



COVID-19 Toolkit: Breach of consumer guarantees

I am a supplier of goods or services. The government restrictions relating to COVID-19 have prevented me from supplying the goods or services of the type, frequency and/or standard that my customers are used to. Do consumer guarantees still apply?

With the constantly evolving movement and public gathering directions imposed by the government in relation to COVID-19, many merchants have had to either cancel the services or the orders for goods they provide to consumers and provide refunds or other forms of compensation.

Under the *Australian Consumer Law (ACL)*, a consumer has the right to a remedy against a merchant if the merchant has breached a consumer guarantee, whereby the consumer may seek recourse against a merchant. However, a consumer may not rely upon the consumer guarantees if the merchant's breach of a consumer guarantee was the result of either:

- the representations of a third party, which excludes the representations made by the merchant's employees or agents; or
- something that was beyond human control that happened after the supply of the goods or services.

Arguably, the government-imposed movement and public gathering directions in relation to COVID-19, and / or the COVID-19 pandemic itself, may amount to something that was beyond human control that caused the merchant to breach a consumer guarantee. If either of these things occurred *after* the goods or services were supplied to the consumer, then the merchant may not be liable for the breach of a consumer guarantee. This means that if there is any recourse for a consumer against the merchant, then it must be found elsewhere, such as in the contract between the parties.

Our Corporate team helps manage a variety of supply agreements on behalf of clients. For more information about issues related to trading during a pandemic, our [COVID-19 Toolkit](#) might be of assistance, as well.

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