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New Australian Consumer Protection Laws

From the 1st January 2011, individuals and business will be covered by a uniform set of consumer protection laws across all States and Territories. Individuals and business will be considered a consumer if they purchase goods or services that cost less than \$40,000; or if goods or services cost more than \$40,000 they are of a kind ordinarily acquired for domestic, household or personal use or consumption. This definition covers all of the goods and services supplied by Mosaic.

Consumer guarantees on goods

- **Acceptable quality**

Goods are of acceptable quality if a reasonable consumer, taking into account the nature and price of the goods, and any statements made about them on packaging or labelling, would consider they are:

- safe, durable and free from defects
- acceptable in appearance and finish
- do all the things that the goods are ordinarily used for.

- **Fit for specified purpose**

Goods must be fit for any purpose that the seller tells the consumer they would be fit for prior to them purchasing the goods. Goods must also be fit for any purpose that the consumer made known to the seller before purchasing the goods. Consumers can make their purpose known either expressly or the purpose can be implied from the circumstances.

- **Description**

Any description of a good, through verbal statements made to the consumer or representations made on packaging or labels, must be accurate.

- **Match sample or demonstration model**

Goods must match any sample or demonstration shown prior to the time of sale.

- **Express warranties**

Sellers must also abide by any express warranty that they make about goods.

- **Clear title, free from securities and charges, uninterrupted possession**

Sellers guarantee that the goods come with a clear title, unless they told the consumer otherwise before the sale, and do not carry any hidden securities or charges. Sellers also guarantee that no-one has a legal right to take the goods away or prevent the consumer from using the goods.

For more information see: <http://www.accc.gov.au/content/index.phtml/itemId/956994>

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Consumer guarantees on services

- **Care and skill**
Service providers must carry out all services using an acceptable level of skill and/or technical knowledge. Service providers must also take reasonable steps to avoid loss or damage when providing the services.
- **Fit for specified purpose**
Services, and any good resulting from the service, must be fit for any purpose or achieve any result that you represented to the consumer prior to them agreeing to the services. Services must also be fit for any purpose or achieve any result that the consumer made known to you prior to agreeing to the services. Consumers can make their purpose known either expressly, or the purpose can be implied from the circumstances.
- **Reasonable time**
If the contract does not specify a time frame for the services to be completed, services must be completed within a reasonable time. What is 'reasonable' will depend on the type of services and other relevant factors.

For more information see: <http://www.accc.gov.au/content/index.phtml/itemId/956993>

The seller's obligations under the Act:

Every business who provides or services to consumers automatically gives certain guarantees. These consumer guarantees cannot be changed, limited or refused by a seller, manufacturer or importer and if a consumer has a problem with a good they are free to approach the seller or manufacturer/importer to obtain a remedy - and you cannot tell them otherwise. Some key excluded behaviours include:

- **Misrepresenting consumer rights, including 'No refund' statements**
It is against the law for a seller to do anything that leads consumers to believe their rights are limited, or do not apply, including telling the consumer that a consumer guarantee:
 - does not exist
 - may be excluded, or
 - may not have a particular effect that in fact it does have, or
 - that they are required to pay for any rights equivalent to a consumer guarantee.

Any misleading claims a business makes about consumers' rights under the consumer guarantees are invalid and do not affect a consumer's right to obtain a remedy under the consumer guarantees. These claims are also likely to breach provisions of the Australian Consumer Law relating to false, misleading and deceptive conduct.

The guarantee does not cover aspects such as a consumer simply changing their mind, but does apply to defects in 'sale items' 'specials' and any other goods or services.

- **Voluntary and extended warranties¹**
Sellers must honour any warranty or promise made to a consumer. This includes verbal statements made by staff about what a good or service will do or how long it will last for, and also written policies about what will be done if there is a problem with a good or service.

¹ For more on training guarantees see our blog post at:
<http://mosaicprojects.wordpress.com/2009/09/09/guaranteed-pmp-pass/>

Any business can make extra warranties or promises about their goods or services, however, they must still honour the consumer guarantees. This means they must fix a problem when goods fail to meet a consumer guarantee, even if the consumer does not have a warranty or extended warranty, or the goods are out of warranty.

Warranties must be accurately defined. It is impossible to 'guarantee a pass' in any PMI exam. The solution offered by most organisations that 'guarantee a pass' is in fact a 'partial refund if you fail'. The warranty needs to be described as such if it is to be effective.

- **Gift recipients**

Gift recipients have the same rights and responsibilities and are entitled to the same remedies as a consumer who has bought goods directly.

- **Proof of transaction**

Limiting the acceptable proof of a transaction. Sellers are still able to require a consumer to provide proof of purchase but a receipt is not the only valid proof of purchase. For example, a credit card statement may be a valid, alternative way to show where the good was purchased.

- **Packaging**

If a consumer guarantee has not been complied with the seller cannot refuse to provide a remedy because goods were not returned in original packaging or wrapping.

Additional Information

Download the Australian Government information brochure from:

http://www.mosaicprojects.com.au/PDF/Consumer_Law.pdf

Go to the official website at: <http://www.consumerlaw.gov.au>