made fit for that purpose within a reasonable time
- the consumer informed the supplier that they required the goods for a particular specified purpose, the goods are substantially unfit for that purpose and the goods cannot easily be made fit for that purpose within a reasonable time, or
- the goods are unsafe

A problem or failure with **Consumer Services** will be a 'major' if:

- a reasonable consumer would not have acquired the services if they had been fully aware of the problem
- the services are substantially unfit for their normal purpose and cannot easily be made fit for that purpose within a reasonable time
- the consumer informed the supplier that they required the services for a particular specified purpose, the services and any resulting product are substantially unfit for that purpose, and cannot easily be made fit for that purpose within a reasonable time
- the consumer informed the supplier about a particular result they wanted from the service, the service and any resulting product cannot reasonably achieve that result, and cannot attain that result easily and within a reasonable time, or
- the supply of services creates an unsafe situation



### Example

An example of a major service problem might be if your organisation paid for an electrician to install safety switches in residential houses your organisation uses to care for its clients. If the safety switches did not work and set sparks off when pressed, this is a major failure as they are unsafe.

There will also be a major failure where there are multiple major problems which are not remedied.

## Remedies available where Consumer Goods or Services are in breach of the ACL

Under the Consumer Guarantees, where there is a 'minor' problem with Consumer Goods or Services, the supplier can choose whether to:

- replace or repair the goods
- have the service re-supplied, or
- provide a refund

Where there is a 'major' failure, the consumer can reject the goods or services and either:

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

In some circumstances, the consumer can also sue the supplier or manufacturer in court for damages if the consumer suffers loss as a result of non-compliance with the Consumer Guarantees.



## Remedies against a supplier of consumer goods

Consumer Goods: Remedies for minor problems	Consumer Goods: Remedies for major problems
The consumer can request the supplier repair the problem with the goods within a reasonable period of time.	The consumer can reject the goods (return them) and choose a: <ul style="list-style-type: none"> <li>• refund, or</li> <li>• replacement (or one of similar value if reasonably available).</li> </ul>
The consumer can request the supplier replace the goods with identical goods within a reasonable period of time.	The consumer can sue the supplier for compensation for any reduction in value of the goods arising from the major problem.
The consumer can request a refund.	
If the supplier refuses or fails to fix the problem, the consumer can: <ul style="list-style-type: none"> <li>• repair the goods themselves and sue the supplier for the reasonable cost of repairing the goods and any consequential loss or damage, or</li> <li>• notify the supplier that they have rejected the goods and request a refund or replacement.</li> </ul>	

## Remedies against a manufacturer of consumer goods

A consumer also has the right to sue a manufacturer of goods for damages, if the problem with the goods concerns a Consumer Guarantee as to:

- acceptable quality
- repairs and spare parts
- matching description, or
- an express warranty given by the manufacturer or importer

## Remedies against a supplier of consumer services

Consumer Services: Remedies for minor problems	Consumer Services: Remedies for major problems
The consumer can request the supplier rectify the problem with the services within a reasonable period of time.	The consumer can terminate (cancel) the contract for the supply of services and request a refund for any part of the service not consumed.
If the supplier refuses or fails to fix the problem, the consumer can: <ul style="list-style-type: none"> <li>• have the services rectified and sue the supplier for the reasonable costs of rectifying the problem with the services and any consequential loss or damage, or</li> <li>• terminate the contract for the supply of services and request a refund for any part of the service not consumed.</li> </ul>	The consumer can cancel the contract and: <ul style="list-style-type: none"> <li>• get a refund for the parts of the service not already consumed, or</li> <li>• seek a refund for money already paid</li> </ul> The consumer can seek compensation from the supplier for any reduction in the value of the services arising from the major problem.  The consumer can keep the contract and negotiate a reduced price for the drop in value of the service – this may mean asking for some of your money back if you've already paid.



### Caution

If you are having difficulty with the supplier or service provider of a consumer good or service, consider contacting the [Australian Competition and Consumer Commission](#) or the authority responsible for consumer protection in your state or territory. You can find a list of them on [the ACCC's website](#).



### Real Example – ACCC v Harvey Norman

Harvey Norman was taken to court by the ACCC for misleading consumers that they had no obligation to provide a remedy for defective products that they supplied.

They misled the consumers to believe that:

- the consumers were required to pursue the manufacturer's warranty directly with the manufacturer, and
- the consumers were required to pay for some or all of the repair costs if they pursued the warranty through Harvey Norman

This was illegal conduct so the Federal Court ordered Harvey Norman to pay a total of \$52,000 for making false or misleading representations about consumer guarantees. The message to take from this is that you must not do anything that may mislead the public about consumer guarantees.



# Resources

## Related Not-for-profit Law resources

### ▶ [Fundraising](#)

This page contains resources that provide an overview of fundraising application processes and requirements in each Australian state and territory, how to apply for relevant licences and a guide for each jurisdiction in Australia on its fundraising law.

### ▶ [Events](#)

This page contains detailed fact sheets on different kinds of events and a checklist to help your organisation identify which permits and legal issues you will need to consider.

### ▶ [Communications and Advertising](#)

There are many laws that apply to public and private communications. The main laws to consider are outlined in this part of the Not-for-profit Law website.

## Australian Government guidance

The Australian Government has a website which contains information about the Australian Consumer Law, including how it administered and enforced (jointly by the Australian Competition and Consumer Commission (**ACCC**) and the State and Territory consumer protection agencies, with the involvement of the Australian Securities and Investments Commission (**ASIC**)), and consumer policy more generally.

### ▶ [Consumer Guarantees: A guide for consumers](#)

### ▶ [Consumer Guarantees: A guide for businesses](#)

### ▶ [ACCC website on the Australian Consumer Law](#)

## Legislation

### ▶ [Competition and Consumer Act 2010 \(Cth\)](#)

## Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (**ACCC**) is Australia's competition regulator and administers the *Competition and Consumer Act 2010* (Cth). The ACCC offers advice to consumers about how to resolve problems or make a complaint about products or services, and provides information about mandatory product safety requirements.

### ▶ [ACCC webpage on consumers](#)

### ▶ [ACCC webpage on mandatory standards](#)