



Australian
Competition &
Consumer
Commission

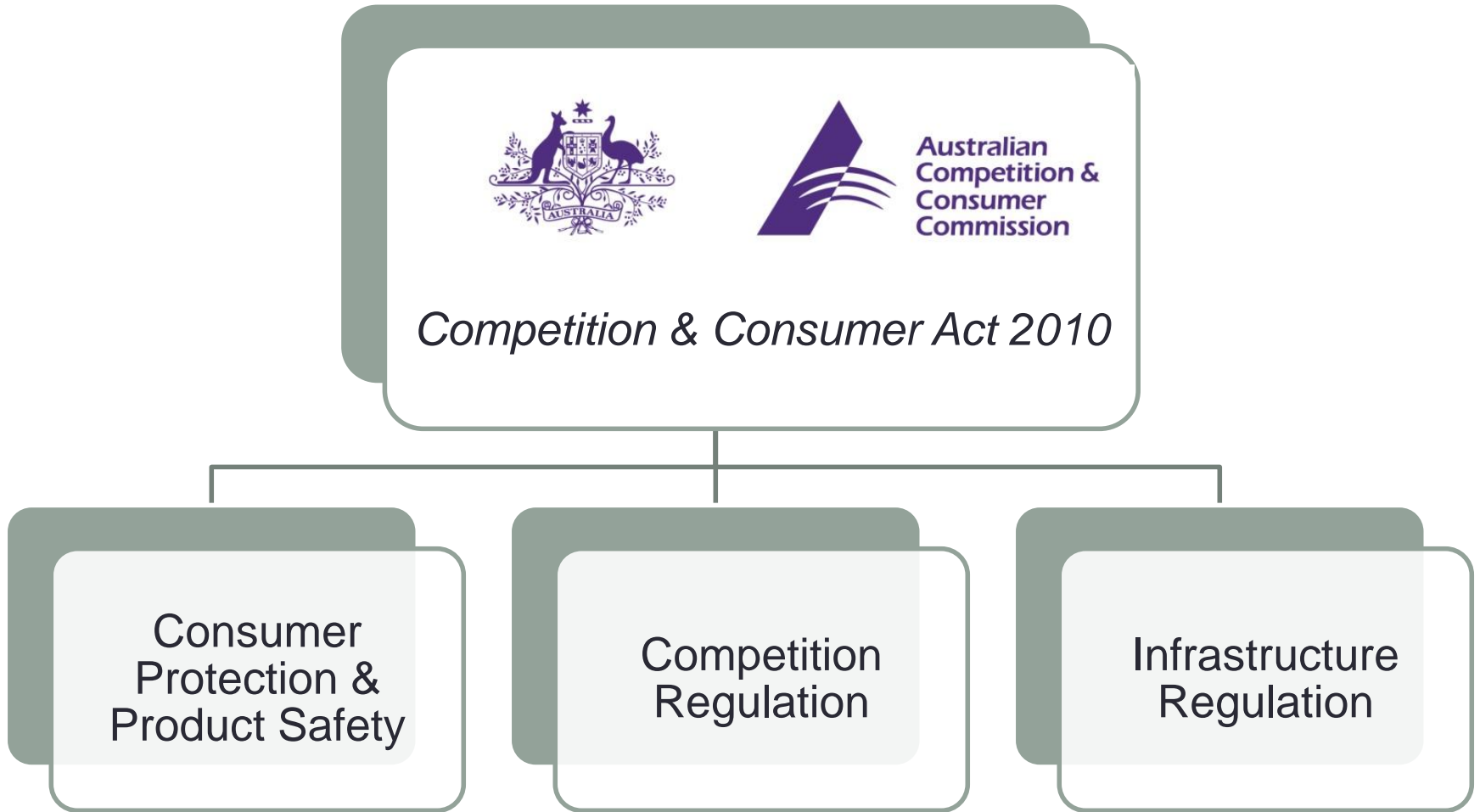
THE AUSTRALIAN CONSUMER LAW

Supplying consumer products

Australasian Furnishing Research and Development
Institute AGM, 17 November 2016

Billy Brine
Small Business & Industry Codes
ACCC

What we do



Consumer guarantees

- A single set of rights and remedies for consumers when buying goods or services
- Designed to ensure consumers get what they paid for
- Apply to:
 - all businesses which sell, lease or hire goods or services to consumers
 - manufacturers and importers of goods sold to consumers
- Consumers are entitled to a remedy (repair, replacement or refund) if one or more of the guarantees have not been met
- Cannot be excluded through contract terms

How does the ACL define a consumer?

- A person or business will be a consumer and therefore **protected by the ACL** if they buy goods or services:
 - for a price under \$40,000
 - for a price over \$40,000 – when they are goods or services that are normally used for personal, domestic or household use or consumption
 - that are vehicles or trailers used mainly to transport goods on public roads (regardless of cost)

Exceptions: People who purchase goods for resupply or for use in the manufacture or repair of other items are **not** consumers even if they meet the criteria outlined above. Auctions and private sales are not covered by the ACL.

The guarantees - goods

- **Goods** must:
 - be of acceptable quality
 - be fit for any disclosed purpose
 - match any description given or sample/demonstration shown
 - have repair facilities and spare parts available for a reasonable time
 - be free from undisclosed securities and charges
- Consumers must also obtain clear title and have undisturbed possession of the goods
- Consumer guarantees have no set time limit – they last for a reasonable time

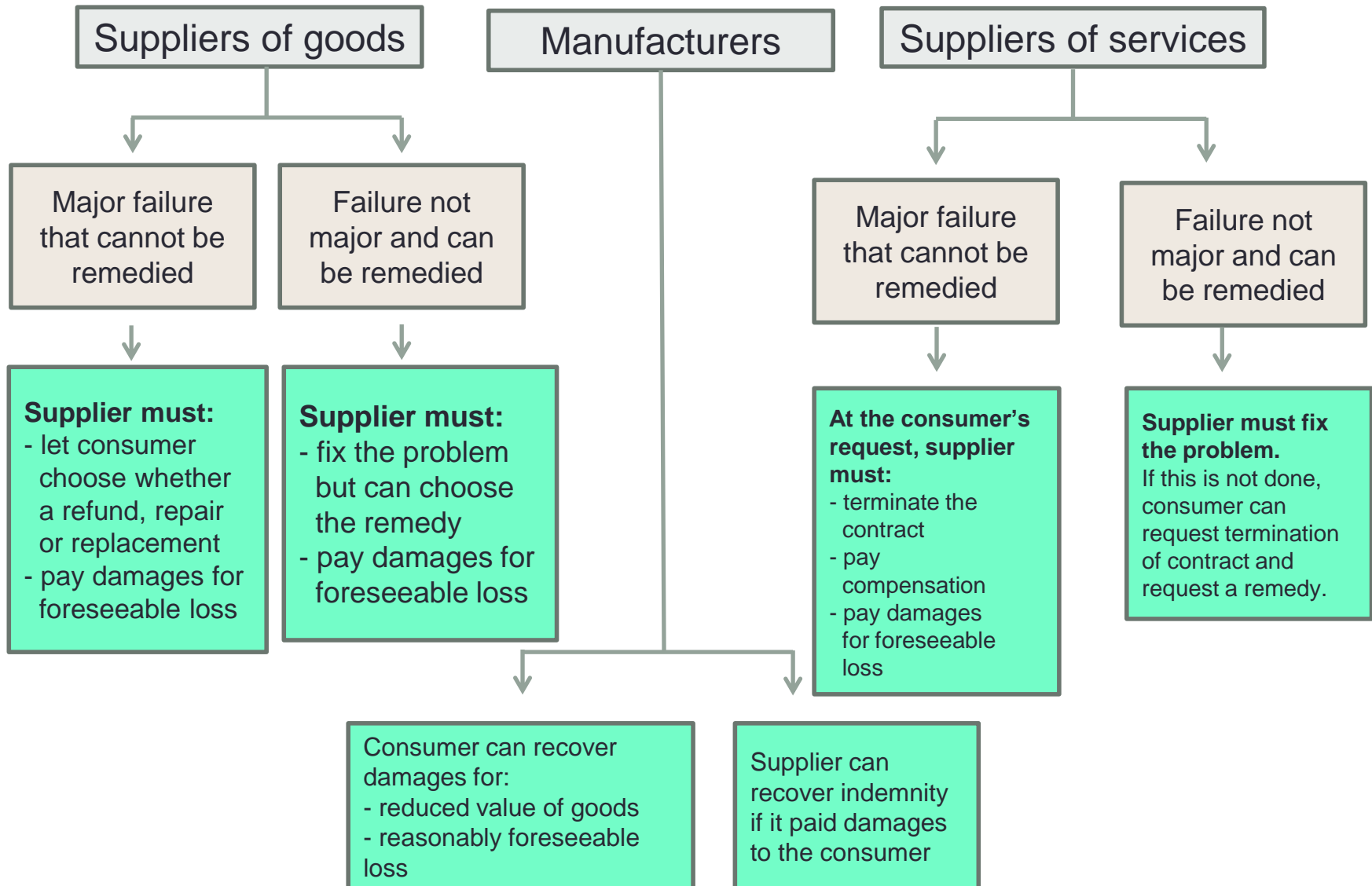
The guarantees - services

- **Services** must be:
 - provided with due care and skill
 - fit for any purpose disclosed by the consumer
 - provided within a reasonable time, when no time has been arranged

Remedies

- **Major** failure to comply – consumer can demand a replacement, full refund or compensation for the drop in value due to the problem with the good
- **Minor** failure to comply – supplier can decide how to remedy the goods within a reasonable time
- Consumers can claim a remedy from either the supplier, the manufacturer or the importer
- Remedy may also include payment for consequential loss
- Supplier entitled to recover losses from manufacturer from providing remedy to consumer

Remedies relating to guarantees



Consumers not entitled to a remedy if

- They simply changed their mind
- The problem was caused by misuse of the goods
- They did not explain why they wanted a particular good or service (and it wasn't obvious)
- the goods are lost, destroyed, damaged or disposed of by the consumer
- Goods are attached to property, and cannot be removed without damaging them



Voluntary warranties

- Do not cancel out the consumer guarantees
- Terms and conditions must not mislead customers about the consumer guarantees
- Sellers must comply with any warranty they offer
- Sellers must not pressure consumers to purchase extended warranties



Warranties against defects

- If you offer a written warranty with goods or services, it must adhere to the requirements of the ACL
- These are warranties in addition to consumer guarantees – e.g. '12 month manufacturers warranty'
- ACL sets out mandatory information about the warranty that must be available with the product or service contract
- Applies to all levels of the supply chain

Required information

- What the business (giving the warranty) must do if goods are faulty or defective – e.g. repair or replace the goods
- What the consumer must do to claim under the warranty – e.g. not misuse the goods
- Contact details (phone, address, etc.)
- Length of warranty
- What a consumer must do to claim under the warranty – how to contact the business and where to send the claim
- Who is responsible for expenses, and how expenses can be reclaimed
- Mandatory text needs to be included

Mandatory text

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.

You can include extra information in a warranty against defects, but it must not limit or negate the mandatory text.

It also cannot mislead consumers

Misleading or deceptive conduct

- The ACL prohibits misleading or deceptive conduct in trade or commerce
- Consumer guarantees cannot be changed, limited or refused
- Must not lead consumers to believe rights are limited or do not apply (e.g. 'No refund' statements)
- It doesn't matter if you intend to mislead someone or not



Other things that can mislead

- Incomplete or inaccurate pricing information
- Passing your product or business off as something it's not
- Not disclosing important information
- Inaccurate 'credence claims'
- False testimonials
- Any statement or action that could lead 'reasonable consumer' into error





Product safety

Mandatory product standards and bans

- Mandatory safety standards specify minimum requirements specific products must meet before they are supplied
- Currently 41 standards administered by the ACCC
 - Blinds, curtains and window fittings
 - Bunk beds (**under review**)
 - Household cots (**under review**)
- Minister can impose temporary or permanent bans on products and product-related services if there is a risk that they may cause serious injury, illness or death
- Currently 22 banned products
- Criminal penalties for supplying non-compliant products

Mandatory reporting



- Suppliers are responsible for reporting incidents where consumer goods have been associated with a death or serious injury or illness of any person.
- Applies to entire supply chain - manufacturer, importer, distributor, wholesaler, installer, repairer etc.
- Applies to consumer goods, or services related to consumer goods (e.g. installing window fittings)
- The requirement applies whether the supplier believes the goods caused the injury or not
- Supplier has **two days** after becoming aware to lodge report
- Fines for failure to lodge report

How to report?

- Complete and submit a mandatory injury report via the ACCC's online form
www.productsafety.gov.au/mandatoryreporting
- contact the ACCC on 1300 302 502
- What information needs to be provided with the report?
 - Identification of the consumer goods (or services and related goods)
 - When and in what quantities the consumer goods were manufactured, supplied in Australia, imported into Australia, or exported from Australia
 - The circumstances of death, serious injury or illness
 - The nature of the serious injury or illness suffered
 - Any action the supplier has taken or intends to take

Recalls

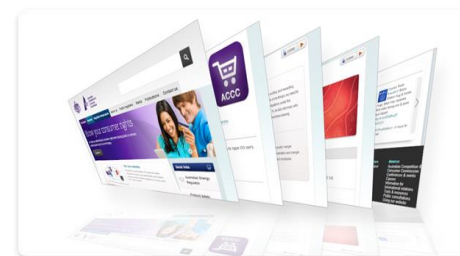
- Removal of a good or a component of a good from supply
- Removal can be permanent, or temporary until it conforms with a safety standard, or is safe
- Two types of recall, voluntary and compulsory
- **Voluntary** - supplier initiates a recall and voluntarily takes action to recover or repair the supplied goods (must notify minister)
- **Compulsory** - Minister can issue a recall notice to a supplier to recall consumer goods



Further information

ACCC website

www.accc.gov.au/business



Product Safety Australia website

www.productsafety.gov.au



ACCC small business helpline

1300 302 021

