

# The Australian Consumer Law and Consumer Guarantees: Can they be excluded?

Written by Elizabeth Moran and Lauren Moscovis  
19.07.2016

## Key Points

- The Australian Consumer Law is a national law aimed at consumer protection and fair trading.
- It provides consumers with automatic “consumer guarantees”, which are essentially a comprehensive set of rights for defective goods and services.
- The consumer guarantees apply to products and services which businesses sell, hire, or lease for under \$40,000 or over \$40,000 but normally bought for personal or household use.
- A failure to understand these consumer guarantees can have significant implications for suppliers and manufacturers of goods or services.
- It is vital that businesses understand these consumer guarantees, and how to limit their liability under the ACL.

## Introduction

The ACL is a national law aimed at ensuring fair trading and protecting consumers. In effect, the ACL applies to all retail consumer purchases and also covers some business purchases. The ACL provides certain automatic guarantees to consumers, which cannot be “contracted out” of or excluded.

These include guarantees that the goods are of acceptable quality and matching the description given by the supplier or manufacturer, and that services are provided with due care and skill, are fit for the specified purpose, and provided within a reasonable time.

However, as their name suggests, these consumer guarantees only apply to certain goods and services sold, hired, or leased to consumers.

## In what circumstances will the consumer guarantees apply?

The ACL’s applicability depends on two key factors: whether or not you are selling goods or services to a **consumer**, and, what type of **goods or services** you are selling.

### 1. Is the person a consumer?

The ACL will only apply where the goods or services are sold in trade or commerce and bought by a consumer. A consumer is a person who buys:

- (a) Any type of goods or services costing up to \$40,000;
- (b) Goods or services costing more than \$40,000, which are normally used for personal, domestic or household purposes (i.e. a car);
- (c) A vehicle or trailer used mainly to transport goods on public roads irrespective of how much it costs.

If a contract falls within any of these three scenarios, the ACL consumer guarantees will apply, so long as the purchaser did not obtain the goods in order to re-supply them to someone else.

## 2. What type of goods?

While goods or services costing up to \$40,000 automatically fall within the scope of the ACL, those goods or services costing more than \$40,000 can still be subject to consumer guarantees where it is a type of good or service normally used for personal, domestic or household purposes.

For example, the sale of a plane to a corporation for commercial use would not be subject to the consumer protections of the ACL.

The ACL also expressly defines certain products as “goods”, including computer software, gas and electricity, animals, and minerals. It is important to examine the statute to determine the rights of consumers under specific contracts.

## Can a supplier or manufacturer limit their liability?

Suppliers and manufacturers can limit their liability under the consumer guarantees where the contract is for the supply of goods or services which are **not** ordinarily acquired for personal, domestic or household use or consumption.

In this instance, liability may be **limited** by an **express provision** in the contract to:

- (a) the cost of replacement or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

This limitation of liability must be **fair and reasonable** in the circumstances, and in particular:

- (a) The strength of the **bargaining positions** of the parties;
- (b) Whether the buyer received an **inducement to agree** to the term or could have obtained the goods elsewhere;
- (c) Whether the buyer **knew** or ought reasonably to have known of the **existence and extent of the term**;
- (d) In the case of a supply of goods, whether the goods were manufactured, processed or adapted to the **special order** of the buyer.

## Why consumer guarantees matter

If you are contracting to sell goods or services, it is important to understand what your statutory obligations are in relation to consumer guarantees. While businesses are not permitted to “contract out” the consumer guarantees, they should ensure that the contract includes an express provision that limits its liability should a breach of a consumer guarantee occur and a consumer seeks to enforce its rights.

## Contact

For more information please contact:

**Elizabeth Moran**

Solicitor

T +61 422 452 023

E e.moran@pln.com.au

**Lauren Moscovis**

Paralegal

T +61 415 213 232

E l.moscovis@pln.com.au



This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.