

BULLETIN

VACC Industry Divisions



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Dear Member

VACC reminds you that the Competition and Consumer Regulations 2010 (Cth) (regulations) have been amended to require businesses giving a warranty against defects to consumers for the supply of services (or the supply of goods and services together) to include mandatory text in the warranty. This change comes into effect, on and from 8 June 2019.

What is a warranty against defects

A warranty against defects is a representation communicated to a consumer that if the goods or services (or part of them) are defective, the business will:

- repair or replace goods (or part of them)
- resupply or fix a problem with services (or part of them)
- provide compensation to the consumer.

A representation will only be a warranty against defects if it is made at or around the time that goods or services are supplied.

A promise about what you as a supplier or manufacturer will do if something goes wrong with a good or service can be a warranty against defects under the ACL even if it is not provided in a formal document.

Any material with writing on it could evidence a warranty against defects, for example wording contained within your repair authority terms and conditions.

Who is consumer

A person—or in some cases a self-employed individual or a business—will be considered a consumer if they purchase:

- goods or services that cost less than \$40,000 or
- goods or services that cost more than \$40,000 but are of a kind ordinarily acquired for domestic, household or personal use or consumption or
- a vehicle or trailer primarily used to transport goods on public roads.

A purchaser will not be considered a consumer if goods are purchased to be resold or to be transformed into a product that is sold.

Information that must be included as of 8 June 2019

If you provide a warranty in your business terms and conditions, then you are required to include the following information.

A 'document which evidences a warranty against defects' must state:

- what you as the business (giving the warranty) must do if goods are faulty or defective – for example, repair or replace the goods
- what the consumer must do to entitle them to claim the warranty – for example, cease using the goods when a fault arises or contact the supplier or manufacturer and point to the defect
- the following information about the business giving the warranty:
 - name
 - business address
 - telephone number
 - email address (if any)

- the warranty period—how long the warranty lasts for
- what a consumer must do to claim under the warranty—how to contact you and where to send the claim
- whether you or the consumer are responsible for expenses associated with a warranty claim and how the consumer can claim back any expenses incurred
- that the benefits provided to the consumer by the warranty are in addition to other rights and remedies available to the consumer under the law.

Mandatory Text

In addition to the requirements above, a document evidencing a warranty against defects must include mandatory text to ensure consumers are aware that any warranty against defects operates in addition to consumers' rights under the ACL.

The mandatory text for the supply of goods is:

'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 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.'

From 8 June 2019, the mandatory text for the supply of services is:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

From 9 June 2019, the mandatory text for the supply of goods and services is:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Please review and amend any documentation you may have regarding warranties against defects.

Yours sincerely

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