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# CONSUMER LAW POLICY

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## Policy

Victorian Fireplaces & BBQ's will comply with all local, state and federal laws and regulations in relation to rights of the consumer in relation to The Australian Consumer Law. The full text of the ACL is set out in Schedule 2 to the Competition and Consumer Act 2010 (CCA).

## The ACL includes:

- core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair terms in standard form consumer contracts;
- specific protections against certain defined 'unfair' practices, including particular instances of misleading or deceptive conduct, pyramid selling, unsolicited supplies of goods and services, component pricing and the provision of bills and receipts;
- regulation of certain aspects of consumer transactions, includes
  - a system of statutory consumer guarantees for consumer goods and business goods valued below \$40,000;
  - a national legal framework for unsolicited selling, including door-to-door trading and telephone sales;
- a national law for consumer product safety; and
- robust enforcement and consumer redress provisions.

## Our consumer guarantees include the following:

When a consumer buys goods or services, our consumer guaranteed rights include:

- The supplier has the right to sell the goods
- The goods are of acceptable quality
- The goods match their description, sample or demonstration model
- The goods are fit for any purpose that the consumer makes known to the supplier
- Repairs and spare parts for the goods are reasonably available
- The services are carried out with reasonable care and skill; and
- The services are completed within a reasonable time where there is no agreed date.
- Not act in Misleading or deceptive conduct

- Not act in unconscionable conduct towards consumers or businesses.
- Not engage in unfair contract terms
- Not conduct in unfair practices

**Exclusions:**

- Consumer guarantees do not apply to a private sale.
- Consumer guarantees do not apply to sales by auction.
- Transaction must occur “in trade or commerce”

**Acceptable quality**

- safe, durable and free from defects
- acceptable in appearance and finish
- do everything goods of that type are commonly used for

**Exclusions:**

- Defects specifically drawn to buyer’s attention;
- Pre-sale inspection; and
- Defects arising from “abnormal use”.

**Guarantee relating to the supply of goods by sample**

- Guarantee that goods supplied will comply with the sample or demonstration model.
- Consumer must have reasonable opportunity to compare purchased goods with original sample or model.
- Guarantee will not apply if defects ought to have been noticed on inspection.

**Guarantee relating to repairs and spare parts**

- Buyers have a guarantee that spare parts and repair facilities will be reasonably available for a reasonable time.
- However – guarantee only applies to manufacturer (including an importer) and not the supplier.
- Exemption where reasonable notice given.

## Conduct covered by the Australian Consumer Law

The Australia Consumer Law (ACL) brings together 17 pieces of State and Territory legislation, as well as the provisions of the Competition and Consumer Act (CCA), into one regime for consumer protection. It covers a very broad range of conduct and introduces a number of concepts from State and Territory legislation that were not previously in the Trade Practices Act (TPA).

### **Something old**

The ACL continues to cover much of the same conduct that was previously prohibited under the TPA.

In very broad terms, this encompasses:

- misleading or deceptive conduct in trade or commerce (Pt 2-1)
- unconscionable conduct (Pt 2-2)
- specific unfair practices, including making particular kinds of false or misleading representations, conduct related to unspecified supplies, participating in pyramid schemes and the requirement to state a single price for goods or services in certain circumstances (Pt 3-1)
- statutory warranties, which are now called 'consumer guarantees' (Pt 3-2)
- product safety, bans, recalls and warning notices (Pt 3-3)
- information standards (Pt 3-4)
- liability for manufacturers for goods with safety defects (Pt 3-5).

In addition, the ACL retains parallel provisions creating offences in respect of many of the civil contraventions (Ch 4).

### **Something new**

The ACL covers a much broader range of conduct than was previously covered under the TPA, incorporating provisions that were previously found in State and Territory legislation and some entirely new provisions.

Some examples are:

- new provisions dealing with unfair contract terms, pursuant to which a term of a consumer contract will be void if it meets the statutory test for unfairness (Pt 2-3)
- a new provision extending the protection against liability for unsolicited goods to unsolicited services (s 42)
- a new prohibition on supplying goods, where multiple prices are displayed for those goods, at a price other than the lower or lowest of the prices displayed (s 47)
- new provisions to regulate unsolicited consumer agreements (Pt 3-2, Div 2)
- new provisions to regulate lay-by agreements (Pt 3-2, Div 3)
- requirements that suppliers provide receipts for transactions over \$75 (excluding GST) and itemised bills for services if requested to do so within 30 days of the services being provided (ss 100 and 101).

### **Something in between**

Although there is substantial overlap between the conduct regulated by the previous consumer protection provisions that were in the TPA and the new provisions in the ACL, there will be some uncertainty as to how the ACL operates until there is some case law on the new provisions. A number of provisions that are intended to operate in the same way as earlier provisions have been redrafted for a variety of reasons, including clarity; to accommodate the structure of the ACL; to incorporate previous interpretations of the provisions by the courts; or because of changes in drafting style since the provisions were originally enacted. One example is the partial exemption from prohibitions on misleading or deceptive conduct and various kinds of misrepresentations that existed in s 65A of the TPA. This is now found in two separate provisions of the ACL: s 19 and s 38.