



Australian
Competition &
Consumer
Commission

Warranties and refunds

a guide for consumers and business



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Important notice

Please note that this publication is for general guidance only. The information contained in this publication is a summary designed to give you the basic information you need. The information does not cover all of the relevant legislation and general law principles, nor is it a substitute for professional legal advice.

Moreover, because this publication avoids legal language wherever possible there may be some generalisations about the application of legislation. Some of the provisions referred to in this booklet have exceptions or important qualifications. It is important to note that the particular circumstances of the conduct need to be taken into account when determining the application of the law to that conduct.

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Overview

The *Trade Practices Act 1974* (the Act) protects consumers when they buy goods and services.

It does so by saying that there are legal rights and obligations in every contract between a buyer and a seller. For example, the law requires that goods must be free of defects, and do what they are meant to do. Services must be carried out with care and skill.

Consumers' rights, which the Act says automatically form part of every contract between buyer and seller, are called **statutory rights**.

If a seller of goods or services does not meet any one of the obligations, it is a breach of their contract with the consumer. When this happens, consumers are entitled to a **remedy** from the seller.

The type of remedy depends on the circumstances but may include repair or replacement of goods, compensation for loss or damage, a refund or having an unsatisfactory service performed again.

Statutory rights have no set time limit – depending on the price and quality of goods, consumers may be entitled to a remedy after any manufacturers' or extended warranty has expired.

In addition to the legal obligations that the Act says are a part of any contract between a consumer and a seller, some businesses offer extra promises about their goods and services, even though the law does not require them to.

These promises, often called **voluntary** or **extended warranties**, provide extra customer protection if problems arise after a sale. Voluntary and extended warranties may also entitle consumers to a refund, replacement or repair in the event of a problem.

This kind of promise, if it is offered, is in addition to consumers' statutory rights – statutory rights cannot be overruled.

About this guide

This publication contains important information for consumers and businesses about their rights and obligations under the Act.

It includes information about:

- the legal requirements that apply to every transaction between a consumer and a seller, known as **statutory conditions** and **statutory warranties**
- consumers' rights when there is a problem after a sale, including when they are entitled to a remedy for unsatisfactory goods and services
- extra warranties offered by sellers, often called **voluntary warranties** and **extended warranties**
- what consumers can do when there is a problem
- the obligations of manufacturers and importers
- contact details for state and territory fair trading agencies (also called consumer affairs) that may be able to help consumers resolve problems.

Who is this guide for?

This guide is for you, if you are:

- a consumer
- a seller of goods or services
- a manufacturer or importer of goods or services.

Who is a consumer?

The statutory rights in this guide apply to people who fit the definition of a consumer.

The Act says a 'consumer' is a person or corporation who acquires:

- goods or services normally meant for personal or household purposes
- any other type of goods or services costing less than \$40 000
- a commercial road vehicle or trailer used mainly to transport goods on public roads.

A person or business that acquires goods in order to on-sell them or to make a profit is not a consumer.

What is the ACCC's role?

The Australian Competition and Consumer Commission (the ACCC) has several roles in relation to the statutory rights and obligations set out in the Act. The ACCC can:

- 1) Investigate complaints and take action against sellers who have breached the Act – for instance, by engaging in misleading or deceptive conduct in relation to the statutory rights and obligations.

For example, we can take court action against a business that claims it will not issue a refund under any circumstances (this kind of claim is misleading because sellers are required to issue refunds in some cases).

The Act treats this type of breach as serious and conduct of this kind can result in fines of up to \$1.1 million for businesses and \$220 000 for individuals.

Consumers or businesses who want to complain about or report conduct that breaches the Act

should contact the ACCC Infocentre on 1300 302 502.

This guide's section on *Misleading consumers about their rights* has more information about the kinds of behaviour that may be misleading.

- 2) Inform consumers and businesses about the rights and obligations implied by the Act in contracts for goods and services.
- 3) Suggest possible courses of action consumers or businesses might take to negotiate remedies or resolve disputes.
- 4) Help consumers and businesses find the right agency to complain to (if this isn't the ACCC).

What can't we do?

The ACCC cannot:

- 1) Become involved in private contractual disputes on behalf of consumers (including those concerning warranty claims).

If goods or services do not meet one of the statutory conditions or statutory warranties, it is up to a consumer to pursue their own remedy or, if necessary, take action to resolve a dispute, such as writing a complaint letter or contacting their state fair trading office (who may be able to negotiate on their behalf).

This guide provides information on what consumers can do in these circumstances.

- 2) Give legal or professional advice, or reveal how many or what type of complaints we have received about a business.

Goods and services: what the law requires in every sale

Every time a consumer buys goods or services, they are entering into a contract with the seller.

The Act says every one of these contracts contains a number of obligations that sellers must honour. In legal language, these are 'implied' into the contract and exist even if they are not set out in writing.

There are two types of statutory obligations implied into contracts by the Act: **statutory conditions** and **statutory warranties**.

Statutory conditions are the essential terms of a contract – that is, they 'break' the deal between consumer and seller if they are not met.

Statutory warranties are secondary considerations that are important but do not necessarily 'make or break' the deal in the same way as statutory conditions.

Supply of goods

In all contracts for goods, consumers are protected by the inclusion of a number of statutory conditions and statutory warranties.

The **statutory conditions** require that:

- 1) Goods must be of merchantable quality – they must meet a level of quality and performance that would be reasonable to expect, given their price and description. They should also be free from defects that were not obvious at the time of purchase.

One of Sharon's new shoes loses its heel the first time she wears it outside. The shoe is not of merchantable quality.

- 2) Goods must be fit for their intended purpose – they should be suitable for any particular purpose the buyer made known to the seller.

Tony explains to a shop salesman that he wants a DVD player that will play discs produced in other countries, and buys the machine the salesman says will do this. He later discovers overseas discs do not work in the player. The goods were not fit for their intended purpose, which had been made known to the salesman.

- 3) The goods must match the description given to the consumer, or the sample shown.

Alice orders a red dress from a clothing business's website, based on a sample photograph, but receives a pink one instead. The goods do not match the description and so do not meet this statutory condition.

- 4) A consumer must receive clear title to the goods – that is, the seller must be entitled to sell the goods.

The second-hand car Lee recently bought from a dealer is repossessed by police. He finds out that the vehicle was stolen. The seller did not give Lee clear title to the goods.

The **statutory warranties** require that:

- 1) The consumer will enjoy quiet possession of the goods.
- 2) The goods are free from any charge or encumbrance not disclosed or known to the consumer.

Supply of services

All contracts for services contain a number of statutory warranties. They require that:

- 1) Any service must be carried out with due care and skill.

Maria's car overheats not long after she had a mechanic service it. She finds out this happened because the mechanic did not properly tighten a hose connected to her radiator. The mechanic

did not use due skill and care while servicing Maria's car.

- 2) Any materials supplied in connection with the service must be reasonably fit for the purpose for which they are supplied.

Alex hires a painter to paint the outside of her house. A few months later the paint starts peeling, and Alex finds out that the paint was made incorrectly and was not waterproof. The paint was not reasonably fit for the purpose for which it was supplied.

- 3) The service, and any materials supplied in connection with the service, should be reasonably fit for any particular purpose the consumer made known to the seller.

Consumers' legal rights

Problems with goods – remedies

If goods do not meet a statutory condition or statutory warranty, it is a breach of the contract between buyer and seller. When this happens, consumers are entitled to a remedy from the seller.

Types of remedies include refunds, having goods replaced or having goods repaired.

The form of remedy depends on a number of factors, including when the problem arose and whether the problem relates to a breach of a statutory condition or statutory warranty.

Refunds

There are some circumstances where consumers are entitled to receive a full refund for goods that breach a **statutory condition**.

A consumer is entitled to receive a full refund when they cancel (or 'rescind') their contract of sale with the seller.

The right under the Act to cancel a contract and get a refund is generally limited to a reasonable time after a consumer receives a good – this is usually before the consumer has used the goods a lot.

The Act says that consumers can cancel a contract for goods that breach a statutory condition by:

- returning the goods to the seller, or notifying the seller of the problem, within a reasonable time after the consumer has had a reasonable opportunity to inspect the goods (generally, this means before the consumer has used the goods a lot)
- not disposing of, losing or destroying the goods.

To cancel a contract of sale, the consumer must also:

- have taken reasonable care of the goods
- not have damaged the goods by using them in a way they were not meant to be used
- be able to prove they bought the goods from the seller.

If a consumer cancels their contract of sale with the seller, they are entitled to insist on a full refund. A seller may not insist the consumer receive another form of remedy (such as repair or replacement goods) or insist that the refund be issued as store credit.

A consumer is generally entitled to receive any refund in the form of their original payment. For example, if they paid for an item with a credit card, it is reasonable for the seller to give the consumer a credit card refund.

If goods were purchased on an instalment plan, consumers are entitled to a refund of any

payments made and to have any outstanding balance on the goods cancelled.

If faulty goods have to be returned to the place where they were bought, it is reasonable for the seller to pay appropriate freight costs.

Other types of remedies

If a good does not meet a statutory condition or statutory warranty after a consumer has owned it for some time or used it a lot, it is still a breach of contract. However, the consumer may not be entitled to rely upon the right under the Act to cancel or rescind the contract and claim a full refund.

In these cases, the consumer may still be entitled to another form of remedy from the seller for the breach of contract, such as:

- the replacement of the goods, or the supply of equivalent goods
- repair of the goods, or paying for the cost of repair.

It is up to the consumer and seller to negotiate a solution that is acceptable to each party. If the consumer and seller cannot negotiate a remedy, a court or tribunal may decide what is reasonable in the circumstances in accordance with the law.

As a guide, if a seller breaches a contract with a consumer because a good does not meet a statutory condition or warranty, the consumer will be entitled to a remedy which puts them in the same situation as if there had been no breach of contract.

Having a good repaired is one of the most common ways this result can be achieved.

How long do consumers' statutory rights apply?

Statutory rights are not limited to a set time period. Instead, they apply for the amount of time that is reasonable to expect, given the cost and quality of the item.

This means a consumer may be entitled to a remedy under their statutory rights after any manufacturer's voluntary or extended warranty has expired.

For example, it is reasonable to expect that an expensive television should not develop a serious fault after 13 months of normal use. In this case, the consumer could argue the item was not of **merchantable quality** and ask for it to be repaired, even if the manufacturer's voluntary warranty had expired.

Who must provide a remedy?

Sellers – Each sale is a contract between the seller and the consumer. So if the seller breaches the contract by providing goods that do not meet a statutory warranty or condition, it is their responsibility to provide a remedy.

If a seller has to return goods to a manufacturer for assessment or repair, the seller should arrange delivery.

The law allows sellers to recover the cost of the remedy from the goods' manufacturer or importer, if the problem was related to a manufacturing fault.

Manufacturers and importers – The law also gives consumers the right to pursue a manufacturer or importer for a remedy, even if goods were bought from a retailer. However, manufacturers and importers are not required to issue refunds unless the consumer purchased the goods directly from them – that is, they have a contract of sale with the consumer.

For more information see the *Manufacturers' and importers' obligations* section of this guide.

Consumers' responsibilities – goods

The law aims to give consumers and sellers a fair go. It is not designed to protect consumers if they are careless or make unreasonable demands.

There are several circumstances when consumers are not entitled to a remedy from the seller.

Sellers do not have to give refunds, credit or exchanges if consumers:

- change their minds, decide they do not like the goods or have no use for them (except in cases where other legislation provides for a 'cooling off' period – for example, door-to-door sales)
- discover they can buy the goods cheaper elsewhere (except where the seller provides a guarantee that the goods cannot be purchased cheaper elsewhere)
- examine the goods before buying and ought to have seen any obvious fault
- had the defect drawn to their attention before buying (for instance, when goods were labelled as seconds, or faults were clearly marked)
- damage the goods by using them in a way they were not meant to be used.

Disputes about goods

If a seller believes goods have met all the statutory conditions and statutory warranties, or that a fault was caused by the consumer, they may refuse to provide the consumer with a remedy. Alternatively, a consumer may not think the remedy offered to them is reasonable or appropriate.

The *Advice for consumers* section of this guide explains consumers' options in these situations.

Because this kind of dispute is a private contractual matter between buyer and seller, it is up to the consumer to take action. The ACCC cannot become involved in private contractual disputes on behalf of consumers.

However, the ACCC can investigate complaints and take action against sellers who have breached the Act – for example, by engaging in misleading or deceptive conduct (see the *Misleading consumers about their rights* section of this guide for more information).

Complaints can be made to the ACCC Infocentre on 1300 302 502.

Problems with services – remedies

Services that do not meet a statutory warranty also breach the contract between consumer and seller. The consumer is entitled to a remedy for this breach of contract which can include:

- having the services supplied again
- payment of the costs of having the services supplied again
- compensation for any loss they suffer.

The form of remedy depends on what the consumer and seller can agree is acceptable or, if they cannot negotiate a remedy, it will be up to a court or tribunal to decide what is reasonable in the circumstances in accordance with the law.

Consumers' responsibilities – services

A service provider cannot be held responsible for the result if:

- a consumer did not make it clear what they wanted done, unless it was clear from the circumstances what the consumer wanted
- a consumer insisted on having the service carried out in a particular way, but does not like the result
- the service relates to:
 - the transportation or storage of goods for the consumers' business purposes
 - an insurance contract.

Disputes about services

If a service provider believes they have met all the statutory warranties, they may refuse to offer any form of settlement. Alternatively, a consumer may think the remedy offered to them is not reasonable or appropriate.

The 'advice for consumers' section of this guide explains consumers' options in these situations.

Because this kind of dispute is a private contractual matter between buyer and seller, it is up to the consumer to take action. The ACCC cannot become involved in private contractual disputes on behalf of consumers.

The ACCC can, however, investigate complaints and take action against sellers who have breached the Act – for example, by engaging in misleading or deceptive conduct (see the *Misleading consumers about their rights* section of this guide for more information).

Complaints can be made to the ACCC Infocentre on 1300 302 502.

Misleading consumers about their rights

Statutory rights are consumers' rights which are implied in all consumer contracts by the Act. They cannot be changed, limited or refused by a seller.

It is 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 a consumer's statutory rights are invalid and do not affect a consumer's right to obtain a remedy for a breach of a statutory condition or warranty.

Store return policies and 'no refund' signs

Some sellers have a policy on refunds and returns and may choose to display signs so consumers are aware of these before buying.

Businesses do not have to use signs but if they do they must not mislead consumers.

For example, signs that state 'no refunds' or 'no refund on sale items', could lead consumers to believe they have no right to a refund under any circumstances, which is untrue because if a statutory condition has been breached, the consumer may be entitled to a refund.

Policies that set a time limit, such as 'no refunds after 30 days', can be misleading because statutory rights have no time limits, other than what is 'reasonable'.

Similarly, insisting consumers return goods unopened, or in their original packaging may be misleading (as these are not required to claim a remedy under statutory rights).

'Store credit'

A consumer is generally entitled to receive any refund in the form of their original payment. For example, if they paid for an item with a credit card, it is reasonable for the seller to give the consumer a credit card refund.

It is misleading for a seller to insist that a refund be issued as store credit.

Passing on responsibility for a remedy to a manufacturer

Because each sale is a contract between the buyer and the seller, consumers are entitled to insist that the seller provide them with a remedy, even if a problem is due to a manufacturer's fault.

It is a breach of the Act for sellers to mislead consumers about this right – for example, by claiming they can do nothing and that the consumer must contact the manufacturer for a remedy.

In some circumstances it may be reasonable for a seller to return the item to the manufacturer to establish the cause of the fault – for instance, if the good has been used extensively or was purchased some time ago. With technical goods such as cameras or mobile phones the seller may be unable to assess whether the consumer has damaged the good in some way.

In these circumstances, the seller should arrange delivery of the item to the manufacturer.

Services – 'no responsibility' policies

Service providers must also not mislead consumers about their rights – for example, by implying that consumers have no rights if services are not carried out with due care and skill.

Misleading claims may include:

- No responsibility for loss or damage.
- Goods left for repair at your own risk.
- All care but no responsibility.

ACCC action against businesses that mislead consumers

The ACCC treats misleading conduct very seriously, and can take court action against businesses that mislead or deceive consumers about their rights. This can result in fines of up to \$1.1 million for businesses and \$220 000 for individuals.

Help for businesses

The ACCC provides guidance materials, including signs, to help businesses meet their legal obligation to provide correct information about refunds.

These materials are available from the ACCC Infocentre at no cost (see ACCC contact details at the end of this guide).

Voluntary and extended warranties

Sellers and manufacturers can make extra promises about their goods or services as a way of giving consumers more confidence in their quality, or the level of customer protection if things go wrong. These kinds of promises are called ‘voluntary’ or ‘extended’ warranties.

If things do go wrong, a voluntary or extended warranty may entitle a consumer to have goods replaced, repaired, or to have their money refunded.

The terms and conditions of both kinds of warranties set out precisely what consumers can claim, such as whether all repair work or replacement parts are covered.


Regardless of the terms and conditions, voluntary and extended warranties do not override or alter consumer’s statutory rights, or affect a seller’s responsibility to meet statutory conditions and statutory warranties.

Voluntary warranties

‘Voluntary warranties’ are the written and verbal promises sellers and manufacturers make about their goods and services. However, they are also known by other names, including:

- express warranties
- store warranties
- manufacturers’ warranties
- money-back guarantees
- store refund policies
- store exchange policies.

The law does not require any business to provide a voluntary warranty.



However, when such warranties are provided, consumers should understand their terms and conditions (the ‘fine print’) as these set out what the seller will do if there is a problem and whether there are any restrictions or conditions that may prevent a claim.

Depending on the terms and conditions, these warranties may entitle consumers to a refund, replacement or repair if there is a problem.

Voluntary warranties usually apply for a set period – typically 12 months.

A voluntary warranty forms part of the contract between the buyer and the seller. This means consumers have the right to take legal action against the seller if the warranty is not honoured, and this includes any claims about the future availability of services, spare parts and replacement parts.

Some voluntary warranties (which include manufacturers’ warranties) do not cover all types of damage or defects. However, problems that are not covered by a voluntary warranty may still breach a statutory warranty or condition. For example, if the fault means the goods are not of merchantable quality, a consumer may still be entitled to a remedy under their statutory rights.

These rights also extend to any warranty claims made by manufacturers or importers.

Other voluntary warranty issues

Packaging – a seller may require a consumer to return goods in their original packaging as a condition of claiming a refund under a voluntary warranty. However, a consumer seeking a refund under their statutory rights, and who has met the other requirements listed on p. 8 of this guide, does not need to return the packaging.

Warranty cards – sellers and manufacturers sometimes require a consumer to return a ‘warranty card’ (usually issued with the goods) to activate a voluntary warranty. This may be a condition of making any future claim under a voluntary or extended warranty. However, it does not affect a consumer’s statutory rights.

Extended warranties

Sellers sometimes give consumers the option of buying an extra warranty that provides protection for a specified period, often for some time after a manufacturers’ warranty runs out.

These kinds of agreements are called ‘extended warranties’. While some extended warranties may ‘extend’ a manufacturers’ warranty, many are actually a separate service or insurance contract with different ‘fine print’.

An extended warranty may offer repair and maintenance for three years after the manufacturer’s one-year voluntary warranty expires, for example. Some extended warranties promise extras such as priority customer treatment, or technical support.

Ensuring an extended warranty is value for money

Before buying an extended warranty, consumers should decide whether the services and protection being offered are worth the money, and in particular whether the extended warranty provides protection beyond their statutory rights.

Because an extended warranty is usually a separately sold contract, what is covered in the ‘fine print’ may not be the same as in the manufacturer’s voluntary warranty. Therefore consumers should be clear about what protection is being offered, and should not be pressured into purchasing one on the spot.

There are a number of questions consumers should ask to determine whether an extended warranty is good value:

- Does the extended warranty offer a higher level of protection than consumers' statutory rights? Consumers should be certain that an extended warranty does not simply duplicate the protections available under their statutory rights.
Consumers' right to a remedy for goods that fail a statutory condition or warranty has no set time limit but instead depends on what would be reasonable, given the cost and quality of the item. This means that consumers' statutory rights may entitle them to have defective goods replaced or repaired after any voluntary or extended warranty has expired.
- Are there any important restrictions or conditions? For instance, is the warranty only valid if the goods are regularly serviced?
- When does the extended warranty start? Some extended warranties start from the date they are bought, not when the manufacturer's voluntary warranty expires.
- Will any remedy be equal to the goods' original price? The remedies offered under some extended warranties may depreciate (reduce in value) over time. This means that if there is a problem, only part of the purchase price may be refunded or lesser value goods offered as a replacement.
- If the goods have to be sent for repair, who pays freight costs?
- Are there some kinds of problems the warranty does not cover? Some extended warranties may not cover damage caused by accidents or water damage, for example.

Misleading consumers about extended warranties

Retailers and suppliers must not mislead or deceive consumers about the need for an extended warranty or their benefits.

For instance, it is misleading for a seller to represent that they will only replace or repair a faulty product if a consumer buys an extended warranty, since a consumer's statutory rights may entitle them to the same remedy.

The ACCC treats misleading conduct very seriously, and can take court action against businesses that mislead or deceive consumers about any of their statutory rights. This can result in fines of up to \$1.1 million for businesses and \$220 000 for individuals.

Other issues

Second-hand goods

Consumers' statutory rights apply whether the goods are new, 'seconds' or second-hand. Depending on the circumstances, a consumer can expect these goods will meet the statutory conditions and warranties listed in this guide.

For example, a second-hand vacuum cleaner should work without the requirement of any immediate repairs if it has been sold for the purpose of vacuuming (and not spare parts).

Depending on factors like price and age, it may not be reasonable to expect it will last as long, or perform to the same standard as a new one.

Goods bought at auction

Consumers who buy goods at a private auction, where an auction house sells on behalf of a vendor, are not covered by all statutory rights.

In these transactions, the auction house (or auction website) is not usually a part of the contract between buyer and seller, so they are not obliged to provide a remedy if goods are not fit for their intended purpose, are not of merchantable quality or do not match their description.

However, the law says that consumers who buy goods in auctions are entitled to receive 'clear title' to the goods. In other words, the auction house must disclose any outstanding debt on the goods, and a consumer is entitled to not have their ownership of the goods disputed.

Online auctions – There are different kinds of online auctions. Some businesses use the internet to auction goods on behalf of sellers in a way similar to traditional auctions. There are also websites that provide a forum for private and

business sellers to list items for auction, but do not become involved in the transaction.

In both cases, consumers' rights are limited as they are in traditional auctions.

There is one exception:

Businesses selling at a fixed price – Goods and services sold by businesses for a fixed price (that is, a 'buy it now' price) are covered by the same statutory warranties and conditions that apply to other non-auction sales.

Goods bought online or overseas

Australian internet sellers – goods and services bought online must meet the same statutory conditions and warranties as for other kinds of sales. Consumers' statutory rights are also the same.

Overseas internet sellers – although the statutory rights implied by the Act may apply to contracts between Australian consumers and overseas businesses, there may be practical difficulties in obtaining a remedy from an overseas-based business.

Advice for consumers

Being well-informed about any product or service is one of the best ways you can protect yourself as a consumer.

Before buying you should:

- Think about what you want the product or service to do.
- Shop around for the best deal.
- Compare quality and price.
- Ask for advice.
- Inspect goods thoroughly.
- Read the terms of any voluntary warranty or extended warranty carefully. In the case of an extended warranty, consider whether it is value for money, and be careful about buying one at the point of sale.

If something goes wrong – checklists

The following checklists may help you work out if you are entitled to a refund or other kind of remedy.

If you have a problem with **goods** you bought, ask yourself these questions:

- Did the fault happen even though you followed the manufacturer's instructions?
- Did the problem happen even though you took care of the item (for example, you didn't drop it)?
- Was it unreasonable for the goods to have a problem when you consider their price, quality and age?

- Have you found out the seller did not own the goods he or she sold to you?
- Have you found that you cannot use the goods for the purpose you bought them for, even though you explained it to the salesperson?
- Are the goods you received different from the description you were given at the shop, or do not match the sample you were shown?

If the answer to any of these questions was 'yes', then the goods may not meet one or more of the statutory conditions listed on pp. 5-6 of this guide. If you think this is the case, you may be entitled to a refund or other remedy.

Stop using the goods and take care of them until you are able to return them or notify the business of the problem.

If there is a problem with a **service** you bought, ask yourself these questions:

- Did the service provider use appropriate care and skill when performing the service?
- Were the materials provided with the service suitable for the purpose for which they were intended, and the purpose you made known to the service provider?

If the answer to either question was 'no', then the service provider may have breached a statutory warranty, and you can ask for a remedy.

Resolving problems with businesses

Step 1:

Approach the business with your concerns

As soon as possible, contact the business to explain the problem and the outcome you want (such as a refund or exchange) – in many cases a simple phone call or store visit can fix it.

Be clear, persistent, calm and polite. Make a note of all phone calls and visits with the business, including the name of the person you spoke to. If this doesn't resolve your problem, move on to step 2.

Step 2:

Make a written complaint

Write to the business – address your letter or email to the manager or the business' head office. Set out what you are complaining about and the outcome you want (as in step 1). Ask for a response from the business within two weeks.

See the following page for the kind of information you should include.

Step 3:

Consider what other action you can take

If steps 1 and 2 don't resolve your complaint, you still have several options. The best option will depend on your particular circumstances. See this guide's section on other action you can take on p. 29 for more information.

The ACCC publication, *Know how to complain: stand up for your consumer rights* also has information on how to resolve a complaint with a business.

Putting your complaint in writing

Writing a complaint letter is a good way of explaining your problem to a seller or service provider and telling them how you want it fixed.

Your letter should include:

- A description of the problem.
- What you want the seller to do to resolve the problem – for example, issue a refund, replace the item or re-do the service.
- A date by which you expect to hear from the seller. Ask for a response within two weeks. Remember to date your letters.
- Your contact details.
- Copies of any relevant supporting information, such as receipts, advertisements and invoices. Keep the original documents, and keep copies of any letters or emails you send.

If you are complaining about a service, your letter should also include:

- what service was provided
- who served you
- what you told them you wanted done
- the date of the service.

Next is a sample letter for a refund that you could use to help you write to a seller or service provider.

Dear Sir/Madam,

Letter of demand [heading optional]

I am writing to seek a refund for a television cabinet I bought at your store on [insert date]. I had the cabinet delivered two weeks after purchase. When I began placing items into it, I noticed that the hinges on the door of the cabinet do not allow it to open and close smoothly and the doors do not meet evenly when closed. Also, the stain on the cabinet is not evenly applied, so one half of the cabinet is darker than the other.

I feel this is not of merchantable quality and does not match the sample cabinet I was shown when I was in your store. I would like a refund on the cabinet or another cabinet of the same quality and finish as the sample I was shown.

Please contact me by [a reasonable time, usually two weeks] to advise what suitable arrangements you will make for replacement or refund. If I do not hear from you by this date I will have no option but to take further action. I can be contacted on [work phone number] during working hours or after hours on [home/mobile phone number] to discuss this matter further. I trust this will be dealt with promptly.

Yours sincerely, [your name]

Other action you can take

If you cannot get a satisfactory resolution to your problem after writing to a seller or service provider, you still have several options.

Tell your state or territory office of fair trading (sometimes called ‘consumer affairs’). They may be able to help you reach an agreement with a business. All states have their own consumer laws which are similar to the Act, and a fair trading office may be able to use these to take action against a business.

Contact details for all offices of fair trading and consumer affairs agencies are listed at the end of this guide.

Take legal action in a court or tribunal

If you can’t reach agreement with a seller on a reasonable settlement, this step is like asking a legal ‘umpire’ to decide.

- **Small claims courts or tribunals**

Each state and territory has courts or tribunals that handle cases involving small amounts of money (usually up to \$10 000, although the figure varies in each jurisdiction). You don’t need a lawyer to represent you, which can make it a more economical way of resolving disputes, although you will be charged a fee. You should still consider getting independent legal advice (for example from a community legal centre or Legal Aid) about whether this option suits your circumstances.

Contact details for small claims courts and tribunals, community legal centres and Legal Aid are available through the ACCC’s *Consumer and business directory* (www.accc.gov.au).

- **Action through a higher court**

For disputes involving larger sums of money, you may need to go to a higher court. Legal representation for these kinds of cases is usually necessary, which can make this option expensive. There is no guarantee that you will be successful so consider other options first. If you are thinking of pursuing a matter through a court you should seek independent legal advice (for example from a community legal centre or Legal Aid) about whether this option suits your circumstances.

A court or tribunal can award:

- compensation (also called ‘damages’) for any additional losses resulting from the breach of the statutory warranty or condition
- compensation for the cost of having the service re-supplied, and the repair and replacement of related goods.

Manufacturers’ and importers’ obligations

Manufacturers also have obligations under the Act to provide goods that are of reasonable quality and do the job they are supposed to do. These responsibilities apply to importers of goods, or brand name owners, if they are not the original manufacturer.

This means that if goods are faulty or unsatisfactory, the law allows consumers to pursue a manufacturer or importer for a remedy, instead of the retailer.

Who is entitled to claim against a manufacturer or importer?

For goods ordinarily acquired for personal, domestic or household use:

- A consumer is entitled to a remedy from a manufacturer if a good does not meet a statutory condition or warranty.
- A seller may be entitled to compensation from a manufacturer if they have to provide a remedy to a consumer because a good does not meet a statutory condition or warranty.

For goods costing less than \$40 000 but which are not goods ordinarily acquired for personal, domestic or household use:

- If a consumer buys a good which is not ordinarily acquired for personal, domestic or household use (no matter what the price of the good), then the Act does not give the consumer a direct right to seek a remedy from the manufacturer if there is a problem with the good.

- A seller may be entitled to compensation from a manufacturer if the seller has to provide a remedy to a consumer because a good does not meet a statutory condition or warranty.

The manufacturer's liability to the seller is limited to an amount equal to the cost of replacing or repairing the goods.

Consumers' claims against manufacturers and importers

The Act gives consumers who buy goods usually acquired for personal, domestic or household use, the right to a remedy from a manufacturer or importer if they supply goods that:

- are not suitable for the purpose they were sold for
- do not match the description provided, or any sample shown
- are not of merchantable quality
- do not comply with an express warranty.

The rights apply whether the consumer is the original buyer or a subsequent owner (such as someone who has been given the product or bought it second-hand).

A consumer can also take action directly against a manufacturer when:

- a manufacturer does not honour promises made about goods – these include promises made in voluntary warranties, claims made in promotional material, and by sales staff
- the manufacturer does not ensure there is a reasonable supply of repair facilities or replacement parts available. What is regarded as reasonable depends upon factors such as the nature of the product and its expected useful life.

Remedies from manufacturers and importers

Generally, a consumer is entitled to the same kind of remedy from a manufacturer as they could have received from a retailer (as discussed on p. 11), such as having goods replaced or repaired.

However, there is one important difference. A consumer only has the right to obtain a refund from the seller – that is, the business they have a contract of sale with.

This means that manufacturers and importers are not required to provide a consumer with a refund for defective goods, if the consumer purchased the goods from a retailer.

When the manufacturer or importer has a contract of sale with the consumer – for instance, the goods were bought directly from the manufacturer – their obligation to provide a refund is the same as any other seller (see p. 10).

Time limits

Any action against a manufacturer or importer must be started within 3 years of the date the consumer became aware of the fault or damage, and within 10 years of the date that the goods were supplied. It is important to note that this does not mean that manufacturers' and importers' responsibilities last for 10 years.

Sellers' claims against manufacturers and importers

Manufacturers and importers also have legal responsibilities to the retailers and wholesalers that sell their goods.

If a seller has had to refund a consumer's money because goods failed a statutory condition related to a design or manufacturing fault, the Act entitles the seller to claim compensation from the goods' manufacturer (or importer) for the seller's loss.

A consumer buys a power drill that breaks down after one month of normal use. She returns it to the seller, who refunds her money. The seller is entitled to be compensated by the manufacturer for the cost of the drill.

A seller may not be liable to recover compensation from a manufacturer if the problem was the seller's fault.

Manufacturers' liability for non-personal or non-household goods

Because the rules in the Act are designed to protect consumers when they buy goods under \$40 000 or goods which are ordinarily acquired for household or private use, there are some limitations on the rights of consumers and businesses who buy and sell other kinds of goods.

The previous section explained that if goods are the kind usually acquired for personal or domestic use:

- a consumer is entitled to a remedy direct from a manufacturer if a good does not meet a statutory condition or warranty
- a seller is entitled to be compensated by the manufacturer if the seller has to refund or provide a remedy to a customer who has been sold faulty goods.

In these circumstances, the Act does not allow the manufacturer to limit its liability to the seller to the remedy the seller gives to the consumer.

However, if a business sells a good which costs less than \$40 000 but which is a non-household or non-domestic good:

- A consumer is not entitled to a remedy from a manufacturer if a good does not meet a statutory condition or warranty – they must negotiate with the seller for a remedy.

- If a seller is required to provide a consumer with a remedy because the good fails a statutory condition, the amount of money which the seller can claim from the manufacturer can be limited under the Act to the cost of:

- replacing the goods, or
- having the goods repaired, or
- obtaining equivalent goods, whichever is the lowest amount.

Other liability issues

Businesses that sell sporting and recreational services – The Act allows businesses that supply recreational services, such as sporting activities, to put a limitation on its liability for a breach of the statutory warranty that requires them to provide services with due skill and care. Specifically, they can limit their liability for death or personal injury.



ACCC publications about warranties and refunds

The ACCC has a range of publications available to help consumers and businesses understand their rights and obligations.

For consumers:

Your consumer rights: refunds

Your consumer rights: warranties

Your consumer rights: warranties for services

Know how to complain: stand up for your consumer rights

For business:

Our refund policy (signs for display in stores)

News for business: warranty and refund signs

Small business and the Trade Practices Act

You can order these and other publications through the ACCC Infocentre on 1300 302 502 or download them at no cost from the ACCC website at www.accc.gov.au.

Contacts

Australian Competition and Consumer Commission

ACCC Infocentre 1300 302 502

ACCC website www.accc.gov.au

GPO Box 3131

Canberra ACT 2601

Indigenous Infoline: 1300 303 143

TTY: 133 677

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service www.relayservice.com.au.

State and territory contacts

This section contains contact details for fair trading offices (also called consumer affairs) in each state and territory.

Contact details for small claims courts and tribunals, legal aid offices and community legal centres can be found through the ACCC's *Consumer and business directory* (www.accc.gov.au).

Australian Capital Territory

Fair Trading

Tel: (02) 6207 0400

Website: www.ors.act.gov.au

New South Wales

Office of Fair Trading

Tel: 13 32 20

Website: www.fairtrading.nsw.gov.au

Northern Territory

Consumer Affairs

Tel: 1800 019 319

Website: www.consumeraffairs.nt.gov.au

Queensland

Fair Trading

Tel: 13 13 04

Website: www.fairtrading.qld.gov.au

South Australia

Office of Consumer and Business Affairs

Tel: (08) 8204 9777 or 13 18 82 (SA country callers only)

Website: www.ocba.sa.gov.au

Tasmania

Consumer Affairs and Fair Trading

Tel: 1300 654 499

Website: www.consumer.tas.gov.au

Victoria

Consumer Affairs Victoria

Tel: 1300 558 181

Website: www.consumer.vic.gov.au

Western Australia

Department of Commerce

Tel: 1300 304 054

Website: www.commerce.wa.gov.au

