

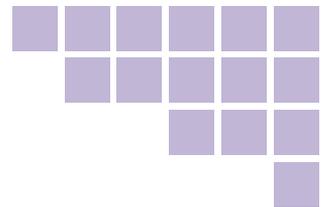


Australian
Competition &
Consumer
Commission

Consumer guarantees — a guide for consumers



When you buy goods and services, you have rights under law. This guide explains your consumer rights and the steps you can take to resolve problems.



Australian Competition and Consumer Commission
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Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011. For more information on the Australian Consumer Law changes see www.consumerlaw.gov.au

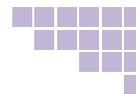
The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

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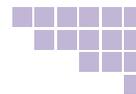
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1. Introduction

When you buy goods or services and they break too easily, don't work or don't perform as generally expected, you have rights under the law.

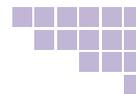
The Australian Consumer Law (contained in a schedule to the *Competition and Consumer Act 2010*) creates a basic set of guarantees for consumers who acquire goods and services from Australian suppliers, importers or manufacturers. These are intended to ensure that you receive the goods or services that you have paid for. When you have a problem and one of the guarantees has not been met, you are entitled to a remedy.

The type of remedy depends on the circumstances but may include a repair, replacement, refund or having the service performed again.

The consumer guarantees only apply to goods and services purchased on or after 1 January 2011. Purchases made before this time may be covered by the laws that applied before 1 January 2011.

Know your rights but remember that the law aims to give consumers and sellers a fair go—it is not designed to protect you if you are careless or make unreasonable demands.

In this booklet you will find answers to some of the questions most commonly asked by consumers, such as what rights you have when something you buy breaks or fails to perform as expected, and when you may be entitled to a refund or exchange. It explains the law in simple language but is no substitute for the legislation or legal advice.



2. Consumer guarantees—snapshot

The consumer guarantees apply every time you buy goods and services.

When you buy goods, the seller guarantees that:

- > goods will be of acceptable quality
- > goods will be fit for a particular purpose
- > goods will match their description
- > goods will match the sample or demonstration model
- > they will honour any express warranties
- > you have title to the goods
- > you have undisturbed possession of the goods
- > there are no undisclosed securities on the goods.

The manufacturer guarantees that:

- > goods will be of acceptable quality
- > goods will match their description
- > they will honour any express warranties
- > they will provide repairs or spare parts for a reasonable time.

When you buy services, the provider guarantees that:

- > they will provide the services with due care and skill
- > the services will be fit for a particular purpose
- > the services will be provided within a reasonable time.

Most of the guarantees are given to you by the seller or service provider; in some cases they are given by the manufacturer. If the manufacturer doesn't have an office in Australia, then the importer is responsible for meeting the manufacturer's guarantees to you.

If a product or service fails to meet a guarantee, you may be entitled to a replacement, repair, refund or other remedy.

Am I covered by the consumer guarantees?

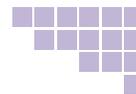
As a consumer, you automatically receive certain guarantees when you buy, hire or lease goods, or buy services.

You are covered by the law if the goods or services you purchase cost less than \$40 000. If the goods or services cost more than \$40 000 but are normally used for personal, domestic or household purposes (such as landscape design), the guarantees will still apply. Vehicles and trailers are also covered, irrespective of cost, provided they are used mainly to transport goods.

This means the consumer guarantees can apply to purchases that a business might make, for example an office chair or photocopier. However, regardless of cost, the guarantees do not apply to goods which are to be re-sold or transformed into something that is sold or used up.

If you receive the goods or services as a gift, you have the same rights as the person who purchased them.

The guarantees do not apply to insurance and financial services, as these are covered by other laws. Services for transporting and storing goods for business purposes are also not covered.



3. Consumer guarantees for goods

The consumer guarantees are intended to ensure that you get the product you paid for and that it does what it is meant to do. There are nine guarantees that apply to goods.

Acceptable quality

There is a guarantee that goods are of acceptable quality if they:

- > are safe, durable and free from defects
- > are acceptable in appearance and finish
- > do everything that they are commonly used for.

When deciding whether goods meet this guarantee, you need to consider the nature of the goods, the price, and any information provided directly by the seller or the manufacturer, or on packaging or promotional material.

You should also consider how you have used the product. Goods are not expected to be indestructible— for example, if you damage the goods or use goods in an unreasonable or unintended manner, you may not be able to rely on this guarantee to obtain a remedy.

Second-hand goods are also covered by the guarantee, but age, price and condition must be taken into account.

The guarantee of acceptable quality still applies to imperfect goods or ‘seconds’. Where a seller alerts you to any defects before the purchase, you should inspect before you buy to make sure you are still happy to go ahead. Otherwise you may not be entitled to a remedy.

A consumer purchases a new pair of shoes, one of which loses a heel when it is worn for the first time.

The consumer can claim that the shoe does not meet the guarantee of acceptable quality.

Fit for a particular purpose

There is a guarantee that goods will be suitable for any particular purpose that you make known to the seller before you buy.

If you explain to the seller that you want the product for a particular purpose, and you buy it based on their claims or expertise, the seller guarantees that it will meet your particular purpose. This guarantee may not apply if it is unreasonable to rely on the seller's skill or judgment, or if you purchase the product despite advice from the seller that it will not meet your particular purpose.

A consumer purchases paint from a specialty paint shop after explaining to the seller that they are painting their outdoor decking. After a couple of months, the paint begins to peel, as it is unsuitable for outdoor surfaces.

The consumer can claim that the paint for the decking is not fit for a particular purpose that was made known to the seller.

Match description

There is a guarantee that any description of a product—whether made verbally or in writing—must be accurate.

A consumer orders a set of pink towels online based on a colour chart provided by the seller. The towels delivered are red.

The consumer can claim that the towels do not match the seller's description.

Match sample or demonstration model

There is a guarantee that if you have chosen goods based on a sample or demonstration model the goods must match in quality, state or condition.

A consumer test drives a new car and agrees to purchase a car the same as the demonstration model. When the new car is delivered it has a smaller engine than the demonstration model.

The consumer can claim the car does not match the demonstration model.

Express warranties

There is a guarantee that, if a seller or manufacturer makes extra promises—either verbally or in writing—about the quality, condition, performance or characteristics of goods, these promises must be met. Common types include money-back guarantees and lifetime guarantees.

Express warranties apply in addition to the consumer guarantees.

A consumer purchases a kitchen knife. The seller promises them that it will stay sharp for 10 years. After five years, the knife is no longer sharp.

The consumer can claim that the knife does not meet the express warranty.

Repairs and spare parts

There is a guarantee that when you purchase a product the manufacturer or importer must provide spare parts and repair facilities for a reasonable time after purchase. This applies even if you did not purchase the goods directly from the manufacturer or importer.

How long is 'reasonable' will depend on the type of product.

This guarantee does not apply if you are advised at the time of purchase that repair facilities and spare parts will not be available after a specified time.

A consumer purchases a new television that requires repair after six months. The supplier cannot provide spare parts to repair the television.

The consumer can claim that the supplier has not met the guarantee for repairs and spare parts.

Title to goods

There is a guarantee that when you buy goods, the ownership rights are passed to you. The seller must tell you when there are other rights over the goods.

This guarantee also applies to goods you buy through private transactions but it does not apply to goods that are leased or hired (because you don't expect to own these outright).

A consumer buys a second-hand car from a private seller. The car is then repossessed by the police because it was stolen.

The consumer can claim that the seller did not give clear title to the goods.

Undisturbed possession of goods

There is a guarantee that no one will try to repossess or reclaim a product you buy. This guarantee also applies to private transactions.

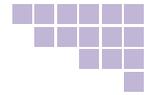
For goods that are hired or leased, the guarantee applies only to the period of the hire or lease.

If the goods are purchased under a payment plan and you fail to make the agreed payments, the seller may be able to repossess the goods.

No undisclosed securities on goods

There is a guarantee that the goods will be free of any undisclosed securities or charges, unless you are clearly told otherwise before you purchase.

This guarantee also applies to goods you buy through private transactions, but it does not apply to goods that are leased or hired.



4. Consumer guarantees for services

The consumer guarantees are intended to ensure you get the service you paid for. There are three guarantees that apply to services.

Due care and skill

There is a guarantee that service providers must carry out all services using an acceptable level of care and skill. Their work must be at least as good as what a competent person with average skills and experience would provide. They must also take reasonable steps to avoid loss or damage when providing the service.

A consumer hires a plumber to fix a leak in the bathroom. The next day, the same leak returns.

The consumer can claim that the service was not provided with due care and skill.

Fit for a particular purpose

There is a guarantee that the services and any resulting products will be reasonably fit for any particular purpose specified.

This guarantee may not apply if it is unreasonable to rely on the service provider's skill or judgment, or if the provider tells you the service or resulting product will not meet your purpose.

This guarantee does not apply to professional services provided by a qualified architect or engineer.

A consumer hires a carpenter to build a unit that will fit their 50-inch plasma television. The finished product is too small.

The consumer can claim that the service did not meet the purpose specified.

Services must be supplied within a reasonable time

There is a guarantee that the services will be supplied within a reasonable time, if there is no time frame otherwise agreed. What is 'reasonable' will depend on the nature of the services and other relevant factors such as weather and availability of parts or supply of materials.

A consumer hires a builder to replace some broken roof tiles. The consumer and the builder don't discuss the completion date. The builder starts the repairs but does not return for a month.

The consumer can claim that the service has not been supplied within a reasonable time.

However, if it was raining during that time the delay might be reasonable.



5. Other things you should know

Second-hand goods

The consumer guarantees apply whether the goods are new, 'seconds' or second-hand. Depending on factors like price and age, it may not be reasonable to expect a second-hand product to last as long or perform to the same standard as a new one.

For example, a second-hand vacuum cleaner is not expected to last as long as a new one.

Goods bought at auction

Only the consumer guarantees relating to title, undisturbed possession and undisclosed securities and charges apply to goods purchased at a traditional auction conducted by an agent of the person selling the goods.

If you sell goods through an online auction website you may be required to abide by the consumer guarantees, as these websites do not generally act as an agent for the person selling the goods.

If you take up an option to buy at an online auction site at a fixed price, you are covered by the same consumer guarantees that apply to non-auction sales.

Goods bought online or overseas

If you buy from an Australian-based online seller, you are covered by the consumer guarantees.

If you buy from an overseas online seller, you may not be covered by the guarantees. There may also be practical difficulties in obtaining a remedy from an overseas-based seller. Check the terms and conditions of the contract before you buy.

Store return policies and ‘no refund’ signs

Signs or cash register receipts that state ‘no refunds’ are misleading, because they give you the impression that it is not possible for you to get a refund under any circumstance—even when there is a major problem with the goods. For this reason, the following examples of signs are unlawful:

- > ‘no refund on sale items’
- > ‘exchange or credit note only for return of sale items’
- > ‘no refunds after 30 days’.

Similarly, insisting you return goods unopened or in their original packaging may be misleading, as these conditions are not required to claim a remedy under the law.

However, signs that state ‘No refunds will be given if you have simply changed your mind’ are acceptable.

‘No responsibility’ policies

Service providers cannot make claims that mislead consumers about their rights—for example by implying that you have no rights if services are not carried out with due care and skill.

Claims which may be misleading include:

- > ‘no responsibility for loss or damage’
- > ‘goods left for repair at your own risk’
- > ‘all care but no responsibility’.

Manufacturers’ warranties

Suppliers or manufacturers may provide a warranty promising that if defects occur within a given period of time a consumer may be entitled to a repair, replacement, refund or other compensation.

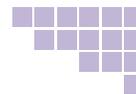
It is important to understand that a manufacturer’s warranty applies in addition to the consumer guarantees. Whereas the consumer guarantees apply to all purchases and cannot be waived, manufacturers’ warranties are offered voluntarily and usually apply to certain types of products such as electrical goods, cars and furniture.

Extended warranties

Suppliers or manufacturers may offer extended warranties to provide additional protection or to lengthen the coverage of their manufacturer's warranty. You will normally have to pay extra for these warranties when you make the purchase.

It is important to understand that these warranties do not cancel your right to make claims under the consumer guarantees.

Before you buy an extended warranty, check to see if it offers you more protection than the rights you automatically have by law. Make sure you also check the terms and conditions, as they may outline things you must do in order to make a claim under the warranty.



6. When goods or services don't meet a guarantee

If a product or service you buy fails to meet a guarantee, you have a right to a remedy such as:

- > refund
- > repair
- > replacement or exchange
- > compensation
- > cancellation of contract.

The remedy you are entitled to will depend on whether the failure to comply with the guarantee is major or minor.

Minor failures

Minor failures to comply with a consumer guarantee can normally be fixed or resolved in a reasonable amount of time. In this case, the seller can choose to offer you a refund, replacement or repair or, in the case of services, resupply.

This must be provided free of charge and within a reasonable time depending on the circumstances.

If the seller refuses to fix the problem or takes too long, you may be able to get it fixed by someone else and recover the costs from the seller.

Major failures

Major problems cannot be fixed or are too difficult to fix.

There is a major failure to comply with a consumer guarantee when:

- > you would not have purchased the product if you had known about the problem. For example, you would not have bought the washing machine if you had known the motor would fail after three months.
- > the product is significantly different from the description, sample or demonstration model you were shown. For example, you ordered a red bicycle from a catalogue but the bicycle delivered was green.

- > the product is substantially unfit for its normal purpose and cannot easily be made fit within a reasonable time. For example, the raincoat you bought is not waterproof because it is made from the wrong material.
- > the product is substantially unfit for a purpose that you told the supplier about, and cannot easily be made fit within a reasonable time. For example, you told the seller you needed a car to tow a boat, but the car they sold you is not powerful enough to tow your boat because its engine is too small.
- > the product is unsafe. For example, the electric blanket has faulty wiring.

There is a major failure with a service when:

- > you would not have engaged the service if you had known the nature and extent of the problem. For example, you would not have paid to have your shoes resoled if you had known the sole would come off after the first wear.
- > the service does not meet the reasonable expectations for that type of service, and the problem cannot be rectified within a reasonable time. For example, a carpet-cleaning service damages your carpet by leaving large water marks.
- > you told the supplier that you wanted the service for a specific purpose, which was not fulfilled, and the problem could not be easily rectified within a reasonable time. For example, you tell a pay TV company that you want to watch the Olympics. You sign up to a 24-month contract but the Olympics are over by the time the service is installed.
- > you told the supplier that you wanted a specific result, yet the service and end result failed to meet your specifications and could not be easily rectified within a reasonable time. For example, you arrange for custom-made blinds to be installed, which when fitted are too small. It will take three months to re-fit the blinds.
- > the supply of the service has created an unsafe situation. For example, an electrician incorrectly wires wall sockets in your new kitchen, which makes the electrical outlets unsafe.

When there is a major failure with a product, you can choose to:

- > return the product and ask for a refund
- > return the product and ask for an identical replacement, or one of similar value if reasonably available

- > keep the product and ask for compensation for the drop in value caused by the problem.

When there is a major failure with a service, you can choose to:

- > cancel the contract and pay a reasonable amount for the work done, or seek a refund for money already paid
- > keep the contract and negotiate a reduced price for the drop in value of the service—this may mean asking for some of your money back if you have already paid.

Remedies explained

Refunds for goods

The seller can offer you a refund for a minor problem. If the problem is major you have the option to choose a refund, and the seller must not refuse or insist that you accept a credit note, exchange card or replacement.

The seller must also return any other form of payment you might have made such as a trade-in. If this is not possible (if, for example, they have sold the product you traded in) they must refund you the value with another form of payment.

Replacement (or exchange) of goods

If you are offered a replacement for a minor problem, or you choose a replacement for a major problem, the replacement must be of the same type and similar value. If such a replacement is not reasonably available, you may need to choose a repair or a refund.

The consumer guarantees that applied to the original goods will apply to any replacement goods.

Compensation for loss of value of goods

If the problem is major and has resulted in the goods losing some value, you can choose to keep the goods and ask the seller for a partial refund. You may need to negotiate a reasonable amount with the seller.

The compensation amount is likely to depend on a range of factors, such as the value of the goods when you bought them, how much they would be worth now (if you bought them new), and how big the problem is.

Cancelling a service contract

If there is a major problem with a service and you choose to cancel the contract, you must tell the seller. The contract is considered cancelled as soon as you tell them. You can do this verbally or in writing (or, if this is not possible, by any other means).

You cannot immediately cancel a service if the problem is minor or can be fixed.

Refunds for cancelled services

If you are entitled to cancel a contract for a service, you may also have a right to a refund. You may need to negotiate a reasonable amount. What is reasonable will depend on a range of factors, such as whether some or all of the services provided were unsatisfactory, or provided at all. This may mean asking for some of your money back if you have already paid.

Goods and services that are linked or bundled

Sellers often sell related goods and services together as a package, such as home delivery of your newspaper. Sometimes a problem develops with only one part of the package—that is, the good or the service.

If you return unsatisfactory goods due to a major problem, you have the right to cancel any services that were provided in connection with the rejected goods. You do not have to make further payments to the seller for the service after you cancel the contract.

If you cancel a contract for unsatisfactory services, you must return any goods connected with the service—even if there is no problem with the goods. If you have paid any money for the goods, the seller must give you a refund. It is your responsibility to return the goods, unless that would involve a significant cost (in which case the seller must collect the goods).

Compensation for losses caused by problems

When you incur costs or suffer losses due to failure of goods or services to meet a consumer guarantee, you may be able to claim compensation from the seller, manufacturer or service provider.

You can only claim compensation where the loss can be reasonably attributed to the failure of the supplier to meet the guarantee. This could include paying for damage caused by a product, and the inspection and transportation costs you incurred when fixing the damage.

The seller will not have to pay for problems unrelated to their conduct or to the goods they supplied, or for losses caused by something completely independent of their business after the goods left their control.

Claims against manufacturers and importers

You can seek a repair or a replacement directly from a manufacturer or importer where there is a failure of the consumer guarantees for

- > acceptable quality
- > matching description
- > repairs and spare parts
- > express warranties.

If the manufacturer or importer cannot repair or replace the product in a reasonable time you may also be able to claim damages for a reduction in the product's value, or for losses that could be reasonably attributed to its failure.

Under the consumer guarantees you can only get a refund from the seller. This means you cannot ask the manufacturer for a refund unless you purchased the goods directly from them.

When you may not be entitled to a remedy

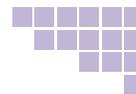
You may not be entitled to a remedy if you:

- > simply change your mind, decide you do not like your purchase or have no use for it
- > damage or use goods in an unreasonable or unintended manner
- > discover you can buy the goods or services more cheaply elsewhere (unless the seller guarantees that the goods cannot be purchased more cheaply elsewhere)
- > examined the goods before buying and ought to have seen any obvious fault
- > had a defect drawn to your attention before buying (such as goods labelled as seconds with their faults clearly marked)

-
- > are unhappy with a service that you insisted on having carried out in a particular way
 - > did not make clear what service you wanted and what you wanted it to achieve
 - > did not rely upon, or unreasonably relied upon, the seller's skill or judgment when choosing a product or service.

You are not entitled to claim against a seller where the failure to meet a consumer guarantee is due to:

- > something someone else said or did, unless it was their agent or employee
- > an event that was beyond the seller's control (for example bad weather or delays in delivery).



7. Taking action

There are three steps you can take to try to fix the problem.

Step 1—Contact the seller

As soon as possible, contact the business to explain the problem and the outcome you want. In many cases a simple phone call or store visit can fix the problem.

It is a good idea to formally put your concerns in writing—that way, the seller is clearly aware of the problem and what you want, and you also have a record of your contact.

A letter or email of complaint should:

- > explain the problem
- > explain the outcome you want
- > outline the steps you will take if you and the seller cannot resolve the problem
- > ask for a response within a reasonable time—for example two weeks or 10 business days.

Make sure you keep copies of any letters, emails or documents that you send.

You are not required to produce the original receipt of purchase, but it is likely that the seller will require you to provide some evidence that the goods or services were purchased from them (such as a receipt or bank statement showing the transaction).

It is your responsibility to return the goods unless the cost of doing so is significant, in which case the seller must collect the goods at their own expense and within a reasonable time.

See page 22 for a sample letter of complaint. There is more information about how to write a complaint letter on the ACCC website (www.accc.gov.au).

Step 2—Contact the ACCC or another third party

If you are still having difficulty resolving a complaint, you may want to seek assistance. The best place to go will depend on your circumstances.

When the ACCC can help

The ACCC can give you information about your consumer rights and obligations and suggest possible courses of action you might take. It can also investigate and take action on behalf of affected consumers when a seller or manufacturer fails to meet obligations under the consumer guarantees.

State and territory consumer protection agencies

If you cannot negotiate a satisfactory outcome with the seller, and your complaint involves a local business, you can contact the consumer protection agency in your state or territory (sometimes called ‘consumer affairs’). They can provide you with information about your rights and options. They may also be able to conciliate (negotiate) between you and the seller to reach a resolution.

Industry ombudsmen and dispute resolution schemes

Some industries—including the telecommunications, financial services, energy, water and insurance industries—provide free complaints services through an ombudsman or an independent dispute resolution scheme.

Step 3—Take legal action

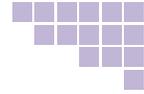
Consider getting independent legal advice about what options are available and suit your circumstances.

Small claims courts and tribunals

You may be entitled to take your complaint to the small claims court or tribunal in your state or territory.

Private legal action

For disputes involving large sums of money, you may be able to take private legal action. Make sure that you get legal advice first, as legal action can be expensive and there is no guarantee that you will be successful.



Putting your complaint in writing

Your letter should:

- > describe your problem and the outcome you want. Focus on the main details.
- > include key dates, such as when you purchased the goods or services and when the problem occurred
- > identify what action you have already taken to have the problem fixed (such as going back to the shop where you purchased the product or service)
- > outline the steps you will take if you and the seller cannot resolve the problem (for example making a complaint to the consumer protection agency in your state or to the ACCC)
- > ask for a response within a reasonable time—for example two weeks or 10 business days
- > attach a copy of any supporting relevant documentation such as a receipt or invoice.

Sample letter of complaint

[Your address]

[Date]

Dear Sir/Madam,

RE: concerns about television cabinet

I am writing to seek a remedy for a television cabinet I bought at [insert store address] on [insert date]. The cabinet was delivered on [insert date]. The cabinet doors do not open or stay shut. Also the stain on the cabinet is uneven, with one half darker than the other.

I feel this is not of acceptable quality and does not match the sample cabinet I was shown in store. I would like you to replace it with one of the same quality and finish as the sample and arrange for return of the faulty cabinet at no cost.

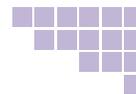
I have attached a photocopy of my receipt as proof of purchase.

I would like a response by [a reasonable time, usually two weeks]. If I do not hear from you by this date, I will consider lodging a formal complaint with [name of your local consumer protection agency].

I can be contacted on [work phone number] during working hours or after hours on [home/mobile phone number] to discuss this matter further.

Yours sincerely,

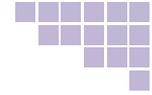
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More information

Publications

A guide to the consumer guarantees—the ACCC, Australian Securities and Investments Commission (ASIC) and state and territory consumer protection agencies have jointly produced this publication for business, legal advisors and consumer representatives to provide more detailed guidance about the consumer guarantees. You can download a copy from www.accc.gov.au or www.consumerlaw.gov.au.



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