



MEMBER ALERT

CHANGES TO DEFECTS WARRANTY LAWS FOR GOODS & SERVICES -- COMMENCES 1 JANUARY 2012 --

It is common for manufacturers and suppliers of goods and services to offer defects and extended warranties as part of their terms and conditions of sale. Those warranties generally say that the business will repair or replace the goods or services if a defect occurs within the warranty period and are included in warranty documents packaged with goods or in terms and conditions of supply.

What is a warranty against defects?

The *Australian Consumer Law (ACL)* (which replaced the *Trade Practices Act*) automatically provides guarantees for goods and services purchased by consumers. These statutory consumer guarantees require amongst other things that goods must be free of defects and fit for purpose and that services must be provided within a reasonable time. These guarantees cannot be removed, excluded or contracted out of, and have no time limit – the time limit will depend on the price and quality of goods purchased.

Some suppliers and manufacturers also provide additional promises or **warranties** as part of their service to customers. These **express** warranties (sometimes called manufacturers warranties), set out the terms and conditions under which the manufacturer agrees to repair or replace the product or refund the purchase price. Some manufacturers offer extended warranties on top of this. The offering of express warranties is not compulsory, but if provided they must comply with the *ACL*.

Whilst the *ACL* provided a 12 month transition for businesses to update their systems, operations and documentation, this period ends on 31 December 2011. From **1 January 2012**, it will be an offence for businesses to give a consumer an express warranty for goods or services that does not comply with *Regulation 90* of the *Competition & Consumer Regulations*.

What is Regulation 90?

Regulation 90 lists the items that must be included in an express (including extended) warranty clause or statement. This includes the processes a consumer can take to enforce the warranty.

The warranty must:

1. be in a document that is legible, presented clearly and expressed in reasonably plain language (this is defined as 'transparent') and must also:
2. concisely state
 - o what the person who gives the warranty must do so that the warranty may be honoured; and
 - o what the consumer must do to entitle the consumer to claim the warranty;
3. prominently state the name, business address, telephone number and email address of the person or entity giving the warranty;
4. state the period or periods within which a defect in the goods or services must appear if the warranty is to apply;
5. set out the procedure for claiming under the warranty, including the address to which a claim may be sent;
6. state who will bear the expense of claiming under the warranty and, if it is the party giving the warranty, how the consumer can claim expenses incurred in making the claim;
7. state that the benefits to the consumer under 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.
8. **The warranty must also contain the following words:**

"Our goods come with guarantees that cannot be excluded in 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."

What should manufacturers and suppliers do now?

If have not already done so, you should review and, as necessary, revise any printed warranty cards or other documents, such as manuals and terms and conditions, that you commonly give your clients.

Goods packaged before 1 November 2011

For stock packaged prior to 1 November 2011, the ACCC has provided given some further transitional allowance. It has said that:

“Until September 2012, when considering the appropriate enforcement response to any contravention of the warranty against defects requirements that apply to stock in the supply chain manufactured and packaged prior to 1 November 2011, the ACL Regulators will have regard to:

- whether there are serious practical difficulties in updating warranty documents-e.g. the warranty is in a tamper-proof package; and*
- whether the supplier has taken all reasonable steps to otherwise convey the mandatory text and information required by the ACL to consumers-e.g. by placing a compliant sticker on the outside packaging.*

In these circumstances the ACL Regulators are unlikely to take enforcement action.”

For more information please contact your HIA workplace adviser on 1300 650 620.