



Australian Consumer Law sets out a range of rights and responsibilities that apply to purchases of goods or services in Australia.

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These rights are known as **Consumer Guarantees**.

Consumer Guarantees ensure that the goods and services purchased by Australian consumers meet quality and performance standards, and match the description provided by the seller.

The ACL is contained within the *Competition and Consumer Act 2010* available at the following link:
<https://consumer.gov.au/legislation/current-legislation>

When do the Consumer Guarantees apply?

Consumer guarantees apply to all purchases of goods and services in Australia where:

1. The goods/services are the kind of goods/services usually purchased for personal or domestic use, rather than a business purchase; **or**
2. The price of the goods/services was less than \$100,000; **or**
3. The goods are a vehicle or trailer purchased to transport goods on public roads.

In other words, the purchase must fit into at least one of the above categories in order to attract the protection of the ACL consumer guarantees.

Consumer Guarantees do not apply to private sales (e.g. Facebook Marketplace transactions).

What are the Consumer Guarantees?

Businesses must ensure that **goods** sold to consumers:

- Are of acceptable quality
- Are fit for purpose
- Match the description provided by the seller
- Match any sample or demonstration model shown by the seller

Businesses must ensure that **services** sold to consumers:

- Are rendered with due care and skill
- Are reasonably fit for purpose
- Are supplied within a reasonable time

Can Consumer Guarantees be avoided by retailers?

Importantly, the ACL consumer guarantees exist completely independently of any terms and conditions or warranties imposed by the seller. In other words, retailers cannot exclude or limit their responsibility for ensuring goods and services meet the consumer guarantees, even if a contract or agreement suggests otherwise.

This has been confirmed by courts several times, including in the case of [ACCC v Mazda Australia Pty Ltd \[2021\] FCA 1493](#). In that case, Mazda Australia was found to have made misleading representations to consumers about their rights under the ACL, including representations that consumers were not entitled to refunds or replacement vehicles for major failures.

Breaches of Consumer Guarantees

If a consumer guarantee is breached, the consumer may bring an action against the **supplier** of the defective goods/services. The consumer does not need to pursue the **manufacturer** directly.

The remedies available to the consumer depends on the severity of the defects.

A breach of a consumer guarantee is a **major failure** where:

- A reasonable consumer fully acquainted with the nature of the goods/services purchased

would not have purchased those goods/services; **or**

- The goods/services are not fit for purpose and cannot be remedied to make them fit for purpose easily and within a reasonable time; **or**
- The goods depart in one or more significant respects from the description/sample or demonstration model they were supplied by; **or**
- The goods are unsafe, or the services are supplied in a way that is unsafe.

Where a consumer can establish a major failure of goods/services, the consumer will be entitled to elect a remedy. Available remedies include repair/replacement/refund, cancellation of the service and compensation for reasonably foreseeable loss resulting from the defect.

If the defect is not a major failure, but the consumer can still establish that a minor failure exists, the retailer is entitled to elect which remedy to provide the consumer with (i.e. repair, replacement or refund).

Where to start?

If you have purchased defective goods or services in Australia, we suggest you contact the supplier at first instance.

The supplier will generally need to inspect the defect in order to engage in negotiations with you.

If an appropriate resolution cannot be reached by negotiation, you may need to obtain an independent expert report in support of your position, for example, an independent mechanic's report for defects to a car.

If the issue cannot be resolved through these informal avenues, we suggest you contact either the Australian Competition and Consumer Commission (ACCC) for assistance, or contact Andersons for advice on the next steps available to you.

If you've been sold defective goods or services and can't get the problem resolved, Andersons' commercial litigation team can help you enforce your rights.

Call us on **8238 6666** or email enquiry@andersons.com.au