

AUSTRALIAN CONSUMER LAW – SUPPLIER AND MANUFACTURER OBLIGATIONS

Suppliers and manufacturers each have Consumer Guarantee obligations under the Australian Consumer Law (ACL), regardless of whether a supplier or manufacturer has provided a warranty against defects in relation to the goods. When an issue arises with a good the consumer may approach either the supplier or manufacturer of the good to seek a remedy. Additionally, the supplier has a right of indemnity against the manufacturer in some circumstances. This fact sheet provides general information on the multi layered application of the consumer guarantees to suppliers and manufacturers and the supplier's right of indemnity against the manufacturer.

Brief Overview of Consumer Guarantees and Warranties

The ACL provides statutory guarantees relating to the supply of goods and services to consumers (**Consumer Guarantees**). Both suppliers and manufacturers carry Consumer Guarantee obligations under the ACL. These are statutory guarantees available to the consumer that cannot be contracted out of.

For more information regarding Consumer Guarantees and the application of Consumer Guarantees please refer to our fact sheet "Australian Consumer Law – Consumer Guarantees".

A warranty is a promise made by the supplier or manufacturer to the consumer, which operates as a contract between the consumer and the person who gives the warranty. Importantly, the consumer guarantees will continue to apply when a warranty is in place in relation to the goods regardless of whether the warranty period has expired. Additionally, a remedy may be available under a consumer guarantee even where the warranty is assessed as not providing a remedy (as the warranty may be more restrictive in its terms).

For more information regarding the simultaneous application of Consumer Guarantees and warranties please refer to our fact sheet "Australian Consumer Law – Warranties and Consumer Guarantees".

Types of Remedies

If a consumer guarantee has not been met, then a consumer may have the good repaired, replaced or refunded and may in some cases seek compensation. Remedies for major failures may also be available.

For more information regarding available remedies please refer to our fact sheet "Australian Consumer Law – Consumer Guarantees".

In relation to a warranty, the consumer may also seek any additional of remedy available under the terms and conditions of the warranty.

Assisting the Consumer

Whether the manufacturer or supplier assists the consumer with the remedy depends on who the consumer approaches for a remedy.

If the consumer approaches the supplier and the supplier has an obligation under a consumer guarantee, then the supplier should assist the consumer regardless of whether there is a manufacturer's warranty in place or whether the manufacturer also has an obligation under the consumer guarantee (note that in relation to consumer guarantees the supplier may have a right of indemnity against the manufacturer (see below)).

At the same time, if the consumer approaches the manufacturer for assistance, and the manufacturer has an obligation under a consumer guarantee, then the manufacturer should assist the consumer. This is further clarified in the table provided below.

Where the supplier of goods has an obligation under the consumer guarantee, then the supplier should assist the consumer and not redirect the consumer to the manufacturer. Also, the supplier may assist the consumer with a claim under a manufacturer's warranty. However, if the consumer is not satisfied with this and/or asks the supplier to provide the remedy, then the supplier has an obligation to provide a remedy. On a practical level, the supplier may need to send a good away to assess whether the consumer is eligible for a remedy. However, as the supplier has obligations under the ACL that are separate to the manufacturer's obligations and the supplier has a right of indemnity against the manufacturer in some circumstances, it is inappropriate for a manufacturer to require a supplier to obtain approval to provide a remedy to a consumer or for the supplier to seek such approval from the manufacturer. Your words should also reflect these actions so that it is important not to use words to the effect that you will 'seek the approval of the manufacturer' or 'find out from the manufacturer whether you can provide a remedy'.

Indemnity

The supplier has a right of indemnity against the manufacturer under the ACL where the supplier has incurred costs in relation to the failure to meet the following consumer guarantees:

- the consumer guarantee as to acceptable quality (ACL section 54);
- the consumer guarantee as to fitness for a disclosed purpose, which is made known by the consumer to the manufacturer either directly or through the supplier (ACL section 55);
- the consumer guarantee in relation to the description applied to the product by or on behalf of the manufacturer (or with the express or implied consent of the manufacturer) (ACL section 56).

In certain circumstances the supplier also has a right of indemnity against the manufacturer if the supplier is liable for loss or damage in relation to particular consumer guarantees.

If the supplier seeks to enforce the right of indemnity against the manufacturer the supplier must do so within three years of the earlier of the first day of the discharge of the liability or the day on which the consumer commenced proceedings against the supplier.

Who is a Manufacturer?

The definition of manufacturer under the ACL is quite broad and may encompass suppliers who are not aware they fall within the definition for the purpose of the ACL. Under the ACL a person or entity will be a manufacturer if any of the following circumstances applies to the person or entity, the person or entity:

- assembles, processes, produces, extracts or grows the good;
- holds themselves out to the public as the manufacturer of the good or allows another person/entity (supplying or promoting the supply of the good) to hold them out as the manufacturer of the good;
- allows their name to be placed on the good, including the name of the business or trademark of the person or business; or
- imports the good into Australia where the person/entity is not the manufacturer of the good and, when the goods are imported, the manufacturer of the goods does not have a place of business in Australia (in relation to this, if the goods are imported on behalf of a person/entity, the person/entity is taken to have imported the good).

It is important to note that more than one person can be identified as the manufacturer of a product (the actual or deemed manufacturer), in which event the manufacturers will both be liable as manufacturer under the ACL.

Obligations of Suppliers and Manufacturers

The following table assists to identify who is responsible for providing a remedy to a consumer and when the supplier's right of indemnity against the manufacturer may apply. The table is based on the example of the consumer (who meets the ACL consumer eligibility criteria) seeking a remedy in respect of a good that may not be of acceptable quality (the consumer guarantee provided under ACL section 54).

STEP	CONSIDER	YES	NO
1.	Is there a current warranty?	Both the warranty and the consumer guarantees apply to the circumstances. An assessment should be made of whether a remedy should be provided under the warranty or the consumer guarantee. See note 1 and note 2.	The consumer guarantees apply to the circumstances. An assessment should be made of whether a remedy should be provided under the consumer guarantee. See note 2.
2.	Is the provider of the warranty refusing to provide a remedy under the warranty?	The consumer guarantees continue to apply to the circumstances. An assessment should be made of whether a remedy should be provided under a consumer guarantee. See note 1 and note 2.	Note that even where the remedy is provided the consumer guarantees will continue to apply to the circumstances. See note 1 and note 2.
3.	Is there a warranty with an expired warranty period?	The consumer guarantees apply to the circumstances. An assessment should be made of whether a remedy should be provided under the consumer guarantee. See note 1 and note 2.	The consumer guarantees apply to the circumstances. Refer to step 2.
4.	Manufacturer: Has the consumer approached the manufacturer?	If the consumer has established that they are entitled to a remedy then, the manufacturer is to assist the consumer and provide a remedy. Go to step 5.	If no, and the consumer has approached the supplier go to step 6.
5.	Manufacturer: Does the manufacturer consider that the goods became of unacceptable quality due to: - an act, omission or representation of a person other than the manufacturer (or agent thereof);	The manufacturer must establish that this is case and, only if established, then the manufacturer is not required to provide a remedy.	If no, then the manufacturer is required to provide a remedy.

STEP	CONSIDER	YES	NO
	<ul style="list-style-type: none"> - a cause independent of human control after the goods left the manufacturer; - the consumer causing the goods to become of unacceptable quality or failing to take reasonable steps to prevent the good becoming of unacceptable quality; or - the goods being damaged due to abnormal use? 		
6.	<p>Supplier:</p> <p>Has the consumer approached the supplier for a remedy where the supplier supplied the good to the consumer?</p>	<p>If the supplier has supplied the consumer with the good <u>and</u> consumer has established that they are entitled to a remedy, then the supplier is to assist consumer and provide a remedy.</p> <p>Go to step 7</p> <p>The supplier may have a right of indemnity against the manufacturer.</p> <p>Refer to step 8.</p>	<p>If the supplier did not supply the good (for example, the good was a customer supplied part), then the consumer is unlikely to be entitled to a remedy in respect of the good.</p> <p>However, if the consumer establishes that another consumer guarantee was not met, such as the consumer guarantee that services are provided with due care and skill, then the consumer is likely to be entitled to a remedy. In which event an assessment should be made of whether a remedy should be provided under that consumer guarantee.</p> <p>See note 2.</p>
7.	<p>Supplier:</p> <p>Does the supplier consider that the goods became of unacceptable quality due to:</p> <ul style="list-style-type: none"> - the consumer causing the goods to become of unacceptable quality or failing to take reasonable steps to prevent the good becoming of unacceptable quality; or - the goods being damaged due to abnormal use? 	<p>The supplier must establish that this is the case and, only if it is established, then the supplier is not required to provide a remedy.</p>	<p>If no, then the supplier must provide a remedy.</p> <p>Go to step 8.</p>
8.	<p>Indemnity:</p> <p>Can the supplier establish that there is a defect with the good for which the manufacturer is responsible?</p>	<p>If the supplier can establish that the manufacturer is responsible for the defective good, then the manufacturer should reimburse the supplier for the supplier's cost in providing the remedy.</p>	<p>The manufacturer is not required to indemnify the supplier if it is not established that the manufacturer is responsible for the defect with the good or the manufacturer establishes that:</p>

STEP	CONSIDER	YES	NO
			<ul style="list-style-type: none"> - the goods became of unacceptable quality due to an act, omission or representation of a person other than the manufacturer (or agent thereof); - a cause independent of human control after the goods left the manufacturer; - the consumer causing the goods to become of unacceptable quality or failing to take reasonable steps to prevent the good becoming of unacceptable quality; or - the goods being damaged due to abnormal use.
<p>Note 1 – If a remedy is not available under a warranty it may still be available under a consumer guarantee for the reason that the consumer guarantee may have a broader application than the warranty.</p> <p>Note 2 – For general guidance when the consumer guarantees may apply refer to our fact sheet “Australian Consumer Law – Consumer Guarantees”.</p> <p>NOTE: This table is based on the example of the consumer (who meets the ACL consumer eligibility criteria) seeking a remedy in respect of a good that may not be of acceptable quality (the consumer guarantee provided under ACL section 54).</p>			

Need assistance?

Industry Legal Group provide members with information and advice on consumer law matters, including assistance addressing consumer guarantee issues. Assistance extending beyond general advice will be charged on a fee for service basis and we will provide you with a fee estimate on request or within a general advice provided to you. AAAA members have access to a discounted rate for our services. Please contact Industry Legal Group on **1300 369 703** or aaaa@industrylegalgroup.com.au if you have any questions relating to this fact sheet or to discuss any consumer law issues that arise.

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