

NEW LEGISLATION – WARRANTY AGAINST DEFECTS (effective 1 January 2012)

From 1 January 2012, all goods and services that provide a warranty against defects must comply with the new legislative requirements under the Australian Consumer Law.

Requirements

Where goods and services supplied provide for a warranty against defects, they must comply with the requirements of regulation 90 of the *Competition and Consumer Regulations 2010*. The requirements are:

- (1) For subsection 102(1) of the Australian Consumer Law, the following requirements are prescribed:
 - (a) a warranty against defects must be in a document that is transparent;
 - (b) a warranty against defects must concisely state:
 - (i) what the person who gives the warranty must do so that the warranty may be honoured; and
 - (ii) what the consumer must do to entitle the consumer to claim the warranty;
 - (c) a warranty against defects must include the text mentioned in subregulation (2);
 - (d) a warranty against defects must prominently state the following information about the person who gives the warranty:
 - (i) the person's name;
 - (ii) the person's business address;
 - (iii) the person's telephone number;
 - (iv) the person's email address (if any);
 - (e) a warranty against defects must state the period or period within which a defect in the goods or services to which the warranty relates must appear if the consumer is to be entitled to claim the warranty;
 - (f) a warranty against defects must set out the procedure for the consumer to claim the warranty including the address to which a claim may be sent;
 - (g) a warranty against defects must state who will bear the expense of claiming the warranty and if the expense is to be borne by the person who gives the warranty – how the consumer can claim expenses incurred in making the claim;
 - (h) a warranty against defects must state that the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates.
- (2) For paragraph (1)(c), the text is:
'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 for 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'.

Reminder to Suppliers

Myer expects that all suppliers comply with the requirements and will conduct random checks to ensure compliance. Where non-compliant stock is found, Myer will contact the supplier to implement corrective actions.

Commencing August 2011, a reminder letter was sent to most Myer suppliers outlining the new legislative requirements for warranties against defects and Myer's expectation for compliance. A copy of the letter is attached for reference.

Transitional arrangements

A number of businesses have advised ACL Regulators that due to the long lead times associated with many consumer products, and the nature of the packaging of those products, there will be some goods in the supply chain that, as at 1 January 2012, do not contain warranty documents that are compliant with the warranty against defects requirements of the ACL.

The ACL Regulators recognise that transitional practical difficulties may arise in the application of the new provisions. Accordingly, until September 2012, when considering the appropriate enforcement response to any contravention of the warranty against defects requirements that apply to stock in the supply chain manufactured and packaged prior to 1 November 2011, the ACL Regulators will have regard to:

- (i) whether there are serious practical difficulties in updating warranty documents - e.g. the warranty is in a tamper-proof package; and
- (ii) whether the supplier has taken all reasonable steps to otherwise convey the mandatory text and information required by the ACL to consumers - e.g. by placing a compliant sticker on the outside packaging, or by erecting prominent, clear, point-of-sale signs including the mandatory text and information at all cash registers in a prominent position.

In these circumstances the ACL Regulators are unlikely to take enforcement action.

17 August 2011

«FirstName» «LastName»
«JobTitle»
«Company»
«Address1»
«Address2»
«Address3»

Dear «Title» «LastName»

Australian Consumer Law and Warranty against defects

As you would already be aware, the Australian Consumer Law (ACL) provides consumers with a number of protections and sets out a number of rules that businesses must adhere to when providing goods or services. These rules include requirements relating to warranties and guarantees.

The ACL is supported by the Competition and Consumer Regulations 2010 (the Regulations), which contain additional requirements that businesses must follow to comply with the ACL, including requirements relating to voluntary warranties against defects offered by businesses.

From 1 January 2012, any warranties against defects in consumer goods or services sold in Australia must comply with mandatory requirements including regulation 90 of the Regulations [see Appendix A].

A warranty against defects¹ is a representation communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions):

- (a) repair or replace the goods or part of them; or
- (b) provide again or rectify the services or part of them; or
- (c) wholly or partly recompense the consumer;

if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

This letter is a reminder of the legislative requirements and the importance of having processes in place to ensure compliance. The immediate implication for you as one of Myer's suppliers is that after **Friday 21 October 2011**, Myer reserves the right to reject goods where you have given a warranty against defects unless they comply with the Regulations. Goods delivered after this date that are found to be non-compliant may be returned at your cost. We encourage you to incorporate a form of identification onto packaging or labelling that allows easy detection that the product contains an updated warranty against defects document.

Myer will conduct random audits, to assess and appraise a supplier's compliance with the Regulations. During such audits, suppliers must be able to demonstrate compliance and provide documentation to Myer evidencing compliance, upon request.

¹ as defined in the Competition and Consumer Act 2010

To ensure compliance with every aspect of the Regulation, you are encouraged to take immediate action to review your warranties against the defects (if you have not already done so) to ensure that warranties provided comply. As a Myer supplier you are contractually obliged to only supply products to Myer that are in full compliance with relevant legislation and regulations. If you supply goods to Myer that do not comply with the law you will be in breach of the Myer Supply terms. Myer reserves the right to recover any loss suffered (including fines and legal fees) as a result of such breach.

If you require further information or are unclear about any of your obligations, please seek your own legal advice.

Your assistance and co-operation is greatly appreciated. If you have any queries, please do not hesitate to contact Eugenie Lau on +61 3 8667 7843 or Claude Demunari on +61 8667 6572. Alternatively please email myer.compliance@myer.com.au.

Yours sincerely,

Steven Black
National Assurance Manager

APPENDIX A: REGULATION

90 Requirements for warranties against defects²

- (1) For subsection 102 (1) of the Australian Consumer Law, the following requirements are prescribed:
 - (a) a warranty against defects must be in a document that is transparent;
 - (b) a warranty against defects must concisely state:
 - (i) what the person who gives the warranty must do so that the warranty may be honoured; and
 - (ii) what the consumer must do to entitle the consumer to claim the warranty;
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 - (f) a warranty against defects must set out the procedure for the consumer to claim the warranty including the address to which a claim may be sent;
 - (g) a warranty against defects must state who will bear the expense of claiming the warranty and if the expense is to be borne by the person who gives the warranty -- how the consumer can claim expenses incurred in making the claim;
 - (h) a warranty against defects must state that the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates.
- (2) For paragraph (1) (c), the text is '*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 for 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*'.

² as detail on Austlii website for Commonwealth Consolidated Regulations