

Consumer Guarantees and not-for-profit organisations

Legal information for community organisations



This fact sheet covers:

- what are the Consumer Guarantees?
 - how do they apply to not-for-profits?
 - when are not-for-profits, consumers?
 - when are not-for-profits, manufacturers or suppliers?
 - 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.

The ACL includes a set of automatic guarantees that provide consumers rights to remedies when their goods or services do not meet the requirements of the guarantees.

The ACL contains some very important protections for consumers, called 'Consumer Guarantees' (**Consumer Guarantees**):

- the Consumer Guarantees place obligations on manufacturers and suppliers of goods and providers of services, such as organisations that sell goods, and organisations that perform a service for a fee, and
- the Consumer Guarantees also give rights to the consumers who buy those goods or receive those services.

1. What are the Consumer Guarantees?

The Consumer Guarantees are guarantees that automatically apply when consumers buy certain goods and/or services in Australia. If a supplier or a manufacturer does not meet the requirements of the guarantees, then the consumer has rights to a remedy under the ACL.

The guarantees and rights under the Consumer Guarantees are compulsory. This means they cannot be changed, limited, 'contracted out' of or excluded.

The Consumer Guarantees protect both individuals and incorporated bodies (e.g. companies).

EXAMPLE

A supplier cannot display a sign that states 'no refunds given' or 'exchange or credit note only for return of sale items'.



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 under the ACL.



1.1 Consumer Guarantee Goods and Services

The Consumer Guarantees only apply to Consumer Guarantee Goods and Services (**CG Goods and Services**) which include:

- goods and services bought on or after 1 January 2011 (a statutory warranty scheme applies to goods purchased before that date)
- any 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 requirements.

FURTHER READING

The Australian Competition and Consumer Commission has further information on Consumer Guarantees [here](#) including a detailed [guide](#).

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.

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

The Consumer Guarantees have two implications for not-for-profit (**NFP**) organisations:

- if a NFP is involved in supplying goods or services 'in trade or commerce', it may be subject to the Consumer Guarantees, and
- when a NFP buys CG Goods and Services, it will be also be protected by the Consumer Guarantees.

3. When is a NFP organisation subject to the Consumer Guarantees under the ACL?

The Consumer Guarantees will apply to a NFP organisation when it:

- operates in trade or commerce, such as when the NFP 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 an NFP organisation will be engaging in trade or commerce, even though it is not operating for profit.



3.1 What are the Consumer Guarantees in relation to 'Suppliers' of Goods and Services?

A NFP organisation is a 'supplier' under the ACL, if it:

- supplies goods (including re-supply) 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 guarantees to a consumer.

3.1.1 Supplying goods

The Consumer Guarantees require suppliers to make guarantees to a consumer, the goods they are supplying:

- 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 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.

RELATED RESOURCES

For further information on security interests see Not-for-profit Law's Fact Sheet "Protecting Your Assets on the Personal Properties Security Register" [here](#).

3.1.2 Supplying services

The Consumer Guarantees require suppliers to make guarantees to a consumer, the services they are supplying:

- 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).

3.2 What are the Consumer Guarantees in relation to 'Manufacturers' of Goods?

A NFP 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.

3.2.1 Manufacturing goods

The Consumer Guarantees require suppliers to 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 descriptions
- have a reasonable availability of repairs and spare parts, and
- will comply with any express warranties given in relation to the goods.

NOTE

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

CG Goods and Services must meet the requirements of the supplier guarantees or manufacturer guarantees set out above (the Consumer Guarantees), as applicable.

The Consumer Guarantees can take into account the age, price and condition of the good or service. However, defects (for example a dent in a boxed appliance) would need to be pointed out to a consumer for the acceptable quality guarantee to not apply in respect of the defect.

If a CG Good or Service fails to meet the Consumer Guarantees, the NFP 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.

4. What about gifts?

If an organisation, including a NFP, supplies gifts or donations (eg. food hampers or donated mobile phones), that organisation does not necessarily have obligations to the consumer of the gift or donation, under the ACL.

EXAMPLE

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



Under the ACL, the recipient of a gift has the same rights as a consumer who originally purchased the goods or services. If an NFP 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.

CAUTION

The Consumer Guarantees apply to goods or services that are donated or gifted if they are provided for 'promotional purposes'. For example, a NFP 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.



5. When is a NFP organisation protected by the Consumer Guarantees?

If a NFP organisation buys CG Goods and Services, then it is a 'consumer' under the ACL, as long as the purchase is in trade or commerce (eg. if the NFP organisation pays for them or if they are supplied on a promotional basis). This means that a NFP organisation will have available to it the rights and remedies under the Consumer Guarantees.

5.1 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'.



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 a problem (also known as a failure) with Consumer Goods or Services is 'major' or 'minor' will depend on the circumstances, however, generally a 'minor' problem will be able to be remedied

5.1.1 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.

5.1.2 Major problem

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

Consumer Goods

- a reasonable consumer would not have purchased the goods if they had been fully aware of the problem
- the goods 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 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.

Consumer Services

- 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 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 minor problem might be if your organisations bought a number of t-shirts for workers to wear. The t-shirt(s) were missing a button. The t-shirt(s) would still be fit for purpose and the missing button is something that could be easily fixed.

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 and safety switches did not work and set sparks off when pressed. This is a major failure: they are unsafe.

5.2 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, a consumer can have their goods replaced or repaired, their service re-supplied or have their money refunded. 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.

5.2.1 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 and request a: <ul style="list-style-type: none"> • refund, or • replacement.
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 rectify the problem, the consumer can: <ul style="list-style-type: none"> • repair the goods themselves and sue the supplier for the reasonable cost of repairing the goods and any consequential loss or damage, or • notify the supplier that they have rejected the goods and request a refund or replacement. 	

5.2.2 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.



TIP

A supplier cannot refuse to send a consumer to the manufacturer of a consumer good.

5.2.3 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 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 rectify the problem, the consumer can: <ul data-bbox="220 533 794 754" style="list-style-type: none">• 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• terminate the contract for the supply of services and request a refund for any part of the service not consumed.	The consumer can sue the supplier for compensation for any reduction in the value of the services arising from the major problem

CAUTION

If you can't get 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 at the ACCC's website [here](#).



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.

Legislation

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

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](#)

✔ www.consumerlaw.gov.au

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.

✔ www.accc.gov.au/consumers

✔ www.productsafety.gov.au/product-safety-laws/safety-standards-bans/mandatory-standards

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