

CG LAW BULLETIN

The Australian Consumer Law – is your business compliant? – Part 2

More than 18 months on from the implementation of the Australian Consumer Law (**ACL**), it seems that very few retailers and manufacturers understand their obligations under the ACL, putting them at risk of receiving hefty penalties for non-compliance.

In part one of this CG Law Bulletin, we examined what goods and services the ACL applies to and what guarantees you must provide the consumer to avoid receiving penalties under the Act, while in this part, we'll consider your business's obligations to provide consumers with a remedy and some frequently asked questions regarding extended warranties, signage and proof of purchase.

WHAT CAN A CONSUMER DO IF GOODS OR SERVICES DO NOT MEET A CONSUMER GUARANTEE?

If your business fails to meet a consumer guarantee in relation to the supply of goods, the consumer will be entitled to a remedy. Where the problem is minor, your business may choose between providing a repair or offering the consumer a replacement or a refund. However, where there is a major failure, the *consumer* can reject the goods and choose whether they would prefer;

- (a) a refund; or
- (b) a replacement; or
- (c) ask for compensation for any drop in value of the goods.

A consumer is entitled to contact your business directly if:

- (a) the goods are not fit for any disclosed purpose; or
- (b) the goods do not match a sample or demonstration model; or
- (c) services are not supplied with due care and skill; or
- (d) services are not fit for the particular purpose; or
- (e) services are not completed within a reasonable time (where there was no set time for completion).

In contrast, the consumer must contact the *manufacturer* if the goods do not meet the guarantee as to repairs and spare parts. If a consumer approaches your business requesting a remedy in this regard, you should refer them directly to the manufacturer.

A consumer can contact both your business and the manufacturer if goods are not of an acceptable quality, breach an express warranty or do not match their description.

RECEIPTS AND 'PROOF OF PURCHASE'

A consumer will have to prove that they obtained the goods or services from your business in order to make a claim, however a tax invoice or receipt is not necessarily required. If the consumer can provide a credit card statement or receipt number for a telephone or internet transaction, this may be sufficient for them to be entitled to claim a remedy from you.

“BUT THEY PURCHASED IT ON SALE...”

The ACL applies to goods and services purchased on sale. Your business must not state that you don't offer refunds on sale items or only offer exchange or credit note for the return of sale items, as this implies that it is not possible for the consumer to get a refund under any circumstances, which is misleading. Your business could be fined up to \$1.1 million for providing false or misleading information to consumers in this regard.

DO YOUR EMPLOYEES UNDERSTAND THEIR OBLIGATIONS WHEN OFFERING EXTENDED WARRANTIES?

Under the ACL, a supplier (or their employees) must not tell a consumer that they are required to pay for any rights that are equivalent to the rights that they already have under the ACL. This means that when selling a consumer an extended warranty for a product, your employees must not tell the consumer that a warranty provides extra protection which they will not have if they do not buy it, where the warranty offers them no additional protection than the ACL. For example, if a consumer buys a television for \$2000, which comes with a 12 month manufacturer's warranty and it stops working 18 months later, your business could not likely refuse the consumer a remedy, as a reasonable consumer would expect more than 18 months' use from a \$2000 television.

SIGNS INFORMING CUSTOMERS ABOUT THEIR RIGHTS

Although it is not currently compulsory for businesses to display a sign alerting consumers to their rights under the ACL, the Commonwealth minister responsible for the ACL can make this compulsory at any time. Many businesses have chosen to display standard signs at points of sale within their stores.

CONCLUSION

If you are a supplier of goods or services and would like further information regarding your obligations under the ACL, please do not hesitate to contact the Clifford Gouldson Business Services team.

Amanda Tolson Clifford Gouldson Lawyers P +7 4688 2118 E amanda@cglaw.com.au	Ben Gouldson Clifford Gouldson Lawyers P +7 4688 2100 E ben@cglaw.com.au
Peta Hewitt Law Clerk Clifford Gouldson Lawyers P +7 4688 2119 E peta@cglaw.com.au	

