

# Consumer Guarantees and not-for-profit organisations

Legal information for community organisations

## This fact sheet covers:

- ▶ what are the Consumer Guarantees?
- ▶ how do they apply to not-for-profits?
- ▶ when are not-for-profits consumers?
- ▶ when are not-for-profits manufacturers or suppliers?
- ▶ when will a consumer have a remedy under the Consumer Guarantees?

The Australian Consumer Law (ACL) is a national law that aims to protect consumers and ensure fair trading throughout Australia. It includes a set of automatic guarantees that provide consumers rights to remedies when their goods or services do not meet the standards set by the guarantees.

The ACL contains some very important protections for consumers, called 'Consumer Guarantees' (Consumer Guarantees):

- the Consumer Guarantees place obligations on manufacturers and suppliers of goods and providers of services, such as organisations that sell goods, and organisations that perform a service for a fee, and
- the Consumer Guarantees also give rights to the consumers who buy those goods or receive those services.

## What are the Consumer Guarantees?

The Consumer Guarantees are guarantees that automatically apply when consumers buy certain goods and/or services in Australia. If a supplier and/or a manufacturer do not meet the standards set by the guarantees, then the consumer has rights to a remedy under the ACL.

The guarantees and rights under the Consumer Guarantees are compulsory. This means they cannot be changed, limited, 'contracted out' or excluded.

### EXAMPLE

A supplier cannot display a sign that states 'no refunds given' or 'exchange or credit note only for return of sale items'.



The Consumer Guarantees only apply to Consumer Guarantee Goods and Services (**CG Goods and Services**) which include:

- goods and services bought on or after 1 January 2011 (a statutory warranty scheme applies to good purchased before that date)
- any goods or services costing up to \$40,000 (the individual unit cost of the goods or services is counted, not the total cost if multiple goods or services are purchased)
- goods or services costing more than \$40,000, which are normally used for personal, domestic or household purposes, and
- any vehicle or trailer.

The supply of second hand goods will be subject to the Consumer Guarantees if it meets the requirements of the CG Goods and Services above.

## How do the Consumer Guarantees apply to not-for-profits?

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The Consumer Guarantees have two implications for not-for-profit (NFP) organisations:

- if a NFP is involved in supplying goods or services ‘in trade or commerce’, it may be subject to the Consumer Guarantees, and
- when a NFP buys CG Goods and Services, it will be also be protected by the Consumer Guarantees.

## When is a NFP subject to the Consumer Guarantees under the ACL?

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The Consumer Guarantees will apply to a NFP when it:

- operates in trade or commerce, such as when the NFP carries out a business or professional activity, and
- manufactures or supplies goods or provides services.

### NOTE

By manufacturing or supplying goods or services, an NFP will still 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 NFP is a 'supplier' under the ACL, if it:

- supplies goods (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, or
- provides services.

The Consumer Guarantees require suppliers to make guarantees to a consumer that:

### **the goods they are supplying:**

- are of acceptable quality
- match the description given to those goods and any sample
- are reasonably fit for any specified purpose
- are not encumbered with security interests, unless otherwise disclosed
- are described accurately
- can be sold with clear title, unless otherwise disclosed
- will not be repossessed, except in limited circumstances
- the services they are providing: will be provided with due care and skill and are reasonably fit for any specified 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 NFP is a 'manufacturer' under the ACL if it produces, assembles, imports or has its name on goods.

The Consumer Guarantees require manufacturers to make guarantees to a consumer that:

### **the goods they manufacture:**

- are of acceptable quality
- match descriptions, and
- have a reasonable availability of repairs and spare parts.

Goods and services must meet the mandatory standards in the Consumer Guarantees. The applicable standard can take into account the age, price and condition of the good or service. However, defects (for example a dent in a boxed appliance) would need to be pointed out to a consumer for the quality standard to not apply in respect of the dent.

## EXAMPLE

Second-hand goods or goods sold as 'seconds' must have the defects specifically disclosed to the consumer before they purchase the goods.



If a product or service fails to meet the Consumer Guarantees, the NFP may have to repair the product, or refund what the consumer paid for the product or service.

## What about Gifts?

If an organisation supplies gifts or donations (eg. food hampers or donated mobile phones), that organisation does not necessarily have obligations to the consumer of the gift or donation, under the ACL.

## EXAMPLE

If an organisation purchased mobile phones to give to refugees for free, the refugees would not be able to enforce the Consumer Guarantees against the organisation as a supplier, but they could enforce the guarantees against the manufacturer of the phones, as well as, the company that the organisation purchased the phones from (if this is not the same as the manufacturer)



Under the ACL, the recipient of a gift has the same rights as a consumer who originally purchased the goods or services. If an organisation received donated goods, then that organisation can enforce the Consumer Guarantees against the supplier (rather than donor) or the manufacturer of the goods.

## CAUTION

The Consumer Guarantees apply to goods or services that are donated or gifted if they are provided for 'promotional purposes'. For example if an NFP gives out branded merchandise at a fundraising event. In these cases, a donating NFP will be considered to be a supplier.



## When is a NFP protected by the Consumer Guarantees?

If a NFP buys CG Goods and Services, then it is a 'consumer' under the ACL, as long as the purchase is in trade or commerce (i.e. the NFP pays for them). This means that a NFP will have available to it the rights and remedies given to consumers under the Consumer Guarantees.

# What happens when a goods or service doesn't meet the Consumer Guarantees standards?

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Where goods or services fail to meet the mandatory standards in the Consumer Guarantees, there are a number of actions a consumer can take against a supplier or manufacturer.

However, before making a claim against the supplier or the manufacturer, a consumer is usually required to prove that the product or service was purchased from the supplier or manufacturer, by showing a tax invoice, receipt or gift receipt.

The options available to a consumer 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'.

Under the Consumer Guarantees, a consumer can have their product replaced or repaired, or their service re-supplied. In some circumstances, the consumer can also sue the supplier or manufacturer in court, for damages.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has resources on the following topics:

- ✔ [Fundraising](#)
- ✔ [Events](#)
- ✔ [Communications and Advertising](#)

## Legislation

- ✔ [Competition and Consumer Act 2010 \(Cth\)](#)

## Australian Government guidance

- ✔ [Consumer Guarantees: A guide for business and legal practitioners](#)
- ✔ [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

## Australian Competition and Consumer Commission

- ✔ [www.accc.gov.au/consumers](http://www.accc.gov.au/consumers)

The ACCC is Australia's competition regulator and administers the *Competition and Consumer Act 2010* (Cth).

The ACCC offers advice to consumers about how to resolve problems or make a complaint.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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