

## COULD CONSUMER GUARANTEES APPLY TO YOUR BUSINESS' PURCHASE OF GOODS AND SERVICES?

It is often considered that the Australian Consumer Law (ACL) consumer guarantees relating to goods and services are not available to purchases made by a business – however this is not necessarily the case

Goods and services purchased by businesses may be subject to the consumer guarantees. Meaning that if a business purchases goods or services and an issue subsequently arises with the good or service, then the business may be in a position to benefit from the consumer guarantees.

### When will the consumer guarantees apply to business purchases?

A business will be able to rely on the consumer guarantees if:

- it applies and has not been met by the supplier of the goods or services; and
- the business has made the purchase of the good or service as a consumer.

### When will a business be a consumer?

The definition of consumer is not restricted to private individuals, it extends to purchases of goods or services by businesses. A business may be able to rely on the consumer guarantee provisions if they fall within the definition of 'consumer'. Generally, a business will be considered to have made a purchase as a consumer if any of the following applies to the purchase of goods or services:

- The amount payable is \$40,000 or less; or
- It is of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- In the case of vehicles or trailers, the vehicle or trailer is acquired primarily for use in the transport of goods on public roads;

and they are not purchased for either of the following:

- re-supply; or
- using them up or transforming them in trade or commerce in the course of the process of production or manufacture, or in the course of repairing or treating other goods or fixtures on land.

### Goods or services of \$40,000 or less

If a business purchases the goods or services for \$40,000 or less, and the purchase is not used for re-supply or in the process of production or manufacture, or the repair or treatment of goods or fixtures on land, then the business may rely on the consumer guarantees. Otherwise, the consumer guarantees may still be relied on if one of the other two conditions are met.

If goods or services are provided as a mixed supply (that is goods or services are purchased

with other property or services), and a specified price was not given to the particular good or service, then the price is established as follows:

- the price at which they could have been purchased for from the supplier; or
- if they could not be purchased separately from the supplier, then the lowest price they could have been purchased from another supplier; or
- if neither of the above apply, then the price of the value.

### For personal, domestic or household use or consumption

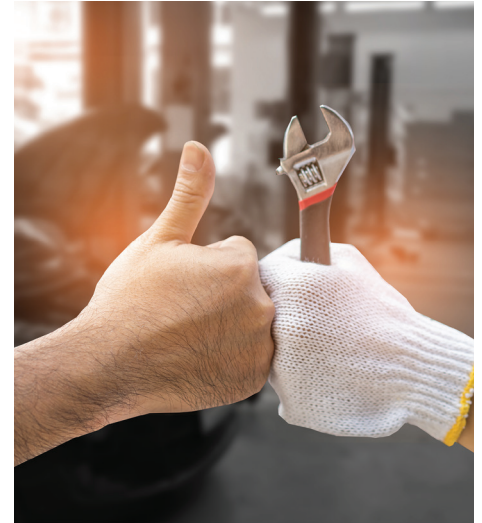
A business may rely on consumer guarantees if the goods or services are ordinarily acquired for personal, domestic or household use or consumption regardless of the price of the good or service. Whether they are purchased for such a purpose is dependent on the item purchased.

The main question is whether the good or service is *ordinarily* acquired for personal, domestic or household use or consumption. This may be a simple assessment for the purchase of particular items, such as a type of car. For example, a business can rely on the consumer guarantees where the business has purchased a car that is of a type *ordinarily* purchased for personal use, provided the car is not used for resupply or in the process of production or manufacture, or the repair or treatment of goods or fixtures on land. However, other items may be more difficult to specify as *ordinarily* acquired for personal domestic or household use or consumption.

In *Bunnings Group Ltd v Laminex Group Ltd* (2006) FCA 682, the Federal Court of Australia considered the word 'ordinarily' means 'commonly' or 'regularly' rather than 'predominantly'. Other considerations to determine whether the item is *ordinarily* purchased for personal, domestic or household use or consumption includes the design, marketing, pricing and potential uses for the good or service.

### Trailers and vehicles for transport of goods on public roads

The purpose for which the vehicle or trailer was purchased is subjective, it relies on the reason the vehicle or trailer was purchased by the business and does not rely on consideration of the nature of the goods. If the business purchased the



vehicle or trailer to use primarily for the transport of goods on public roads the vehicle or trailer will likely be a consumer good and the consumer guarantees will be applicable.

### The consumer guarantees

If it is established a business purchased goods or services as a consumer the consumer guarantees are applicable to the purchase.

### Consumer guarantees may be limited but not excluded

A supplier of goods or services may not exclude the consumer guarantees. If a contract entered into contains a clause purporting to exclude the consumer guarantees the supplier will be unable to rely on the clause. Meaning that where the business can establish that it purchased a consumer good or service the consumer guarantees will be applicable despite a contractual clause purporting to exclude them.

However, a supplier may be able to limit their liability under the consumer guarantee to the extent permitted under the ACL. A supplier may limit their liability in respect of goods to the repair or replacement of the goods (or the cost of repair or replacement). In relation to services the supplier may limit liability to the re-supply of the services (or the cost of another person re-supplying the services).

### AAAA Member Benefits

Industry Legal Group provides advice to members on consumer law matters. If you have any questions relating to the above case, please contact Industry Legal Group on 1300 369 703 or [aaaa@industrylegalgroup.com.au](mailto:aaaa@industrylegalgroup.com.au)