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Warranties Against Defects made to Consumers

If you are a manufacturer, importer or retailer of consumer goods or a supplier of services to consumers then a new regulation introduced under the Australian Consumer Law (ACL) on 1 January 2012 could have a major impact on the way you do business.

The New Regulation

The new regulation (Regulation 90 of the Competition and Consumer Regulations 2010) is the final instalment of the federal government's three stage roll-out of amendments to trade practices law in Australia. The regulation imposes compulsory obligations regarding "warranties against defects" given to consumers. If you manufacture, import or supply consumer goods with a written "warranty against defects" or if you supply services to consumers and give such a document or even if any of your staff make claims about "warranties against defects" then you are directly affected by the new regulation.

Requirements of the New Regulations

The regulation itself sets out a number of specific requirements in relation to all "warranty against defects" documents. These requirements is set out at the end of this article .

Amnesty

Although the new regulation came into force on 1 January 2012, a limited 9 months amnesty applies to suppliers who make a good faith effort to comply with the regulation. However, enforcement action may be taken if a good faith effort is not made.

What are Warranties Against Defects?

"Warranties against defects" are promises (sometimes called "voluntary warranties") given to consumers about what would be done if something goes wrong with goods or services. They are often general promises given to customers that the supplier will:

1. repair or replace goods (or part of them);
2. re-supply or fix a problem with services (or part of them); or
3. wholly or partly compensate the buyer,

if the goods or services (or part of them) are defective.

Warranties of this nature may be for a limited (e.g. 6 months) or lengthy (e.g. 3 years) period. The warranties apply over and above the statutory consumer guarantees introduced in 2011, and so they are given in addition to the statutory consumer guarantees.

Who Must Comply?

The new regulation applies to all manufacturers, importers, retailers and service providers whose goods or services are supplied to consumers.

Who are Consumers?

A person or a business will be considered to be a consumer if they purchase:

1. goods or services that cost less than \$40,000.00; or
2. goods or services that cost more than \$40,000.00 but are of a kind ordinarily acquired for domestic household or personal use or consumption.

However, a purchaser will not be considered a consumer if the goods are purchased to be re-supplied or to be used-up or transformed in the course of production or manufacture.

What Does the Regulation Require?

The new law requires that as from 1 January 2012, all “warranties against defects” documents provided by manufacturers, importers, retailers and service providers to consumers must comply with the new regulation. Pursuant to Section 102 (2) of Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA), it is illegal for a person to:

1. give a consumer a document that evidences a “warranty against defects” that does not comply with the requirements of the new regulation; or
2. represent directly to a consumer that the goods and services are goods or services to which a “warranty against defects” relates if the warranty does not in fact comply with the requirements of the new regulation.

This means that all documents given to consumers that “evidence” a “warranty against defects” must:

1. be set out in a particular way;
2. include certain specific information; and
3. contain a specific statement,

all as set out in the regulation (see the requirements set out at the end of this article).

As a result, anyone in the supply chain who provides a document which gives or incorporates a “warranty against defects” is caught by the regulation. If a manufacturer places a “warranty against defects” card with the goods then the regulation applies to the warranty card if the goods are sold to consumers directly by the manufacturer. Similarly, any document incorporating a “warranty against defects” which is given to a consumer by a retailer or a member of the retailer’s staff must also comply with the regulation.

Non-Compliant Warranties

Under the CCA, it is illegal for a person to represent directly to a consumer that a good or service has a “warranty against defects” if the warranty does not comply with the regulation. If, for example, a consumer asks a retailer whether a product comes with a “warranty against defects”, it is illegal for the retailer to say that it does if the warranty itself does not comply with the regulation.

Penalties

Both criminal and civil penalties apply to contraventions of the new law. Financial penalties could be as high as \$50,000 for corporations and \$10,000 for individuals. The penalties could be up to \$1.1 million for corporations and \$220,000 for individuals if the failure to give a consumer “warranty against defects” which complies with the new regulation also amounts to false and misleading representation.

Benefits for Consumers

Consumers should obtain a number of benefits under the new regulation including the following:

1. warranty documents should be easier to understand;
2. relevant contact details of the person offering the warranty must be stated; and
3. the legal rights of consumers will be more clearly specified.

Potential Problems with the Amnesty

For goods, the question of whether or not the new regulation applies depends on when the “warranty against defects” document is physically given to the consumer, rather than when the goods were manufactured. Obviously, many goods sold after 1 January 2012 will have been manufactured before that date. If the goods include warranty documents then the regulation will nevertheless apply. In order to mitigate the situation, a 9 months amnesty applies so that defective warranty documents which accompany goods in the supply chain which were manufactured before 1 November 2011 will be exempt. However, the supplier must nevertheless take all reasonable steps to convey the correct warranty information to consumers.

In order to qualify for the amnesty, a supplier must demonstrate that:

1. the relevant goods were manufactured and packaged before 1 November 2011;
2. there were serious practical difficulties in up-dating warranty documents; and
3. the supplier has taken all reasonable steps to convey the required information to consumers.

The amnesty does not apply to any goods manufactured after 31 October 2011. The amnesty also does not apply to any services provided after 1 January 2012.

Other Potential Problems

Manufacturers will be liable for any point-of-sale material which they provide to retailers which states that goods have a “warranty against defects” if the actual “warranty against defects” document does not comply with the regulation.

Retailers may be exposed to liability by the mere act of “giving” a non-compliant “warranty against defects” to a customer, for example, in a box or tamper-proof packaging.

What Retailers and Service Providers Must Do









If you are involved in retail or in supplying services to consumers then you should:

1. check all “warranty against defects” documents, including sales agreements and service contract which are provided to customers, to make sure that they comply with the new regulation; and
2. tell your staff not to make any representations to customers about “warranties against defects” unless they are sure that the relevant document complies with the new regulation.

Document Review

If you would like us to review any of your documents to ensure that they comply with the new regulation, please contact us at your earliest opportunity.

1. Under Regulation 90 of the CCR, all warranty against defects documents must:

-  be transparent – that is, the document must be expressed in reasonably plain language, legible and presented clearly;
-  concisely state what the person who gives the warranty must do so that the warranty will be honoured and what the consumer must do to be entitled to claim the warranty;
-  prominently state the name, business address, phone number and email address (if any) of the person providing the warranty;
-  state the period or periods within which a defect in the goods or services to which the warranty relates must appear if the consumer is to claim the warranty;
-  provide a procedure for the consumer to claim the warranty including the address to which a claim may be sent;
-  state who will bear the expense of claiming the warranty and, if the expense is to be borne by the person who gives the warranty, how the consumer can recoup expenses incurred in making the claim;
-  state that the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates; and
-  include the following text:

“Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”



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