

## CONSUMER GUARANTEES

*The consumer guarantees apply to goods and services purchased from 1 January 2011. Information on your obligations for goods and services purchased prior to this date remain basically unchanged.*

### **Your consumer guarantee responsibilities**

Every business who provides goods - by selling, leasing or hiring - or services to consumers automatically gives certain guarantees. Businesses that make goods, put them together or have their name on them also give certain guarantees. Importers give these same guarantees, if the maker does not have an office in Australia.

If a consumer has a problem with a good they are free to approach the seller or manufacturer/importer to obtain a remedy - and you cannot tell them otherwise.

### **Who is 'a consumer'?**

A person - or in some cases a business - will be considered a consumer if they purchase:

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

However, if goods are purchased to be resold or to be transformed into a product that is sold, the consumer guarantees will not apply.

### **Are any industries exempt from the consumer guarantees?**

The consumer guarantees do not apply to businesses supplying gas, electricity, telecommunications services or any other good or service specified by the regulations.

### **What you cannot tell a consumer**

You must not tell a consumer that a consumer guarantee:

- does not exist
- may be excluded, or
- may not have a particular effect that in fact it does have.

You also must not tell a consumer that they are required to pay for any rights equivalent to a consumer guarantee.

### **Misrepresenting consumer rights, including 'No refund' and 'No responsibility' signs**

The consumer guarantees cannot be changed, limited or refused by a seller, manufacturer or importer.

It is also against the law for a seller to do anything that leads consumers to believe their rights are limited, or do not apply—for example, by claiming that no refunds will be given under any circumstances.

Any misleading claims a business makes about consumers' rights under the consumer guarantees are invalid and do not affect a consumer's right to obtain a remedy under the consumer guarantees. These claims are also likely to breach provisions of the Australian Consumer Law relating to false, misleading and deceptive conduct.

### **'No refund' and other signs**

Signs that state 'no refunds' are unlawful. They imply it is not possible to get a refund under any circumstance - even when there is a major problem with the goods or service.

For the same reason, the following signs are also unlawful:

- 'No refund on sale items'
- 'Exchange or credit note only for return of sale items'

Signs that state 'No refunds will be given if you have simply changed your mind' are acceptable.

### **Voluntary and extended warranties**

You must honour any warranty or promise you make to a consumer. This includes verbal statements made by staff about what a good or service will do or how long it will last for, and also written policies about what you will do if there is a problem with a good or service?

Any business can make extra warranties or promises about their goods or services. However, they must still honour the consumer guarantees. This means you must fix a problem when goods fail to meet a consumer guarantee, even if the consumer does not have a warranty or extended warranty, or the goods are out of warranty.

### **Gift recipients**

Gift recipients have the same rights and responsibilities and are entitled to the same remedies as a consumer who has bought goods directly.

## CONSUMER GUARANTEES

### **Proof of transaction**

You are able to require a consumer to provide proof of purchase, but a receipt is not the only valid proof of purchase.

For example, a credit card statement, lay-by agreement or a stamped and dated warranty card showing where the good was purchased may be valid, alternative ways to show where the good was purchased.

### **Packaging**

If a consumer guarantee has not been complied with you cannot refuse to provide a remedy because goods were not returned in original packaging or wrapping.

### **Consumer guarantees on goods** **Acceptable quality**

Goods are of acceptable quality if a reasonable consumer would consider they are:

- safe, durable and free from defects
  - acceptable in appearance and finish
  - do all the things that the goods are ordinarily used for
- Taking into account the nature and price of the goods, and any statements made about them on packaging or labelling.

### **Fit for specified purpose**

Goods must be fit for any purpose that you told the consumer they would be fit for prior to them purchasing the goods. Goods must also be fit for any purpose that the consumer made known to you before purchasing the goods.

### **Description**

Any description of a good—through verbal statements made to the consumer or representations made on packaging or labels—must be accurate.

### **Match sample or demonstration model**

Just like all descriptions of goods must be accurate, all goods must match any sample or demonstration shown prior to the time of sale.

### **Clear title, free from securities and charges, uninterrupted possession**

Sellers guarantee that the goods come with a clear title, unless you told the consumer otherwise before the sale, and do not carry any hidden securities or charges. Sellers also guarantee that no-one has a legal right to take the goods away or prevent the consumer from using the goods.

### **Express warranties**

Sellers must also abide by any express warranty that they make about goods.

### **What if the guarantees aren't met?**

If a seller does not meet any of the guarantees listed above, the consumer is entitled to a remedy—either a repair, replacement, refund or compensation for any drop-in value from the original price paid—depending on the circumstances.

### **Major failure**

A major failure to comply with a consumer guarantee is one where a reasonable consumer would not have purchased the goods had they known of the full extent of the problem, the goods differ significantly from any description, sample or demonstration model or the goods are unsafe.

### **When a supplier deals with a problem that is the manufacturer's responsibility**

It is important to remember that if you don't comply with a consumer guarantee, your customers have a right to take action against you. This is the case even if the problem with the good was caused by the manufacturer.

The consumer guarantees do, however, provide sellers with rights against manufacturers or importers of goods if the seller provides a remedy to a consumer for a problem which is caused by the manufacturer or importer.

### **Consumer guarantees on services** **Care and skill**

Service providers must carry out all services using an acceptable level of skill and/or technical knowledge. Service providers must also take reasonable steps to avoid loss or damage when providing the services.

### **Fit for specified purpose**

Services, and any good resulting from the service, must be fit for any purpose or achieve any result that you represented to the consumer prior to them agreeing to the services. Services must also be fit for any purpose or achieve any result that the consumer made known to you prior to agreeing to the services.

## CONSUMER GUARANTEES

### **Reasonable time**

If the contract does not specify a time frame for the services to be completed, services must be completed within a reasonable time.

What is 'reasonable' will depend on the type of services and other relevant factors such as weather and availability of parts.

### **What happens if a consumer guarantee is not complied with?**

If a service provider does not meet any of the guarantees listed above, the consumer is entitled to a remedy—either fixing the problem with the services, a refund or compensation for any drop-in value from the original price paid—depending on the circumstances.

### **Major failure**

A major failure to comply with a consumer guarantee is one where a reasonable consumer would not have agreed to the services had they known of the full extent of the problem.

### **Recreational services**

A 'recreational service' is one where someone participates in:

- a sporting activity or a similar leisure pursuit
- any other activity that involves a significant degree of physical exertion or physical risk, for recreation, enjoyment or leisure.

Examples of recreational services are forms of sport such as fitness training, horse riding, sky-diving, bungee jumping and paintball.

Under the ACL 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).

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

You will need legal advice to establish whether you can limit your liability.