



ACT Law Society Essentials Series

Australian Consumer Law

Presented by Care Consumer Law

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OUR DETAILS

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CARE PROGRAMS

**Care
Financial
Counselling**

**Care
Community
Loans (No
Interest)**

**Care
Consumer
Law**

**Care
Community
Development
& Education**

CARE CONSUMER LAW

Care Consumer Law's key areas of law include:

- **Credit Law:** credit cards, bank loans, car finance, payday lending and buy-now-pay-later products, private childcare and school fees, online courses, telco and utility, consumer leases, insurance products
- **Australian Consumer Law:** related to provision of goods and services from a business or a tradesperson)
- **Financial Abuse** – it is a form of family violence and happens when your partner or a family member controls your money without your permission
- **Debts recovery** : private childcare and school fees, online courses, gym membership, strata debts etc
- **Defined Benefits Information Service (DBIS):** The DBIS provides information, legal advice, and support to people about accessing the defined benefits available under the MAI Scheme. Please note, however, that we are not able to assist in conciliation conferences or provide representation services on Motor Accident Injuries disputes.

AUSTRALIAN CONSUMER LAW

Competition and Consumer Act 2010 (Cth)

- Commenced 1 January 2011, renaming the *Trade Practices Act 1974*
- Establishes national law for consumer protection and fair trading
- The Australian Consumer Law (ACL) is Schedule 2 of the Act.
- All states and territories have enacted laws applying the ACL as a law in their respective jurisdictions.
- In the ACT, section 7 Fair Trading (Australian Consumer Law) Act 1992 (ACT) applies the ACL as a territory law and may be cited as the Australian Consumer Law (ACT)

PREVIOUS LAW

- Consumer rights implied into the contract.
- Breach relied on the general law of contract.
- Consequences and remedies depended on whether the terms were conditions or warranties.

CURRENT LAW

- Statutory minimum standards apply as distinct rights under the ACL.
- Consequences and remedies for breach are governed by the ACL.
- General law of contract not excluded by the ACL – can still claim a breach of contract.

WHO DOES THE ACL APPLY TO:

- The ACL applies to transactions where a consumer purchases goods or services from a supplier.
 - **Supplier** = anyone, including a trader, retailer or service provider, who, in trade or commerce, provides goods and services to a consumer.
 - **Trade and commerce** = any business or professional activity, including activities not intended to make a profit.

| | |
|---|--|
| A TV purchased from JB HiFi Group Pty Ltd | ✓ This is a consumer transaction |
| A TV purchased from Daisy Simpson at Daisy's home | ✗ This is a <u>private sale</u> not a consumer transaction |

- Generally, a contract must exist between the supplier and consumer for the ACL to apply
 - **Exception:** gift recipients (s.266)

WHO IS A CONSUMER?

A **consumer** is defined by section 3 of the ACL as:

- A person who acquires goods or services that:
 - cost up to \$100,000*, or
 - are of a kind ordinarily acquired for personal, domestic or household use or consumption, regardless of price.
- A person who acquires a vehicle primarily for use in the transport of goods on public roads, irrespective of price, is also a consumer

** if purchased before 1 July, this amount is \$40,000.*

In any proceeding, there is a presumption that a person was a consumer, unless the contrary is established

PROOF OF TRANSACTION

Receipts (s.100 ACL)

- Suppliers must provide proof of the transaction (i.e. a receipt) where the cost is \$75 or more.
 - Where cost is less than \$75 – proof may be requested

Itemised Bills (s.101 ACL)

- A consumer may also request an itemised bill in relation to the supply of services. This must be done within 30 days of the later of:
 - Supply of the service, or
 - Receipt of the bill;
- When the request is made, the supplier must give the consumer the itemised bill within 7 days of the request.

OVERVIEW OF PROTECTIONS UNDER THE ACL

- The ACL includes a variety of protections for consumers, including
 - Prohibitions on certain conduct by suppliers
 - Guarantees about the goods or services
- Consumer rights under the ACL cannot be excluded by contract – any attempt to exclude, restrict or modify the rights provided under the ACL is void s.64

PROHIBITED CONDUCT UNDER THE ACL

Prohibited conduct

- Misleading and deceptive conduct. s.18
- False or misleading representations about goods and services. s.29
- Unconscionable conduct. s.20
- Unconscionable conduct in connection with the supply of goods or services. s.21

CONSUMER GUARANTEES - GOODS

In the supply of goods to a consumer there is a guarantee as to:

- Title. s.51
- Undisturbed possession. s.52 (except against the security holder where the security is disclosed to consumer)
- Undisclosed securities. s.53 (security not disclosed to consumer)
- Acceptable quality. s.54
- Fitness for any disclosed purpose. s.55
- Goods supplied correspond with description. s.56
- Goods supplied correspond with sample or demonstration. s.57
- Repairs and spare parts. s.58 (reasonable period after supply)
- Compliance with express warranties. s.59

CONSUMER GUARANTEES - SERVICES

In the supply of services to a consumer there is a guarantee as to:

- Due care and skill. s.60
- Fitness for a particular purpose. s.61
- Reasonable time for supply. s.62 (if time is not fixed by contract)

Exceptions

- The specific guarantee as to 'Fitness for a Particular Purpose' (s.61) does not apply to the services of a qualified architect or engineer. s.61(4)
- None of the above guarantees apply to services provided under an insurance contract: s. 63(1)(b)

GUARANTEES – GOODS

ACCEPTABLE QUALITY S.54

- Fit for the purposes for which goods of this kind are commonly supplied
- Acceptable in appearance and finish
- Free from undisclosed defects
- Safe
- Durable

These factors should be considered in the context of:

- The nature and price of the goods
- Any statements made on the packaging of the goods
- Any representations made by the supplier or manufacturer, and
- Any other relevant factors relating to their supply

ACCEPTABLE QUALITY S.54

Exceptions:

- Defects or issues drawn to the consumers attention before sale. s.54(4) & (5)
- Consumer does not take care of the goods, and they are damaged by abnormal use: s.54(6)
- Consumer examines the goods, and the examination ought reasonably to have revealed the goods were not of acceptable quality
- Sale by auction

**BAUER v CHAIN REACTION BICYCLES
(AUSTRALIA) PTY LTD ACN 064 818 702; MAYER v CHAIN REACTION
BICYCLES (AUSTRALIA) PTY LTD ACN 064 818 702 (Civil Dispute)
[2024] ACAT 18**

On 18 February 2022, both Bauer and Mayer purchased a Merida eONE SIXTY 700 eMTB electric mountain bike (eMTB or bike) from the respondent for \$8,399 each. In July 2022, they discovered issues with each of the bikes' rear axle and rear frame. The axles could not be removed or installed without force. Bauer complained to the respondent on 2 August 2022 by email and Mayer complained to the respondent on 9 September 2022, also by email. The respondent's mechanic examined the bikes and concluded that there were no issues with either bike. Bauer and Mayer brought the matter to ACAT arguing that the bikes were not of acceptable quality pursuant to s54 of the ACL

OUTCOME

The Tribunal considered the fact that:

- The bikes were not of acceptable quality in breach of s 54 of the ACL
- A reasonable consumer would not have purchased the bikes if they had known about the alleged problems with the rear axle and rear frame
- due to the rear axle issues the bikes would have been unsafe especially as the bikes were used for mountain climbing
- The Tribunal ruled that this was a major failure and order the respondent refund the purchase price and associated costs.

FIT FOR SPECIFIED PURPOSE S.55

GUARANTEE APPLIES IF:

- The supplier makes representations that the goods are fit for that purpose
- Or the goods are being acquired by the consumer for a purpose they have expressly, or by implication, disclosed to the supplier.

EXCEPTION:

- If the consumer did not rely on the supplier's knowledge and skill in deciding whether the goods would serve the indicated purpose or
- They relied on the supplier's knowledge and skill but doing so was unreasonable

GOODS MATCH DESCRIPTION S.56

- Guarantee requires goods to match any description given by a supplier including in an advertisement such as a catalogue or on television.
 - Some examples of common differences include products that are a different colour, size or material to that advertised.

GOODS MATCH SAMPLE S.57

- The Guarantee applies to goods provided based on a sample or demonstration model. These goods must:
 - Match in quality, state or condition
 - Be free from any defects which cannot be determined by examination of the sample or demonstration model
- A supplier must allow the consumer a reasonable time to compare the goods received with the sample that was used to sell them. This does not apply to demonstration models because the supplier may sell these.

REPAIR AND SPARE PARTS S.58

- The manufacturer is required to ensure that repair facilities and parts for the goods are reasonably available for a reasonable period after the goods are supplied.
 - *Reasonable time* is determined in the context of the nature and price of the goods. A 'Reasonable time' may be longer for expensive goods, or goods commonly used for long periods.
- **EXCEPTION:** the manufacturer provides the consumer written notice, at or before the supply of the goods, that the facilities for repair or spare parts would not be available after a specified date.

EXPRESS WARRANTIES S.59

- The supplier or manufacturer must comply with any express warranties they have provided with respect of the goods
- Any warranties provided by a manufacturer or supplier are **additional** to the rights available to consumers under the ACL.

OTHER IMPORTANT INFORMATION

SECONDHAND GOODS

- Consumer guarantees apply to both new and secondhand goods.
- Must consider factors like the product's age, type, and cost.

GOODS PURCHASED VIA AUCTION

- Only guarantees to title, undisturbed possession and undisclosed securities apply

GUARANTEES – SERVICES

DUE CARE AND SKILL S.60

- Suppliers guarantee their services are provided with due care and skill. This means they must:
 - use an acceptable level of skill or technical knowledge when providing the services; and
 - take all necessary care to avoid loss or damage when providing the services

FOR EXAMPLE: You hire a cleaner and they use a product on your wood dining table which strips the stain. A person exercising due care and skill would have noticed the bottle says, 'not suitable for wood' and used a different product.

FIT FOR A PARTICULAR PURPOSE S.61

- Requires the service, and any resulting products, being provided will be reasonably fit for the purpose for which they are required.
- Consumer must make this purpose known to the supplier, either expressly or by implication.

FOR EXAMPLE: Services acquired to build and attach a swing to a backyard tree will not be fit for purpose if it is not designed to support a person's weight

REASONABLE TIME FOR SUPPLY S.62

- This guarantee requires services to be supplied within a reasonable time
- **Exceptions:**
 - The timeline for the supply of goods is provided for in a contract between the supplier and consumer
 - There is an agreement between the consumer and supplier about how this timeline will be determined

FOR EXAMPLE: You hire someone to fix your washing machine. You did not set a timeline for repair but were told it would not take long. It has been 4 weeks without communication.

MISREPRESENTATIONS ABOUT CONSUMER RIGHTS

ACCC v Booktopia Pty Ltd [2023] FCA 194

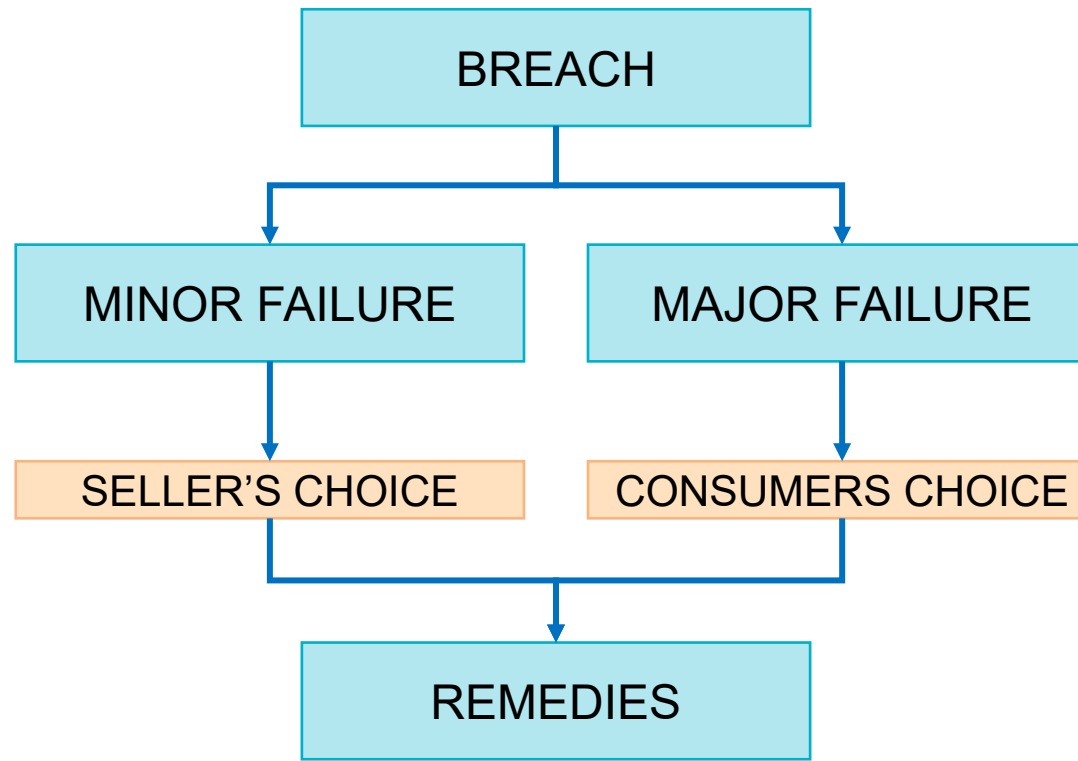
- Booktopia fined \$6 million for making false and misleading representations about the rights of their customers to obtain a refund or other remedy under the consumer guarantee rights in the Australian Consumer Law (ACL).
- Customers were told they had only 2 business days after delivery to notify Booktopia of faults with the received product to be eligible for a refund.
- This contravened the consumer right to a refund, repair or replacement of faulty goods.

Businesses cannot restrict the availability of consumer guarantees or any corresponding entitlement to a remedy when these guarantees are breached

BREACH & REMEDIES

REMEDIES FOR BREACH

The remedy available depends on whether a breach is a major or minor failure



MINOR FAILURE

- Minor failures can generally be fixed or resolved in a reasonable amount of time.
- In this case, it is the seller's choice which remedy to provide. They can choose to offer a refund, replacement or repair, or in the case of services, resupply.
- Remedies for minor failures must be free of charge and within a reasonable time
- If the seller refuses to remedy the problem or takes too long, consumers may get repairs elsewhere and recover the costs from the seller

MAJOR FAILURE (GOODS) S.260

- The goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- The goods depart in one or more significant respects:
 - from description; or
 - from sample; or
- The goods are substantially unfit for its common purpose and cannot, easily and within a reasonable time, be made fit for purpose; or
- The goods are unfit for a disclosed purpose and cannot, easily and within a reasonable time, be made fit for the disclosed purpose; or
- The goods are unsafe.

MAJOR FAILURES

There will also be a major failure with a product or service if there are multiple minor failures which collectively would have prevented a consumer from acquiring those goods or services had they known of the problems

REJECTION PERIOD

If major failure, rejection must occur within the rejection period

Rejection period (s 262(2))

The period of time from the date of the supply to the consumer until the fault or problem would reasonably be expected to appear having regard to:

- a) the type of goods; and
- b) the use to which a consumer is likely to put them; and
- c) the length of time for which it is reasonable for them to be used; and
- d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

MAJOR FAILURE (SERVICES) S.268

- The services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- The service does not meet the reasonable expectations for that type of service, and the problem cannot be rectified within a reasonable time; or
- The services were acquired for a specific disclosed purpose which was not fulfilled and cannot within a reasonable time, be rectified; or
- The supplier was aware that a specific result was desired which was not achieved and cannot be rectified within a reasonable time; or
- The supply of services created an unsafe situation.

REMEDIES AVAILABLE

GOODS

MAJOR AND MINOR FAILURES

REFUND

REPAIR

REPLACEMENT/
EXCHANGE

MAJOR FAILURES ONLY

COMPENSATION FOR LOSS OF VALUE IF YOU KEEP THE
GOODS

SERVICES

MAJOR AND MINOR FAILURES

RECTIFY FAILURE IN A
REASONABLE TIME
(RESUPPLY)

REFUND

MAJOR FAILURES ONLY

CANCEL
CONTRACT

REFUND

COMPENSATION
FOR VALUE
LOSS

Case Study -Jane's broken vacuum cleaner

- Jane bought a vacuum cleaner which came with a 2-year factory warranty
- Two years and one month later, the engine burnt out
- She took the vacuum cleaner back to the retailer who told her that her factory warranty had expired
- The retailer offered to repair her vacuum but at a considerable cost
- Upon Jane's insistence they agreed to service the vacuum for 50% off

Did the retailer correctly advise Jane?

No! the retailer was incorrect

- What the retailer offered sounded reasonable **but** not legally correct.
- Jane's **consumer rights exceeded the 2-year factory** warranty which guarantees her the following options for a '**major fault**' like a burnt-out engine:
- replacement, repair or refund at the consumer's discretion

Case Study – Jane's outdoor table

Jane buys an outdoor table from a leading furniture retailer on 1 February 2024 and immediately places it under her pergola in a lovely sheltered position. On 1 May Jane notices that the surface of the table has peeled back from the table, leaving the bottom layer exposed. Jane is not happy about this as it looks unsightly, is no longer weatherproof and is no longer a suitable surface for her to hold dinner parties around.

Did the retailer breach any consumer guarantees?

????????????????????

How to resolve a consumer dispute

- Letter of demand (business.gov.au)
- Complaint to Fair Trading @ Access Canberra – conciliation/Conciliation
- ACT Civil and Administrative Tribunal (time limits apply)



ROLE OF LAWYERS

- Educate clients about their consumer rights and remedies
- Assist clients with drafting documents including letters of rejection
- Assist clients with negotiating remedies
- Assist clients with navigating tribunal and small claims court process, including by providing representation where necessary.



Contacts

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Thank you