

# Consumer Guarantees and not-for-profit organisations

## Legal information for community organisations

### This fact sheet covers:

- ▶ what are Consumer Guarantees?
- ▶ when is a not-for-profit organisation subject to the Consumer Guarantees?
- ▶ what about supplying and receiving gifts?
- ▶ when is a not-for-profit organisation protected by the Consumer Guarantees?
- ▶ what happens when goods or services don't meet the requirements of the Consumer Guarantees?



### Disclaimer

This fact sheet provides general information about Consumers Guarantees under the Australian Consumer Law. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

Businesses, including not-for-profit organisations, must meet a set of basic standards when they supply products and services in Australia.

These basic standards are known as 'Consumer Guarantees' and are included in the Australian Consumer Law (**ACL**).

**Consumers automatically receive these Consumer Guarantees when they buy goods or services, and these protections cannot be excluded, restricted or modified by the terms of a contract.**

The Consumer Guarantees place obligations on manufacturers and suppliers of goods, and providers of services.

They also apply where a single person both supplies goods and provides services – for example, a bundled good (such as a fridge), and service, (such as installation of the fridge).

The Consumer Guarantees provide corresponding rights to Consumers who buy, hire or lease goods, or receive those services.



## What are Consumer Guarantees?

The Consumer Guarantees are a comprehensive set of Consumer rights that automatically apply when Consumers buy certain goods or services in Australia. The Consumer Guarantees can't be limited or excluded by contract.

Consumer Guarantees apply for a reasonable time and are in addition to any warranties that manufacturers or suppliers may provide for a good. Consumer Guarantees may therefore apply after those warranties expire.

If a supplier, manufacturer or service provider fails to meet a Consumer Guarantee, the Consumer will have rights to a remedy under the ACL. The precise remedy will depend on whether the failure to meet the relevant requirement is 'major' or 'minor'. Possible remedies include the right to repair (at no cost), replacement, refund, compensation for damages and loss, or being able to cancel a faulty service.



### Note

The guarantees and rights under the Consumer Guarantees are compulsory and apply regardless of whether you offered them to the customer at the point of sale, or you sought to limit or exclude their operation in a contract.

## Goods and services covered by Consumer Guarantees

The Consumer Guarantees only apply to goods and services purchased by a 'Consumer'. The ACL defines 'Consumer' to include a person who acquires:

- goods or services costing up to \$100,000 (where multiple goods or services are purchased, the individual unit cost of the goods or services is counted)
- goods or services costing more than \$100,000 which are normally used for personal, domestic or household purposes, and
- any vehicle or trailer used to transport goods on public roads (irrespective of cost)

Goods or services costing more than \$100,000 that are normally used for business use will not be covered.



### Consumer

In this fact sheet, where we refer to a 'Consumer', we refer to a party who acquires goods or services as described above.

Second-hand, leased or hired goods are also covered by most of the Consumer guarantees.



### More information

See the Australian Competition and Consumer Competition website for:

- more information on [Consumer rights and guarantees](#), and
- a [guide for businesses](#)

## How do Consumer Guarantees apply to not-for-profit organisations?

The Consumer Guarantees have the following implications for not-for-profit organisations:

- if a not-for-profit organisation supplies goods or services to a Consumer 'in trade or commerce', the organisation will owe obligations under the Consumer Guarantees, and
- if a not-for-profit organisation buys goods or services as a Consumer 'in trade or commerce', the organisation will be protected by the Consumer Guarantees



### Example

As part of its fundraising activities, a not-for-profit organisation sells reusable takeaway coffee cups manufactured overseas to raise funds for local community sporting programs. Some of the coffee cups are faulty and leak.

Depending on the nature of the fault, consumers would be entitled to repair (if feasible) or replacement of their takeaway coffee cups, or a refund.

## When is a not-for-profit organisation subject to the Consumer Guarantees?

The Consumer Guarantees apply to not-for-profit organisations that:

- manufacture or supply goods or provides services to Consumers, and
- operate in trade or commerce



### Trade or commerce

The phrase 'trade or commerce' is not defined in the ACL and has been given a wide meaning by the courts. The conduct must be of a commercial nature, and includes business or professional activities.

Where a not-for-profit organisation engages in a fundraising activity involving the supply of goods or services in an organised, continuous and repetitive way, it will likely be operating in trade or commerce.



### Note

By supplying goods or services, or manufacturing goods, a not-for-profit organisation will be engaging in trade or commerce, even though it is not operating for profit.

## What are the Consumer Guarantees in relation to 'suppliers' of goods and services?

A not-for-profit organisation will be a 'supplier' under the ACL and owe obligations under the Consumer Guarantees if it:

- supplies or re-supplies goods to Consumers by sale, exchange, lease, hire or hire-purchase, or
- provides services to Consumers



A not-for-profit organisation will not be considered a supplier in relation to the supply of donations, unless the donation is for promotional purposes.

### Supplying goods

The Consumer Guarantees require suppliers to guarantee that the goods they are supplying to Consumers:

- are of acceptable quality, including being fit for all purposes for which they are commonly supplied, and being acceptable in appearance and finish
- are free from defects, and are safe and durable
- match any descriptions of those goods given by a salesperson, on packaging and labels, or in promotions or advertising
- match any demonstration model or sample
- are reasonably fit for any disclosed purpose
- have a reasonable availability of repairs and spare parts
- are not encumbered with security interests or charges, unless otherwise disclosed
- can be sold with clear title, unless otherwise disclosed, and
- will not be repossessed, except in limited circumstances

Suppliers are also required to guarantee any express warranties made in relation to the goods.

Regarding the supply of second-hand goods – the goods will be covered by the guarantee, but the age, price and condition of the goods must be considered.

The acceptable quality guarantee also applies to imperfect goods or 'seconds'. Any defects must be specifically drawn to the Consumer's attention before the Consumer purchases the goods. For example, if a Consumer wishes to purchase a dress from a charity shop and the retail assistant informs the Consumer before purchase that the dress is stained, the dress will still be taken to be of acceptable quality.



#### Note

Second-hand goods, imperfect goods or 'seconds' must have any defects specifically disclosed to the consumer before they purchase the goods.

### Supplying services

The Consumer Guarantees require suppliers to guarantee that the services they are supplying to Consumers:

- 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)



## What are the Consumer Guarantees in relation to ‘manufacturers’ of goods?

A not-for-profit organisation will be a ‘manufacturer’ under the ACL if it grows, produces, assembles, processes, imports (if the manufacturer of the goods does not have a place of business in Australia) or applies its name, brand or mark to goods, or otherwise holds itself out as the manufacturer of the goods.

### Manufacturing goods

The Consumer Guarantees require manufacturers to guarantee to their Consumers that the goods they are manufacturing:

- are of acceptable quality, including being fit for all purposes for which those goods are commonly supplied, and being acceptable in appearance and finish
- are free from defects, and are safe and durable
- match any descriptions of those goods given by the manufacturer
- have a reasonable availability of repairs and spare parts, and
- will comply with any express warranties given by the manufacturer in relation to the goods

## What about gifts?

Gift recipients have the same rights and are entitled to the same remedies as if they had bought the goods or services themselves.

Where a not-for-profit organisation supplies donations, the ACL will not apply, unless the donations are supplied for ‘promotional purposes’. In the circumstances, the Consumer may instead seek a remedy from the manufacturer of the good or the company who supplied the goods to the not-for-profit organisation.

If a not-for-profit organisation receives donated goods, that organisation can enforce the Consumer Guarantees against the supplier or manufacturer of the goods, rather than the donor of the goods.



### Example

If a not-for-profit organisation purchased mobile phones for donation to refugees, the recipients of the mobile phones could not enforce the Consumer Guarantees against the not-for-profit organisation as a supplier, but they could enforce the guarantees against the mobile phone manufacturer and the company from which the not-for-profit organisation purchased the mobile phones.



### Caution

The Consumer Guarantees apply to goods or services that are donated or gifted if they are provided for ‘promotional purposes’.

For example, a not-for-profit 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.



## When is a not-for-profit organisation protected by the Consumer Guarantees?

When a not-for-profit organisation buys goods or services as a Consumer, the not-for-profit organisation will have rights and remedies available under the Consumer Guarantees.

## What happens when goods or services don't meet the requirements of the Consumer Guarantees?

When a supplier or manufacturer fails to meet their obligations under the Consumer Guarantees, a Consumer may take action against them.

Before taking action, a Consumer will generally need to show 'proof of purchase'. Proof of purchase may be shown by a tax invoice, receipt, gift receipt, bank statement or other form of evidence.

The options available to a Consumer seeking to take action against a supplier or manufacturer will 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

Whether the consumer, supplier, manufacturer or service provider can choose the remedy will depend on whether the breach is 'major' or 'minor'.

### Minor failure

A failure to meet a Consumer Guarantee will be a 'minor' if the failure can be fixed within a reasonable time.



### Example – minor failure

An example of a minor failure might be if your organisation bought T-shirts for workers that are missing buttons. The T-shirts will still be fit for purpose and the missing buttons could be easily provided and applied.

### Major failure

A failure to meet a Consumer Guarantee with goods will be 'major' if:

- a reasonable Consumer would not have purchased the goods if they had been fully aware of the failure
- the goods significantly 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 can't easily be made fit for that purpose within a reasonable time
- the Consumer informed the supplier that they required the goods for a particular specified purpose, the goods are substantially unfit for that purpose and the goods can't easily be made fit for that purpose within a reasonable time, or
- the goods are unsafe

There is a major failure with a service if:

- 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 can't easily be made fit for that purpose within a reasonable time
- the Consumer informed the supplier that they required the services for a particular specified purpose, the services and any resulting product are substantially unfit for that purpose, and can't 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 can't reasonably achieve that result, and can't attain that result easily and within a reasonable time, or
- the supply of services creates an unsafe situation



### Example – major failure

An example of a major service failure might be if your organisation paid for an electrician to install safety switches in residential houses that your organisation uses to care for clients. If the safety switches don't work and spark when pressed they are unsafe.

There will also be a major failure where there are multiple minor failures which are not remedied.

## Remedies available against a supplier of goods or services

Under the Consumer Guarantees, if the failure with goods or services is 'minor' (and the failure is not major), the supplier can choose whether to:

- replace or repair the goods
- have the service re-supplied, or
- provide a refund

If the failure with goods or services is 'major', the consumer can reject the goods or services and:

- request a refund or replacement, or
- recover compensation for any drop in value of the goods or services

If the problem causes the Consumer to suffer other loss or damage, they also have a right to compensation in addition to getting a repair, replacement, or refund.

### Remedies against a supplier of goods

#### Remedies for minor failures

The supplier can choose to:

- repair the goods
- replace the goods, or
- provide a refund,

within a reasonable time.

If the supplier refuses or fails to fix the problem, the Consumer can:

- repair the goods themselves and recover all reasonable costs incurred in repairing the goods, or
- notify the supplier that they have rejected the goods and request a refund or replacement

#### Remedies for major failures

The Consumer can reject the goods (return them) and choose a:

- refund, or
- replacement (or one of similar value if reasonably available)

The Consumer can keep the goods and recover compensation for any reduction in value of the goods arising from the major problem.



## Remedies against a supplier of services

### Remedies for minor failures

The Consumer can ask the supplier to rectify the problem with the services within a reasonable time.

If the supplier refuses or fails to fix the problem, the Consumer can:

- have the services rectified and recover the reasonable costs of rectifying the problem with the services and any consequential loss or damage, or
- terminate (cancel) the contract for the supply of services and request a refund for any part of the service not consumed

### Remedies for major failures

The Consumer can terminate (cancel) the contract for the supply of services and:

- request a refund for any part of the service not consumed, or
- seek a refund for money already paid

The Consumer can seek compensation from the supplier for any reduction in the value of the services arising from the major failure.

The Consumer can keep the contract and negotiate a reduced price for the drop in value of the service – this may mean asking for some of your money back if you've already paid.

## Remedies available against a manufacturer of goods

A Consumer may choose to seek a remedy from the manufacturer of goods, 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



### Caution

If you are having difficulty with a supplier, consider contacting the [Australian Competition and Consumer Commission](#) or your state or territory consumer protection agency. You can find a list of them on [the ACCC's website](#).



### Case example – ACCC v Bunavit Pty Ltd

In 2016, the Federal Court ordered a Harvey Norman franchisee, Bunavit Pty Ltd, to pay \$52,000 in penalties for making false or misleading representations regarding consumer guarantee rights.

Sales representatives misled consumers by representing that:

- Bunavit had no obligation to provide a remedy and the consumers were required to pursue the manufacturer's warranty directly with the manufacturer, and
- the consumers were required to pay for some or all of the repair costs if they pursued the warranty through Harvey Norman

Harvey Norman was ordered to pay \$52,000 for making false or misleading representations about consumer guarantees.