



MEDIA RELEASE

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Is eBay selling consumers short?

The Consumer Action Law Centre has taken its concerns about outdated and potentially misleading information on eBay.com.au to the Australian Competition and Consumer Commission (ACCC) after eBay International AG (eBay) failed to respond to the centre's letter outlining its concerns.

The eBay website advises consumers that they're entitled to a refund if the goods they purchase are faulty or not fit for purpose, but states that these rights do not apply to goods bought at auction. But Consumer Action believes this statement, which appears on thousands of sales listings, is likely to mislead buyers and sellers about their rights and responsibilities because sales over eBay are unlikely to be considered auctions under the Australian Consumer Law (ACL).

David Leermakers, policy officer at Consumer Action, said that because eBay was commonly referred to as an "auction website", users may assume their transactions are auctions under Australian law and think this exemption applied to them. However, the exemption only applies where the auctioneer is the agent of the seller, which doesn't appear to be the case with eBay sales.

'If a product bought from a business over eBay is faulty, not fit for purpose, or not what was advertised, the business has obligations under Australian laws and they'll, more than likely, be required to offer the consumer a refund or repair,' said Mr Leermakers.

Consumer Action wrote to eBay International AG in June suggesting that the words "other than by auction" and "but not at auction" be removed from ebay.com.au as a matter of urgency, but the website is yet to be amended. Mr Leermakers said his organisation also informed eBay that other aspects of their consumer rights information needed to be updated to reflect the ACL which came into effect on 1 January 2011.

'eBay's refund advice still refers to the Trade Practices Act 1974 which was superseded by the ACL almost a year ago. Sadly, despite our letter alerting them to the situation, eBay is yet to make a change.

'Given the popularity of eBay.com.au, a substantial number of consumers and traders could potentially be misled. As such a high profile service, eBay has the opportunity to play an important role in informing Australians about their rights and obligations.

'For what would amount to a relatively small amendment to its website, eBay would also improve its shoppers' experience and limit the potential for arguments between customers and traders,' said Mr Leermakers.

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Background notes:

The Australian Consumer Law (ACL) came into effect on 1 January 2011. The ACL replaced the consumer protection provisions in the *Trade Practices Act 1974 (Vic)* and state fair trading legislation.

The previous *Trade Practices Act*, and most state fair trading acts, exempted "auctions" from statutory implied terms. These implied terms gave consumers rights to refunds or repairs where goods or services were not of an acceptable quality, or were faulty.

The new Australian Consumer Law has replaced the implied term regime with a new system of "consumer guarantees". These guarantees provide consumers with rights to refunds or repairs where the item:

- has a problem that would have stopped someone from buying it if they had known about it
- is unsafe
- is significantly different from the sample or description
- doesn't do what the trader said it would do, or what the consumer asked for it to do.

The new Australian Consumer Law does include an exemption for "auctions" (sections 54 to 59), however the definition of an auction is now limited to where the sale by auction is conducted by an agent of the seller (section 2).

Sales on online auction sites will generally not be excluded from the consumer guarantees because auction sites do not usually act as an agent for the person selling the goods.

The Queensland Office of Fair Trading states on its website: *eBay sales are not considered to be an auction as eBay does not act as an agent on behalf of the seller. Therefore, eBay sales are covered by the consumer guarantees under the Australian Consumer Law.*ⁱ

The ACCC states: *When consumers purchase goods from an online auction site, the seller, even a private individual, may need to abide by consumer guarantees as the websites do not generally act as an agent for the person selling the goods.*ⁱⁱ

In its User Agreement, eBay states:

- *Although we are commonly referred to as an online auction web site, it is important to realise that we are not a traditional "auctioneer". Instead, our Site merely acts as an online venue to allow members to communicate and offer, sell, and buy just about anything, at anytime, from anywhere, in a variety of formats, including a fixed price format and an auction-style format commonly referred to as an "online auction".*ⁱⁱⁱ

ⁱ See <http://www.fairtrading.qld.gov.au/auctions-private-purchases.htm>

ⁱⁱ <http://www.accc.gov.au/content/index.phtml/itemId/961809>

ⁱⁱⁱ <http://pages.ebay.com.au/help/policies/user-agreement.html>