



## Compliance Essentials e-bulletin February 2012

### **Trade Practices – Guarantees and Warranties Against Defects**

*Australian Consumer Law* is clear in the obligations that are contained in the provisions relating to the supply of goods and services. Consumers must be dealt with in an open and fair way that extends to advertising (which must not be false or misleading) and testimonials which must be real affirmations and not fictitious.

Some of the responsibilities in relation to consumer expectations can be found in the guarantees that are set out in sections 51- 62 of *Australian Consumer Law* and which apply to the sale of goods and services. These statutory rights of a consumer cannot be overwritten or avoided by a contract where ACL applies; the guarantees are implied in every relevant transaction. The consumer is entitled to expect:

- Guarantee as to title (i.e. ownership) of goods; and
- Guarantee as to acceptable quality; and
- That a product is fit for its disclosed purpose including a supposition that it is free from hidden defects and in accordance with safety provisions including mandatory safety standards where applicable; and
- Goods sold by description, sample or model match the description or sample or model; and
- That a supply of services is rendered with care; and
- That a service is fit for the purpose for which it is intended; and
- That there is a reasonable time for supply of goods or services

Where a vendor makes an express warranty relating to the quality or condition of goods or services e.g. that goods are new, that spare parts are available if required, that express warranty must not set out to give false information or mislead the customer with the aim of making a sale.

January 2012 saw an amendment to *Australian Consumer Law* when *Regulation 90* (relating to *section 102* of the Act) came into effect, laying down the minimum requirements for written Warranties Against Defects. The penalties for breach of this obligation are to a maximum of \$50,000 for a body corporate and to a maximum of \$10,000 for an individual.

### **Warranties Against Defects**

A warranty against defects sets out the terms under which a seller (including a service provider) will remedy matters in the event that there is a problem with goods or services. As of 1 January 2012 a written warranty against defects must be in the prescribed format in order to comply with the legislation. A consumer's rights cannot be overwritten by a warranty against defects. For more information on this obligation follow the link to go to the ACCC website at: <http://www.accc.gov.au/content/index.phtml/itemId/996742>

**Note the reference to a transition period for full compliance.**

*The contents of this document are for information purposes only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.*

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