

# Travel and accommodation

An industry guide to the Australian Consumer Law



This guide was developed by:

- Australian Capital Territory Office of Regulatory Services
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Consumer Affairs and Fair Trading Tasmania
- Consumer Affairs Victoria
- New South Wales Fair Trading
- Northern Territory Consumer Affairs
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# Introduction

The Australian Consumer Law (ACL) is Australia's national consumer law, replacing previous consumer protection laws in the Commonwealth, states and territories. The ACL applies at the Commonwealth level and in each state and territory.

This guide provides information on the ACL for travel and accommodation businesses.

This guide is relevant to you if your business:

- > provides holiday accommodation
- > provides travel; for example, airlines or coach services
- > provides services related to travel, such as tours and recreational activities
- > markets, sells or takes bookings for any of the above.

It covers key aspects of the law such as refunds and cancellations, focusing on issues where:

- > industry bodies have requested more detailed guidance for business
- > consumers frequently report problems to national, state and territory consumer protection agencies.

This guide supplements the ACL guides for business and legal practitioners, available from [consumerlaw.gov.au](http://consumerlaw.gov.au):

- > Consumer guarantees
- > Sales practices
- > A guide to unfair contract terms law
- > Avoiding unfair business practices
- > Compliance and enforcement: how regulators enforce the Australian Consumer Law
- > Product safety.

In addition, guides to unfair contract terms for specific industries can be found at [consumerlaw.gov.au](http://consumerlaw.gov.au).

This guide gives general information and examples – not legal advice or a definitive list of situations where the ACL applies. You should not rely on this guide for complete information on all your obligations under the ACL.

For more information, view:

Australian Consumer Law website  
[consumerlaw.gov.au](http://consumerlaw.gov.au)

Australian Competition & Consumer Commission (ACCC) [accc.gov.au](http://accc.gov.au)

## State and territory consumer protection agencies

Australian Capital Territory: Office of Regulatory Services  
[ors.act.gov.au](http://ors.act.gov.au)

New South Wales: Fair Trading  
[fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

Northern Territory: Consumer Affairs  
[consumeraffairs.nt.gov.au](http://consumeraffairs.nt.gov.au)

Queensland: Office of Fair Trading  
[fairtrading.qld.gov.au](http://fairtrading.qld.gov.au)

South Australia: Consumer and Business Services  
[cbs.sa.gov.au](http://cbs.sa.gov.au)

Tasmania: Consumer Affairs and Fair Trading  
[consumer.tas.gov.au](http://consumer.tas.gov.au)

Victoria: Consumer Affairs Victoria  
[consumer.vic.gov.au](http://consumer.vic.gov.au)

Western Australia: Department of Commerce  
[commerce.wa.gov.au](http://commerce.wa.gov.au)

## Terminology

For the purposes of this guide:

A **supplier** is anyone – including a trader, a retailer or a service provider – who, in trade or commerce, sells, exchanges, leases, hires or provides products or services to a consumer.

**Trade or commerce** means in the course of a supplier's or manufacturer's business or professional activity, including a not-for-profit business or activity.

A **consumer** is a person who buys any of the following:

- > any type of products or services costing up to \$40,000 (or any other amount set by the ACL in future) – for example, an airfare or hotel accommodation
- > a vehicle or trailer used mainly to transport goods on public roads. The cost of the vehicle or trailer is irrelevant
- > products or services costing more than \$40,000, which are normally used for personal, domestic or household purposes – for example, a luxury cruise.

A person is **not** a consumer if they buy products to:

- > on-sell or resupply
- > use, as part of a business, to:
  - » manufacture or produce something else (for example, as an ingredient)
  - » repair or otherwise use on other goods or fixtures.

**Major failure** and **minor failure** refer to failures to comply with consumer guarantees. The ACL does not use the term 'minor'; it only makes reference to a failure that is 'major' and 'not major'. However, throughout this guide the term 'minor failure' is used for simplicity and will apply to circumstances where a failure will not be major.

A **representation** is a statement or claim.

# Consumer guarantees on services

Under the ACL, you must meet the consumer guarantees of providing services:

> **with due care and skill**

You guarantee to use an acceptable level of skill or technical knowledge when providing the services, and take all necessary care to avoid loss or damage

> **which are fit for any specified purpose**

You guarantee that services will be reasonably fit for any purpose specified by the consumer; and any products resulting from the services are also fit for that purpose. You also guarantee that services, and any resulting products, are of a standard expected to achieve the desired results that the consumer made known to you

> **within a reasonable time (when no time is set)**

You guarantee to supply the service within a reasonable time. What is 'reasonable' will depend on the nature of the services.

The consumer guarantees apply to services sold in trade or commerce, that

- > were purchased on or after 1 January 2011
- > cost up to \$40,000 (or any other amount set by the ACL in future), regardless of purpose or use
- > cost more than \$40,000, and are normally acquired for personal, domestic or household purposes – for example, a luxury cruise or travel agent services.

Services **not** covered by consumer guarantees include:

- > services bought before 1 January 2011. These are covered by statutory implied conditions and warranties under the *Trade Practices Act 1974* and state and territory legislation in force before 1 January 2011
- > services costing more than \$40,000, which are usually for commercial use – for example, chartering a cargo vessel to transport livestock
- > transportation or storage of goods for the consumer's business, trade, profession or occupation.

Consumer guarantees cannot be excluded, even by agreement.

For more information on consumer guarantees applying to services, refer to *Consumer guarantees: a guide for business and legal practitioners*, available from [consumerlaw.gov.au](http://consumerlaw.gov.au).

## Major vs minor failures

When a service fails to meet a consumer guarantee, your obligations depend on whether the failure is major or minor.

A major failure with services is when:

- > a reasonable consumer would not have acquired the services if they had known the nature and extent of the problem. For example, a reasonable consumer would not pay to stay in a holiday rental if they knew it was infested with mice
- > the services are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time. For example, a consumer books a holiday at a health resort where the staff are not qualified to provide the health services
- > the consumer told the supplier they wanted the service for a specific purpose but the services, and any resulting product, do not achieve that purpose and cannot easily or within a reasonable time be made to achieve it. For example, a consumer books a premium air ticket with additional leg room, telling the airline they need room to stretch out an injured leg; but their seat does not allow them to do this
- > the consumer told the supplier they wanted a specific result but the services, and any resulting product, do not achieve that result and cannot easily or within a reasonable time be made to achieve it. For example, a consumer books a shuttle bus service to the airport, specifying they want to arrive in time for a particular flight, but the bus is running late and the consumer misses their flight
- > the supply of the services has created an unsafe situation. For example, a family with children books a holiday house where the balcony rails are too low to prevent children falling over.

When there is a major failure, the consumer can:

- > cancel the services and get a refund for any unconsumed services (for example, the unused nights of a hotel stay), or
- > keep the contract and get compensation for the difference in value between the service delivered and what they paid for.

The consumer gets to choose, not the supplier.

The consumer may also seek compensation for any consequential or associated loss or damage resulting from the supplier's failure to meet the consumer guarantees. The loss or damage must have been reasonably foreseeable and not caused by something outside human control, such as a cyclone.

When the problem is minor, the consumer cannot cancel the service and demand a refund immediately. They must give you, the supplier, an opportunity to fix the problem:

- > free of charge, and
- > within a reasonable time.

If you refuse or take too long to fix the problem, the consumer can get someone else to fix the problem and ask you to pay reasonable costs they incurred in getting someone else to fix the problem, or cancel the service and get a refund.

Example:

A family books hotel accommodation, specifying they need a cot for their baby. When they arrive at the hotel, there is no cot in their room. The hotel can easily remedy this problem by providing a cot, so it is not a major failure. This must be done within a reasonable time, otherwise the consumer may terminate the contract and ask for a full refund.

A consumer may be entitled to compensation from you if they suffered any loss or damage because of the failure, and it was reasonably foreseeable that they would suffer loss or damage because of the failure.

## **Allowances for recreational service providers**

Under the *Competition and Consumer Act 2010* and some state and territory fair trading laws, suppliers of recreational services can exclude, limit or modify liability when they do not meet the consumer guarantees to provide services:

- > with due care and skill
- > fit for any particular purpose
- > within a reasonable time (when no time is set).

Suppliers may only limit their liability for death or personal injury, including illness (mental or physical) and disease, but not for property loss.

If you are a recreational service provider, you should get legal advice to establish whether you can limit your liability.

# Common issues

## Online bookings

If you use an online booking agent or website, they will have their own terms and conditions in relation to deposits, booking fees and cancellations. Sometimes these terms and conditions may conflict with yours, so it is important to provide consumers with clear information about relevant terms and conditions of both the online booking provider and the end provider (your business).

You should also be aware that consumers may rely on representations made by an online booking provider regarding certain aspects of your services; for example, room type, quality rating or views.

To minimise the risk of a dispute:

- > ensure you have an agreement with the online booking provider that clearly sets out the relevant terms and conditions
- > provide clear information on who the consumer should contact to change or cancel their booking
- > ensure images of rooms have tags or titles indicating the room type
- > clearly disclose if a quality 'star' rating is self-rated.

## Holiday deals and group buying

Group buying websites – also referred to by some people as 'daily deals' or 'deal of the day' – sell vouchers or coupons for products and services with discounts. In some cases, the vouchers are offered on the condition that a minimum number of buyers take up the deal.

Common issues encountered by consumers include non-supply and incomplete supply of services, and difficulty in booking services and redeeming vouchers.

If you offer these deals you need to be aware of the potential demands and risks. You should consider the potential demand created by advertising your services through group buying websites and whether your business can deliver those services on time and in a reasonable manner. For example, you may want to limit the deal offered so it doesn't restrict your ability to serve both regular and new customers.

You should also work with the group buying website to:

- > ensure that you can deliver services as advertised and that the terms and conditions of sale are fair and clearly expressed
- > ensure any terms and conditions are clear; for example, if you only intend to offer the services on certain days of the week or for a limited time
- > make sure any price representations are accurate.

Example:

A consumer purchased an online group buying voucher for six nights' accommodation in a 'beach view' room at a resort, valid for use within 12 months of purchase.

A month later, he tried to redeem the voucher. However, the resort informed him that the 'beach view' rooms advertised were not available for the selected dates, and he would be offered different rooms at an extra cost of \$100 per night.

Not wanting to incur these extra costs, the consumer enquired about different dates within the 12-month booking period, but found the 'beach view' rooms had been booked out for the entire period.

Because the resort could not offer the consumer the accommodation that had been advertised, it could be argued that they had misled or deceived the consumer into making the purchase and the resort was therefore liable to provide a full refund.

In addition, because the resort had accepted payment for the advertised accommodation, it was required, by law, to supply the accommodation within the voucher's 12-month validity period or offer the consumer a full refund. The supplier could make up for the lack of available 'beach view' rooms by offering the consumer an alternative arrangement (such as a 'beach view' room in another property of the same quality and standard), but the consumer does not have to accept this.

## Telemarketing sales

Many travel and accommodation deals are also sold through telemarketing, which may make them an 'unsolicited consumer agreement' under the ACL.

There are specific provisions in the law that apply to this type of selling.

Salespeople who make unsolicited contact with consumers to sell products or services must comply with:

- > limits on the days and times when they can call or visit
- > requirements for what they must tell the consumer; for example, their cooling-off rights
- > requirements for the sales agreement, including that it must be in writing
- > restrictions on when they can take payment and supply the products or services.

Even if you have contracted another business to do telemarketing for you, your business is still responsible for compliance with the law. The contractor is considered your dealer or representative.

For more information on unsolicited supplies, refer to *Sales practices: a guide for businesses and legal practitioners*, available from [consumerlaw.gov.au](http://consumerlaw.gov.au).

## Representations and expectations of holiday accommodation

Consumers sometimes complain when accommodation appears different from what was advertised by the supplier.

Example:

Two friends travelling together book a deluxe two-bedroom suite. The photos of this room type on the hotel's website show separate sleeping areas, but when they arrive at the hotel, they find their beds are right next to each other. When they raise the issue with the hotel manager, they are told it will cost an extra \$500 to upgrade to a room that meets their requirements.

The best approach is to advertise what the consumer will get accurately. If there are differences between what is advertised and the accommodation that may ultimately be supplied – for example, some rooms have substantially different layouts or views from those represented – you should include a clear and legible warning at the time of booking alerting the consumer to the possibility that they may receive something different.

You should also ensure any descriptions and photos of your accommodation do not mislead consumers about its price, quality, location or amenities. It might also be helpful to include tags or titles on the photographs shown on your website.

It is unlawful for a business to make false or misleading representations about products or services when supplying, offering to supply, or promoting those products or services.

For instance, a business must not make false or misleading representations about:

- > the standard, quality, value or grade of products or services
- > a particular person agreeing to acquire products or services; for example, falsely claiming a celebrity as a client
- > testimonials by any person relating to products or services
- > the sponsorship, approval, performance characteristics, accessories, benefits and uses of products or services
- > the price of products or services
- > a buyer's need for the products or services
- > any guarantee, warranty or condition on the products or services
- > the requirement to pay for any guarantee, warranty or condition on the products or services.



Whether a representation is considered false or misleading will depend on the circumstances of each case. A representation that misleads one group of consumers may not necessarily mislead another group. Whether a representation about a service was misleading would depend on whether it would mislead a reasonable person within this group.

Example:

A telemarketing salesperson called a consumer, offering vouchers for fourteen nights' holiday accommodation. The salesperson persuaded the consumer by comparing the cost of the vouchers to the normal price of the accommodation.

The consumer agreed to buy the vouchers. However, when he received them, he found they did not cover the entire cost of accommodation – they only entitled him to a discount off the price. They also contained additional conditions such as purchasing meals in specified locations.

The consumer was entitled to a refund, as the supplier had made representations to him about the service that would have misled a reasonable person.

## Component pricing

You must not promote or state a price that is only part of the cost, unless also prominently advertising the single (total) price.

The single price means the minimum total cost that is able to be quantified (or calculated) at the time of making the representation in order for a consumer to purchase the service.

The single price is calculated by adding up each of the price components that you are able to quantify when you make the price representation; for example, any tax, duty, fee, levy or charge imposed on you.

A prominent single price is one that:

- > stands out so it can easily be seen by a consumer
- > is clear, eye-catching and very noticeable.

Example:

A travel business advertises an overseas package holiday (flights and accommodation) for \$1990. In fine print at the bottom, it states this price excludes airport taxes. These are known costs totalling \$250, and should therefore be part of the total price.

The total price of the holiday (\$2240) should have been displayed as prominently as the \$1990 package price, because the total price was quantifiable.

While what is 'prominent' may vary on a case-by-case basis, you should consider factors such as the size, placement, colour and font of the price, as well as the background of the advertisement. For example, if a single price is smaller or in a colour that is harder to read than any component price, then this is likely to mean it is not as prominent.

## Contracts and receipts

### Consumer contracts

When you take a booking from a customer, you enter into a contract which includes terms and conditions.

Contracts can be in writing or made orally and can be entered into in a variety of ways, including:

- > signing a document
- > agreeing over the phone
- > clicking an 'I agree' button on a web page.

It is recommended you have a written agreement with your customer that clearly states the terms and conditions of the agreement, including the cancellation policy (see 'Consumer cancellations' on page 9).

If you use standard form contracts, you must ensure these comply with national unfair contract terms laws. These laws protect consumers against contract terms that:

- > would cause a significant imbalance in their rights and obligations under a contract,
- > are not reasonably necessary to protect the business, and
- > would cause detriment (financial or otherwise) to a consumer.

Examples of terms that may be unfair include those allowing the business to:

- > cancel or vary the terms of the contract, without allowing the consumer to do the same
- > make the consumer liable for things that would normally be outside the consumer's control
- > prevent the consumer from relying on representations made by the business or its agents
- > charge the consumer's credit card without giving the consumer notice or an opportunity to dispute the charges
- > forfeit a security bond for any breach of the contract, that is, even if there is no causal link between the breach and the forfeiture
- > avoid liability for negligence
- > increase the fees and charges payable without the right for the consumer to terminate (free of any penalty).

To comply with unfair contract terms laws, you must ensure your contracts do not contain any unfair terms. It is not enough that you consider that applying your policies, procedures and discretion will ensure consumers are dealt with fairly in your view.

If a court finds a term is unfair, that term is treated as if it never existed. If the contract can operate without the unfair term, it will otherwise still be binding.

Example:

A consumer rents a golf buggy from a resort to drive around an island during a holiday.

The resort requires her to sign an agreement acknowledging the golf buggy is "in good order, clean and in a roadworthy condition".

While the consumer can see whether the golf buggy is reasonably clean, she cannot know the mechanical condition or safety (roadworthiness) of the vehicle. This is likely to be an unfair contract term, in which case the resort would not be able to enforce it in the event of a dispute.

The unfair contract terms laws do not apply to a contract to supply products or services from one business to another.

For more information on unfair contract terms, refer to *A guide to the unfair contract terms law*, available from [consumerlaw.gov.au](http://consumerlaw.gov.au).

### Receipts

You must provide a proof of transaction (such as a receipt) as soon as possible after a transaction if a consumer has bought products or services worth \$75 or more (excluding GST).

If the goods or services cost less than \$75, the consumer may ask for a proof of transaction, which you must supply within seven days of being asked.

A GST tax invoice is sufficient proof of transaction.

A proof of transaction must be written in plain language and be legible and clear. It should state:

- > your business name
- > your ABN, if you have one
- > your ACN, if you have one but do not have an ABN
- > date of the supply
- > products or services supplied to the consumer, and
- > price of the products or services.

Electronic copies and digital photographs are valid proofs of transaction; however, they must be clear enough to show the purchase details.

### Itemised bills

A consumer can ask you for an itemised bill that shows:

- > how the price was calculated
- > the number of labour hours and the hourly rate (if relevant), and
- > a list of the materials used and the amount charged for them (if relevant).

A consumer can ask for an itemised bill within 30 days of whichever happens later:

- > the services are supplied, or
- > the consumer receives a bill or account from you for the supply of the services.

You must give the consumer the itemised bill free of charge and within seven days of them asking. It must be expressed in plain language and be legible and clear.

### **Consumer cancellations**

You can avoid many potential problems by including a cancellation policy in a written booking agreement. Your cancellation policy should spell out what happens if a booking is cancelled by you or your customer because, due to events beyond all parties' control, it is impossible to fulfil the original agreement. Such instances are known as a 'frustrated contract'.

A contract is not frustrated if the situation means that it is only inconvenient, difficult or expensive to carry out.

For online bookings, you should make terms and conditions easily available and identifiable on your website to avoid possible disputes. Failure to disclose these conditions could be considered unfair, due to a lack of transparency.

Make sure any cancellation fees or charges reflect your reasonable costs. If you don't, they may be seen as penalties, which you generally cannot enforce. For more information, see 'Cancellation fees' below.

#### **Cancellation because of a natural disaster or other crisis – frustration of contract**

A crisis such as a bushfire or flood may lead some guests to postpone or cancel their visit. Your rights and obligations will depend on the situation.

You are both released from the contract if, for example:

- > the accommodation has been destroyed
- > access roads have been closed, or
- > the authorities have advised that the area is not safe to enter.

There may also be other circumstances in which you or your customers are required to leave an area, or are prevented from entering.

Example:

A company specialising in running outdoor adventure activities has scheduled a three-day hike for a group of tourists in a state park. Temperatures of 40 degrees and over have been forecast across the state for the duration of the hike. The relevant authority has indicated it will close access to parks in high-risk areas, even if a Code Red fire danger rating is not issued.

Given the potential difficulties in relocating the hike to a different state park in these circumstances, the company notifies the hikers that they can choose from a list of alternative camp options; or if this is not suitable, they may cancel and receive a full refund of the purchase cost of the hike.

Such instances would trigger a 'frustrated contract' under the general law, which means it is impossible to perform or carry out a contract due to events beyond all parties' control.

In the above scenario, the customer would be entitled to a refund of any payments already made. However, the law may also entitle you to any reasonable expenses you incurred before the customer cancelled.

#### **Cancellation because of bad weather**

Generally, a guest is not entitled to a refund due to poor or less-than-ideal weather, as this would be unlikely to frustrate performance of the contract and prevent the booking from going ahead. For example, you cannot be held responsible for external environmental conditions outside your control such as:

- > no snow at a ski resort
- > rain during a weekend getaway at the beach
- > colder weather than expected on a summer camping expedition.

Sometimes, however, weather conditions may be integral to the nature of the service being provided and determine whether a contract can be performed. You may wish to address these situations through a specific contractual term or condition, as previously described. Keep in mind that any rights arising as a result of a potentially frustrated contract should not be limited by this term or condition.

## Other cancellation rights

Your guests also have certain rights in the form of consumer guarantees under the ACL. Essentially, accommodation must be fit for any purpose specified by the customer. If it is not, the guest may be able to cancel the booking and obtain a refund (less any amount for any services already provided), depending on whether the problem with the accommodation is major or cannot be remedied.

If you also make claims about accommodation that you can't fulfil – for example, if it does not live up to any representations you have made about it – the guest may have access to a range of other remedies under the ACL, for misleading or deceptive conduct.

## Cancellation fees

Your ability to claim cancellation costs from a customer depends on certain factors. If you charge a cancellation fee, booking fee or administrative charge, it should not be excessive; otherwise, it may be regarded as an unfair contract term. You should consider limiting the fee to the reasonable costs associated with making the booking and, if relevant, preparing the accommodation for the customer's arrival, or reserving services for their use.

If the guest has paid you a deposit, then cancels the booking without a good reason (for example, if they just change their mind), you will usually be able to keep the deposit depending on the terms of the contract.

Generally, a fair deposit should not be more than 10 per cent of the total cost of the accommodation or service booked, unless your potential loss or inconvenience justifies a higher amount. Otherwise, such a higher amount may be seen as a pre-payment. Pre-payments are refundable, minus any actual or reasonable costs you may have incurred before the booking was cancelled.

## Cutting your losses

Before applying your cancellation policy, take into account the likelihood that losses can be limited by re-booking another guest. While the chances of re-booking get smaller closer to the booking date, you should make reasonable efforts. If you re-book the accommodation for the same price, it may be difficult to argue that you have the right to impose a cancellation fee, except for costs already incurred.

If the contract allows you to reclaim losses from a customer, without taking reasonable steps to avoid them, it may be deemed unfair under the ACL. This could include any terms that allow you to claim the total cost of accommodation from a guest regardless of when they cancel the booking.

## Deducting cancellation fees from credit cards

If you record credit card details when confirming a booking by phone, advise customers at the time that their card will be charged if they cancel and ensure they accept that condition. If you don't, it may be considered an unauthorised transaction under the Australian Securities and Investments Commission's ePayments Code, which may apply to your bank. To be safe, give reservations staff a script to follow.

By issuing a written confirmation, you can also prove to the credit card company that you met their conditions.

## Service provider cancellations

You may be in breach of contract if you cancel a booking you have already accepted, unless you are legally permitted to do so (for example, under a valid term of the contract or if performance of the contract is frustrated – see 'Consumer cancellations' on page 9).

The customer may be entitled to claim damages from you as compensation for any loss they suffer as a result of your actions.

It is always better to find an outcome that satisfies both you and your customer, without expensive legal processes.

You should clearly advise your customers, in advance, of any circumstances in which you may cancel their stay – for example, by an explicit term or condition in your contract.

## Credit notes

If a customer is entitled to a refund, you cannot insist that they accept a credit note.

If consumer guarantees have been met, and a credit note is appropriate under the circumstances, you will need to decide:

- > the validity period of the credit note
- > if it is transferable
- > any other special conditions
- > if it can be used for other services
- > how to account financially for new bookings that extend into a new financial year.

### Transferring bookings

Your customer may be willing to postpone their visit. You should have a clear policy about what happens if:

- > the new date is in high season and more expensive
- > the customer makes repeated requests for different dates
- > the customer's booking is associated with a function (for example, a wedding) to be held on or near your business premises.

If your business is part of a group, such as a motel chain, you might offer an alternative to the customer that meets their needs. A hotel chain may be able to offer rooms in a different location; a resort could offer a different venue for a function. Ensure you are offering a good alternative, so your customers feel that they are getting a good service and not being 'shunted around' or penalised.

Remember that, in some instances, a customer may be entitled to a refund as it may not be appropriate to transfer or postpone their booking.

Example:

A country homestead is hired out for a wedding function. On the day of the wedding, the area experiences flash flooding, which leads to the local river bursting its banks and submerging surrounding access roads. Neither the wedding party, nor any guests, are able to get to the property.

The homestead owner rings other venues in the area to determine whether the function can be relocated. Luckily, one is able to accommodate; being more upmarket, however, there is an additional cost of \$3000.

The homestead's contract states that, in the event that a booking needs to be modified – for example, because of an extreme weather incident – the customer is liable for any extra costs.

In this instance, the flash flood would have frustrated performance of the contract by the homestead owner, entitling the bride and groom to cancel their wedding, should they have wished. In that instance, they would have been entitled to a refund, minus any reasonable costs already incurred by the homestead owner, such as the cost of any catering or wages paid to staff.

However, they indicated that they were prepared to relocate the function to the alternative venue secured by the homestead owner and therefore agreed to pay the extra charge.

# Businesses as consumers

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Under the ACL, a business has certain consumer rights when it purchases products or services. You cannot refuse a remedy to a customer simply because their purchase was made for or on behalf of a business.

A business is protected by consumer guarantees if it buys:

- > products or services that cost up to \$40,000
- > products or services that cost more than \$40,000 and are of a kind ordinarily acquired for domestic, household or personal use or consumption
- > a vehicle or trailer primarily used to transport goods on public roads.

Example:

A small business owner arranges travel to attend an interstate trade fair. She pays in advance for a transfer service to take her to the airport. However, the driver is late picking her up and she misses her flight.

The business owner is entitled to a remedy, as the service did not meet the consumer guarantee of being fit for any specified purpose (in this case, to catch the flight) or exercising due care and skill.

Where services are not normally acquired for personal, domestic or household purposes, liability for failure to comply with a consumer guarantee can be limited by contract to:

- > supplying the services again, or
- > paying the costs of having the services supplied again.

For more information, contact your local consumer protection agency.

Australian Capital Territory

**Office of Regulatory Services**

GPO Box 158  
Canberra ACT 2601  
T. (02) 6207 3000  
[ors.act.gov.au](http://ors.act.gov.au)

Northern Territory

**Northern Territory Consumer Affairs**

PO Box 40946  
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[consumeraffairs.nt.gov.au](http://consumeraffairs.nt.gov.au)

South Australia

**Consumer and Business Services**

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T. 131 882  
[cbs.sa.gov.au](http://cbs.sa.gov.au)

Victoria

**Consumer Affairs Victoria**

GPO Box 123  
Melbourne 3001  
T. 1300 55 81 81  
[consumer.vic.gov.au](http://consumer.vic.gov.au)

New South Wales

**NSW Fair Trading**

PO Box 972  
Parramatta NSW 2124  
T. 13 32 20  
[fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

Queensland

**Office of Fair Trading**

GPO Box 3111  
Brisbane QLD 4001  
T. 13 QGOV (13 74 68)  
[fairtrading.qld.gov.au](http://fairtrading.qld.gov.au)

Tasmania

**Consumer Affairs and Fair Trading**

GPO Box 1244  
Hobart TAS 7001  
T. 1300 654 499  
[consumer.tas.gov.au](http://consumer.tas.gov.au)

Western Australia

**Department of Commerce**

Locked Bag 14  
Cloisters Square WA 6850  
T. 1300 30 40 54  
[commerce.wa.gov.au](http://commerce.wa.gov.au)

**Australian Competition and Consumer Commission**

GPO Box 3131  
Canberra ACT 2601  
T. 1300 302 502  
[acc.gov.au](http://acc.gov.au)

**Australian Securities and Investments Commission**

PO Box 9827  
(in your capital city)  
T. 1300 300 630  
[asic.gov.au](http://asic.gov.au)

