



## Consumer Law Update

January 2012

### Do your Terms and Conditions comply with the Australian Consumer Law?

On January 1, 2012 a new Regulation 90 came into force under the Australian Consumer Law. The regulation affects any business which supplies goods or services to consumers, which tends to be most businesses. This note is to help you understand how the new regulation may affect your business. A diagram of how Regulation 90 operates is included.

#### Who is a consumer?

Under the Australian Consumer Law a "consumer" is (generally) a person who has acquired goods or services:

- where the amount paid or payable is less than \$40,000, or
- where the goods or services were of a kind ordinarily acquired for domestic, household or personal use or consumption.

#### Compulsory guarantees

The Australian Consumer Law implies a series of guarantees into most contracts with a consumer.

The guarantees include:

- a guarantee that goods will be of acceptable quality,
- a guarantee that goods and services will be fit for any disclosed purpose,
- a guarantee that when goods are supplied by reference to a sample or description model they will correspond with the sample or description in quality, state or condition, the consumer will have the opportunity to compare the goods with the sample and the goods will be free from any defect not apparent on reasonable examination of the sample,

- a guarantee that a manufacturer of goods will take reasonable action to ensure that the facilities for repair of goods are reasonably available for a reasonable period of time except where written notice has been given indicating repair or spare parts are not available, at or before the time the consumer agrees to the supply of the goods,
- a guarantee that services will be provided with due care and skill, and
- a guarantee that services will be supplied within a reasonable time.

#### Limiting liability

A supplier cannot contract out of these consumer guarantees. However, where the goods or services provided to a consumer are not of a kind ordinarily acquired for personal, domestic or household use or consumption, a supplier may limit its liability to one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods or the supply of the services again,
- (b) the repair of the goods
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods or having the services supplied again,
- (d) the payment of the cost of having the goods repaired.

It is usual for Terms and Conditions to include a clause limiting the supplier's liability in this way. However, if a supplier, instead of just limiting its liability, represents that it will actually carry out the replacement, repair etc, the supplier will be subject to the new Regulation 90.

## Do your Terms and Conditions comply with the Australian Consumer Law? (Cont)

### New Regulation 90 affecting suppliers to consumers

Regulation 90 says that if a person represents to a consumer that if the goods or services, or part of them, are defective it will:

- repair or replace the goods or part of them,
  - provide again or rectify the services or part of them,
  - wholly or partly recompense the consumer,
- then the person must comply with a list of requirements, including specifying:
- what both the person giving the warranty and consumer must do to honour or claim the warranty,
  - details of the person giving the warranty;
  - the period in which defects must appear if the consumer is to be entitled to the warranty,
  - the procedure for the consumer to claim the warranty,
  - who will bear the expense of claiming the warranty, and

- that the benefits under the warranty are in addition to other rights and remedies,

and must provide the following statement:

*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.*

If suppliers offer to repair or replace goods, provide again or rectify services, or recompense the consumer, they will have to amend their Terms and Conditions where necessary to comply with Regulation 90.

### Penalty

The penalty for non-compliance with the regulation is a maximum of \$50,000 for corporations and \$10,000 for individuals.



Level 5, 580 George Street  
Sydney NSW 2000  
T 02 9267 9800  
F 02 9283 2553  
E lawyers@emilford.com.au

ADOPTION  
BUSINESS  
CHARITIES  
CHURCHES  
DECEASED ESTATES  
DISPUTE RESOLUTION  
EDUCATION  
EMPLOYMENT  
ESTATE PLANNING

FOREIGN INVESTMENT  
LITIGATION  
PROPERTY  
RETIREMENT VILLAGES  
TAXATION  
TECHNOLOGY  
TRUSTS  
WILLS

Liability limited by a scheme approved under Professional Standards Legislation

**A member of the Southern Cross Legal Alliance with associated law firms throughout Australia and New Zealand**

### Meet the Team:



David Ford



Garry Pritchard



Fred Chilton



Warwick van Ede



Nathan Croot



Luke Scandrett



Paul Zancanaro



Trudie Strathdee

## Do your Terms and Conditions comply with the Australian Consumer Law? (Cont)

