



Refunds, Returns and Consumer Guarantees

Robert Brandon

brandonlaw

Important Disclaimer

My opinion is neither copyrighted nor is it in any way *intellectual* property, and it's price competitive.

If you like, I'll trade for one of yours.

Australian Consumer Law (ACL)

- National consumer law
- *Competition and Consumer Act 2010*
- Australian courts and tribunals can enforce the ACL
- Consumer guarantees - similar principles to *Trade Practices Act* and State based laws



Complaints to ACCC—by key issue

Issues	Small business	
	2014–15 financial year	2013–14 financial year
Consumer Law Related Issues		
Misleading conduct/false representations	2518	1560
Product safety	1667	210
Consumer guarantees	1320	959
Unconscionable conduct	247	77
Unsolicited goods & services	123	82
Other Australian Consumer Law (ACL) issues	281	347
Competition Related Issues		
Misuse of market power	367	161
Exclusive dealing	324	99
Other competition issues	302	95

What do the consumer guarantees cover?

Goods are covered where they are sold:

- ***‘in trade or commerce’*** - in the course of a supplier’s or manufacturer’s business or professional activity

And bought by a ***‘consumer’*** - a person who buys:

- any type of goods or services costing up to \$40,000;
- a vehicle or trailer used mainly to transport goods;
- goods or services costing more than \$40,000 - normally used for personal, domestic or household



'No Refund' signs and other statements

Signs that are unlawful:

- *'No refunds' including 'No refunds on sale items'*
- *'Exchange or credit note only for return of sale items'*

Must not tell a consumer that a consumer guarantee:

- does not exist
- may be excluded, or
- may not have a particular effect

'No Refund' signs and other statements



The maximum civil penalty for false or misleading information is

- \$1.1 million for a body corporate and
- \$220,000 for an individual.

Criminal penalties may also apply

Nine Consumer Guarantees on Goods

1. The goods will be of ***acceptable quality***:
 - *fit for the purpose*
 - *acceptable appearance and finish*
 - *free from defects*
 - *must be safe*
 - *must be durable*
2. The goods will be ***fit for a specified purpose***
ie. goods will be able to do the job *you were told* they can do



Nine Consumer Guarantees for Goods



3. Any *description of the goods is accurate*
4. The goods will *match the sample* that might be shown or described
5. The manufacturer guarantees that spare parts and repair facilities will be available for a reasonable period

Nine Consumer Guarantees for Goods

6. The supplier and the manufacturer guarantee that *express warranties will be honoured*
7. The supplier guarantees that they *have the right to sell the goods*
8. The supplier guarantees *undisturbed possession* of the goods
9. The supplier guarantees that the goods they are selling are *free from undisclosed securities*

When Consumer Guarantees are not met

The type of remedy will depend on whether the problem is classed as either:

- a *minor failure*; or
- a *major failure*

A '*minor failure*' for goods as anything that is not classed as major!

When Consumer Guarantees are not met



A '*major failure*' is when:

- The consumer would not have bought the goods
- The goods are significantly different from the description
- The goods are substantially unfit for their normal purpose
- The goods are substantially unfit for a purpose told the supplier
- The goods are unsafe

Dealing with Problems - Remedies

For a *major failure*, the consumer can:

- Reject the goods and get a refund
- Reject the goods and get an identical replacement, or one of similar value if reasonably available
- Or keep the goods and claim compensation for the drop in value caused by the problem

Dealing with Problems - Remedies

For a *minor failure*, the supplier can:

- Provide a refund
- Replace the goods
- Repair the goods
- Or fix the title to the goods, if this is the problem

Dealing with Problems – Consequential Loss

A consumer can claim compensation for consequential loss where they:

- could have been expected to result from a failure to meet a consumer guarantee; and
- are *reasonably foreseeable*



Dealing with Problems – Consequential Loss



Suppliers do not have to pay for:

- problems unrelated to their conduct or the goods they supplied; and
- losses caused by something completely independent of the supplier, after the goods left their control

Dealing with Problems – Consequential Loss

Putting a *value* on consequential loss?

- Hard to put a dollar figure on consequential loss
- Compensation should put the consumer in the position they would have been in if the goods or services had met the consumer guarantees

Receipts and 'proof of purchase'

- A consumers need to show that they obtained the goods or services from that supplier or manufacturer
- The same applies to people who received the goods as a gift
- Best proof of purchase is a tax invoice or receipt

Receipts and 'proof of purchase'

Other forms of evidence:

- a lay-by agreement
- a confirmation or receipt number provided for a telephone or internet transaction
- a credit card statement
- a warranty card showing the supplier's or manufacturer's details and the date or amount of the purchase
- a serial or production number linked with the purchase on the supplier's or manufacturer's database

Practice Areas

- Corporate Law
- Business Formation and Structuring
- Property and Conveyancing
- Mergers and Acquisitions
- Intellectual Property
- Estate Planning and Succession
- Litigation and Dispute Resolution

www.brandonlaw.com.au