CHANGES TO ACL MANDATORY WORDING FOR WARRANTIES AGAINST DEFECTS. ARE YOU READY?

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Antitrust, Competition & Trade Regulation Alert

By: Ayman Guirguis

IN BRIEF

In June 2018, changes were made to the *Competition and Consumer Regulations 2010* (Regulations) which require manufacturers and suppliers to include mandatory wording for warranties against defects of services and goods combined with services. The regulations provide a 12 month transition period which will end on 8 June 2019.

Manufacturers and suppliers will soon be required to include the new prescribed wording outlining consumers' guarantees and rights under the Australian Consumer Law (ACL) for ***all*** warranties against defects.

Since 2011, the Regulations have required businesses to provide certain information about the requirements of all warranties against defects. The Regulations also required that specific wording be included for warranties against defects for the supply of goods. From 9 June 2019, this requirement to include prescribed wording will be extended to the supply of:

- services; and
- goods combined with a service.

If you have not already done so in preparation for the 9 June 2019 deadline, we recommend that businesses make arrangements now to ensure all warranty against defects documents are up to date.

WHAT IS A WARRANTY AGAINST DEFECTS?

A warranty against defects is any representation made to a consumer that, if goods or services are defective, the consumer will receive:

- a repair or replacement of the goods;
- the service again, or for a problem with the service to be fixed; or
- a refund or compensation.

While the Regulations previously prescribed certain wording for the supply of goods, there has been an expectation that similar wording was also required in warranties against defects for the supply of services to

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inform consumers that there are guarantees that cannot be excluded under the ACL.

From 9 June 2019, if you supply services, or goods combined with a service, that include a warranty against defects, you will be required to update the wording of any warranty documents. If a warranty against defects is included in a contract for the supply of a service, the contract will need to be updated to include the prescribed text.

Examples of goods supplied in combination with a service include:

- a dishwasher combined with installation services;
- a TV that can be controlled through an app on your phone;
- a recycling service that supplies recycling bins to its customers for personal, domestic or household purposes; or
- a car with built-in GPS and Bluetooth services.

Some services do not require the prescribed text where the service is for the supply of:

- transporting or storing goods, where the goods are used for business, trade, professional or occupational purposes (as opposed to goods used for personal, domestic or household purposes);
- insurance; and
- certain gas, electricity or telecommunications services.

WHAT IS THE MANDATORY WORDING?

For the supply of services:

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.

For the supply of goods with services:

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.*

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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.

For the supply of goods:

The wording for warranties against defects for the supply of goods remains the same as has been in place since 2011. However, if the goods are supplied in combination with a service, then the wording will need to be updated to the prescribed text above.
As a reminder, the following wording must be included with any warranties against defects for the supply of goods:

> 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.

Further details on the mandatory wording can be found on the ACCC's website.

WHAT OTHER INFORMATION IS REQUIRED?

In addition to the mandatory wording, suppliers and manufacturers are still required to include the following details in their warranty against defects documents:

- the contact details of the business (name, business address, telephone number, email);
- how the business will remedy a faulty or defective good / service;
- how a consumer can claim their warranty and any conditions on making that claim;
- how long the warranty period lasts;
- who is responsible for the costs incurred in making the warranty claim - the business or consumer (if it is the consumer, it must also include how they can claim back the costs they have incurred); and
- a statement that the warranty is in addition to other available rights and remedies under the ACL.

WHAT SHOULD YOU DO?

If you have not already done so in preparation for the 9 June 2019 deadline, we recommend that you:

- identify services, as well as goods combined with services, that are supplied with a warranty against defects;

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- review any warranty documents and contracts for the supply of services, and goods with services – both those that are included with the relevant goods or services (i.e. in the box or other terms) as well as those appearing in other media such as on websites, social media pages etc.; and
- include the relevant prescribed text in a document that is provided to the consumer with the supply of services and/or goods.

If you have any issues in complying with these obligations, or for more information about the content of this Insight, or assistance with compliance with your consumer law obligations, please contact a member of the K&L Gates Australian Competition and Consumer Law team.

KEY CONTACTS



AYMAN GUIRGUIS
PARTNER

SYDNEY
+61.2.9513.2308
AYMAN.GUIRGUIS@KLGATES.COM

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