

Consumer Law Alert

Mandatory repair notices for certain consumer goods

July 2011

From 1 July 2011, requirements came into effect which required repairers of certain consumer goods to provide notices to consumers before the repairer accepts consumer goods for repair.

These notices must be provided where the repair of a consumer good:

- relates to User Generated Data; or
- relates to the use of refurbished goods or parts.

What is User Generated Data?

User Generated Data is information that arises from data input into the device by the consumer and retained on the device. Examples include any data stored on goods such as computer hard drives, telephone numbers on mobile phones, songs stored on an iPods; games stored on a console; pictures stored on a camera and files stored on a USB.

What must I do before I accept the goods for repair?

You will need to give notice to the consumer that the repair of the goods may result in the loss of the user's data.

What is a refurbished good or part?

There is no precise definition. However the guidance recently published by the ACCC states that a "refurbished

good or part is likely to be considered as a used good or part that has been reconditioned or restored to an acceptable working order"

If I use refurbished goods or parts, what must I do before I accept the goods for repair?

If your services relate to refurbished goods or parts you must give the consumer notice and you must use specific wording required by the regulations:

"Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods"

In some cases goods or parts might fall into both categories in which case the appropriate notice to the consumer must cover both issues.

When do I need to give notice to the consumer?

If you are required to provide a notice to the consumer, whether it is in relation to User Generated Data or the use of refurbished goods or parts, that notice must be given to the consumer before you accept the goods for repair or commence any work on the goods. You will be required to provide that notice if you accept the goods for repair, even if you do not undertake the repairs yourself and another person does those repairs for you or on your behalf.

Further, a repair notice will be required for all applicable goods accepted for repair after 1 July 2011, regardless of when those goods were purchased.

How do I give notice to the consumer?

The regulations do not prescribe exactly how you are required to give notice to the consumer. However, the ACCC has recently published guidance that states that the notice must be:

- given in hard copy to the customer where the customer provides the goods for repair in person;
- sent by email
- sent by mail; or
- sent by facsimile.

The ACCC guidance provides that where notice is provided by mail the repairer should wait a “reasonable period of time” before commencing the repair of the goods. It does not give any guidance as to what a “reasonable period of time” is, but acknowledges that may vary from situation to situation.

What must my business do?

If you do not have these processes in place, you must as a matter of urgency implement processes to comply with these new provisions which are now operative.

Failure to comply with these obligations may result in penalties of up to \$50,000 for corporations or \$10,000 for individuals.

We can assist in you in developing and implementing a practical process for your business that will communicate the appropriate notice to your customers and which will help protect you from the significant penalties that may apply.

Written by:

David Lieberman
Consultant

+61 2 8248 5828

dliberman@thomsonslawyers.com.au

Matt Murphy
Senior Associate

+61 8 8236 1408

mmurphy@thomsonslawyers.com.au

For further information, please contact:

Ben Coogan
Partner

+61 7 3338 7503

bcoogan@thomsonslawyers.com.au

David Gaszner
Partner

+61 8 8236 1354

dgaszner@thomsonslawyers.com.au

Peter Le Guay
Partner

+61 2 8248 3424

pleguay@thomsonslawyers.com.au

Stephen Voss
Partner

+61 8 8236 1305

svoss@thomsonslawyers.com.au