

## Australian Consumer Laws

The following information is an overview of new laws introduced January 1st 2011 and available in full detail from the Australian Consumer Law (ACL) website <http://www.consumerlaw.gov.au/content/Content.aspx?doc=home.htm> The ACL is administered by the Australian Competition and Consumer Commission (ACCC) nationally and by each State and Territory consumer agency. The new Australian Consumer Laws are a national policy and apply to all businesses – the ACL replace all previous State and Territory laws.

The ACL includes:

- a new national unfair contract terms law covering standard form contracts;
- a new national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- a new national product safety law and enforcement system;
- a new national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- simple national rules for lay-by agreements; and
- new penalties, enforcement powers and consumer redress.

***To be very clear, if you are a manufacturer of timber flooring or flooring products, a manufacturer of coatings, adhesives and all other related products, if you are a supplier of any timber flooring or related products, if you are a retailer of timber flooring or related products and if you are a contractor who installs and/or sands and finishes timber floors or flooring these laws apply to you.***

While the ACL documents are large, they are in plain English and relatively easy to read, we strongly recommend that you thoroughly read the full documentation available on the ACL website (including all five guides) and in particular this guide [http://www.consumerlaw.gov.au/content/the\\_acl/downloads/consumer\\_guarantees\\_guide.pdf](http://www.consumerlaw.gov.au/content/the_acl/downloads/consumer_guarantees_guide.pdf)

### The key points for you to consider?

The new ACL has cleared up many grey areas and strengthened others.

Points considered essential for businesses to take note of include:

- Using a contract is vital, whether between you and the consumer or you and the service provider.
- The introduction of right of rectification for 'minor' repairs. Though the repair must be done free of charge and within a reasonable time.
- Services must be conducted with due care and skill, as well as within 'a reasonable time' (when no time is set).
- Goods/materials supplied must reflect those advertised or presented. Suppliers guarantee that when a consumer buys goods based on their model or sample, the goods will match the sample or demonstration model and any description provided.

- Suppliers/contractors and manufacturers automatically provide guarantees about certain goods they sell, hire or lease, and services they provide to consumers. These rights exist regardless of any warranty provided by the supplier/contractor or manufacturer.
- The goods or services provided must be fit for purpose.
- It is unlawful for a business to make false or misleading representations about goods or services when supplying, offering to supply, or promoting those goods or services. Similarly a business must not act unconscionably when supplying goods or services to a consumer.
- Businesses must not make false or misleading representations about the country of origin of goods.
- Consumer guarantees cannot be negated by stating so in a contract.
- Acceptable quality is established and a consumer is not entitled to a remedy if they had an opportunity to examine the goods before purchase and did not find defects that they should have noticed. To this end you should seek written acceptance.
- The guarantee of acceptable quality will not apply, nor is a remedy entitled if:
  - the consumer uses the goods abnormally
  - the consumer causes the quality of the goods to become unacceptable
  - the consumer fails to take reasonable steps to avoid the quality becoming unacceptable
  - a supplier/contractor does not meet one of the consumer guarantees due to something someone else said or did (excluding the supplier's/contractors agents or employees), or something beyond human control that happened after the goods or services were supplied. This exception does not apply when a supplier has not met the guarantee of due care and skill.
- A consumer is not entitled to a refund for changing their mind.
- A consumer cannot reject goods/materials when they have been discarded, or they are attached to other property and cannot be removed without damage, or too much time has passed.
- Length of warranty is not exclusive to the manufacturer's warranty.
- Goods purchased at auction do not come with some of the consumer guarantees.

No refund signs – signs that say 'no refunds', 'no refunds on sale items' and 'Exchange or credit note only for return of sale items' are considered unlawful. Signs stating 'No refunds will be given if you have simply changed your mind' are acceptable.

- Goods and services provided prior to January 1st 2011 are covered by the previous State and Territory legislations and the previous Trade Practices Act.
- Any warranty or guarantee provided by a business must comply with the ACL.
- States and/or Territories under their Home Building Contracts (or similar), may have additional requirements. For example, in Qld, NSW and WA, required documentation must accompany a contract.

Essential points considered the rights of the consumer include:

- A cooling of period of ten (10) days is required for an unsolicited contract (e.g. work derived from telemarketing or door knocking). Most work in the flooring industry is solicited, however, consumers may have up to a ten (10) day cooling off period once provided with a contract by virtue of State or Territory conditions, relating to Home Building Contracts or similar – check with your State/Territory authority.
- Entitlement to replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage.
- Entitlement 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.
- The consumer can choose to claim a remedy from the contractor, supplier or manufacturer – any or all (dependent on the guarantee that has not been met).
- When there is a major failure, the consumer can reject the goods or services and choose a refund or a replacement, or ask for compensation for any drop in value of the goods or service.

- When the supplier/contractor refuses to repair, the customer can obtain services from another supplier/contractor and seek reasonable costs from the first supplier/contractor, or reject the goods, or seek a refund or replacement.
- A service is cancelled when the consumer notifies the supplier that they want to cancel it.

### Some considerations

The ACL is silent on interpreting times and levels on various aspects, these issues will be addressed by the ACCC or State agencies responsible for implementation. If you are uncertain on any aspect of the ACL, please contact your State or Territory agency for further detail:

<p><b>National</b>  <b>Australian Competition and Consumer Commission</b>            GPO Box 3131            Canberra ACT 2601            Tel 1300 302 502            accc.gov.au</p>	<p><b>Australian Capital Territory</b>  <b>Office of Regulatory Services</b>            GPO Box 158            Canberra ACT 2601            Tel (02) 6207 0400            ors.act.gov.au</p>	<p><b>New South Wales</b>  <b>NSW Fair Trading</b>            PO Box 972            Parramatta NSW 2124            Tel 13 32 20            fairtrading.nsw.gov.au</p>
<p><b>Northern Territory</b>  <b>Office of Consumer Affairs</b>            GPO Box 1722            Darwin NT 0801            Tel 1800 019 319            consumeraffairs.nt.gov.au</p>	<p><b>Queensland</b>  <b>Office of Fair Trading</b>            GPO Box 3111            Brisbane QLD 4001            Tel 13 QGOV (13 74 68)            fairtrading.qld.gov.au</p>	<p><b>South Australia</b>  <b>Consumer &amp; Business Affairs</b>            GPO Box 1719            Adelaide SA 5001            Tel 131 883            ocba.sa.gov.au</p>
<p><b>Tasmania</b>  <b>Office of Consumer Affairs &amp; Fair Trading</b>            GPO Box 1244            Hobart TAS 7001            Tel 1300 654 499            consumer.tas.gov.au</p>	<p><b>Victoria</b>  <b>Consumer Affairs Victoria</b>            GPO Box 123            Melbourne 3001            Tel 1300 55 81 81            consumer.vic.gov.au</p>	<p><b>Western Australia</b>  <b>Department of Commerce</b>            Locked Bag 14            Cloisters Square WA 6850            Tel 1300 30 40 54            commerce.wa.gov.au</p>

Some considerations you will need to be aware of include:

- *What constitutes a minor repair?*

When the problem is minor, the supplier/contractor can choose between providing a repair or offering the consumer a replacement or a refund. The consumer must give the supplier who provided the services an opportunity to fix the problem free of charge and within a reasonable time.

When a minor fault is interpreted by the consumer as a major fault – resulting in the parties differing in their opinion, this situation may result in an inspection and subsequently a court or tribunal making a determination.

- *What is a major failure?*

Goods/materials:

- 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:
  - (i) if they were supplied by description—from that description; or
  - (ii) if they were supplied by reference to a sample or demonstration model—from that sample or demonstration model; or

- The goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- The goods are unfit for a disclosed purpose that was made known to:
  - (i) the supplier of the goods; or
  - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- The goods are not of acceptable quality because they are unsafe.

Services:

- The services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- The services are substantially unfit for a purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- Both of the following apply:
  - (i) the services, and any product resulting from the services, are unfit for a particular purpose for which the services were acquired by the consumer that was made known to the supplier of the services;
  - (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- Both of the following apply:
  - (i) the services, and any product resulting from the services, are not of such a nature, or quality, state or condition, that they might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier;
  - (ii) the services, and any of those products, cannot, easily and within a reasonable time, be remedied to achieve such a result; or
- The supply of the services creates an unsafe situation.

- *What is reasonable time?*

Services or repairs must be supplied within a reasonable time (if no time set):

A contract or agreement for the supply of services usually states when the services will be provided and the date they will be completed. If not, the supplier/contractor guarantees they will supply the service within a reasonable time. What is 'reasonable' will depend on the nature of the services. For example, the time needed to build a house will be longer than the time required to sand a floor. The building or relevant Act in your State/Territory may establish a time period for practical work to be completed within.

- *How long is a guarantee in force?*

Length of guarantees under the ACL are not specified rather aligned to accepted and expected life of a product or service, e.g. a one year warranty on timber flooring does not reflect that the product should last many years.

Some State/Territory building Act or similar in your jurisdiction may enforce a set period (e.g. 6 years) within which a complaint can be lodged.

## How the ACL is enforced

A range of compliance and enforcement options are available to the ACL .

Criminal prosecution for breaches of the law is only one of a range of approaches ACL regulators may take to ensure compliance with the law. Other tools and strategies include:

- education, advice and influencing good practice
- voluntary industry self-regulation codes
- 'without prejudice' discussions
- dispute resolution
- formal written warnings
- infringement notices
- enforceable undertakings
- public warnings
- court orders
- injunctions
- compensation orders
- civil penalties, including pecuniary
- penalties and disqualification orders.

An ACL regulator can investigate a business when a law may have been broken, even if the complaint was resolved.

**Note: This document was up to date at the time of writing. ATFA bears no liability or responsibility for how this information is used or interpreted. Please consult the ACL website for the most accurate information <http://www.consumerlaw.gov.au/content/Content.aspx?doc=home.htm>**