

Chapter 4

Consumer Guarantees

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Part 3-2 of the *Australian Consumer Law* (ACL) contains a regime of consumer guarantees that applies to the supply of goods and services to consumers, with associated remedies in Part 5-4.¹ These guarantees, inspired partly by New Zealand legislation, provide a powerful form of consumer protection. They are independent of tort and contract, and instead provide consumers with statutory rights of redress for faulty or defective goods and services. The consumer guarantees are not premised on finding unfair or fraudulent behaviour on the part of the supplier.² Rather, they set down mandatory standards of quality that goods and services supplied to consumers must meet. For example, the consumer guarantees require any goods supplied to a consumer by a supplier in the course of trade or commerce to be of ‘acceptable quality’ (ACL s 54). When such goods do not meet this standard – for example, shoes that fall apart after being worn only a few times – a consumer will have a statutory right to a remedy under the ACL.

I Background

A Why Introduce Mandatory Quality Standards?

Mandatory quality standards, such as the consumer guarantees in the ACL, might be criticised as impinging on the ideal of freedom of contract because they impose obligations on suppliers and manufacturers that cannot be excluded by contract. Mandatory quality standards might also be criticised as increasing costs for consumers because manufacturers and suppliers are likely pass on the costs of complying with the guarantees. Arguably, if consumers want the protection provided by the types of standards found

1 On the consumer guarantees in the ACL, see further Paterson JM, ‘The New Consumer Guarantee Law and the Reasons for Replacing the Regime of Statutory Implied Terms in Consumer Transactions’ (2011) 35 *Melbourne University Law Review* 252. On the equivalent New Zealand consumer guarantees regime, see generally Tokeley K, *Consumer Law in New Zealand* (Butterworths, Wellington, 2000); Bevan B, Dugan B and Grainer V, *Consumer Law* (LexisNexis NZ, Wellington, 2009).

2 See, for example, *Ryan v Great Lakes Council* [1999] FCA 177.

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