

Office of Regulatory Services

Guarantees, Warranties and Refunds for all Businesses

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Whether you have to provide a refund, repair, replacement or compensation to a consumer for problems on goods or services depends on whether you have met 'consumer guarantees' set under the Australian Consumer Law. You are responsible for understanding your obligations under the law.

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Who guarantees what?

Your responsibilities depend on whether you are a supplier or a manufacturer, including retailers, traders, service providers and others. When a manufacturer does not have a place of business in Australia, the importer takes on the manufacturer's responsibilities to provide a 'remedy'. A 'remedy' is an attempt to put the situation right. Common remedies include repair, replacement and refund.

You are a supplier if you:

- sell goods or services to a consumer in the course of business or professional activity, including a non-profit business or activity; or,
- act through employees, meaning the statements and acts of an employee are those of the supplier.

A manufacturer is a person or business that either:

- makes or puts goods together; or,
- has their name on the goods.

Guarantees for goods.

Both the supplier and the manufacturer guarantee that goods:

- are of acceptable quality, they will be safe, durable and free from defects;
- will be acceptable in appearance and finish, and do the job such things are usually used for; and,
- match any description given to the consumer.

They also guarantee that any express warranties will be honoured.

A supplier also guarantees the consumer is buying goods:

- that have clear title, unless the supplier told the consumer otherwise before the sale;
- that are fit for any disclosed purpose, meaning the goods will do the job the consumer was told they would;
- with a right to undisturbed possession, meaning the supplier promises nobody has a legal right to take the goods away or prevent the consumer from using the goods;
- that do not have any undisclosed securities, meaning the goods do not have any hidden securities or charges; and,
- that match the sample or demonstration model.

A manufacturer guarantees the availability of repairs and spare parts for a reasonable time after the consumer buys the goods.

Guarantees for service.

A supplier guarantees to provide services:

- with due care and skill, meaning they will use an acceptable level of skill or technical expertise, and take care to avoid loss or damage;
- which are fit for any specified purpose, meaning the service will achieve the result the consumer was told it would; and,
- within a reasonable time, when no time is set.

When there is a warranty.

You must honour any extra promises, sometimes called 'express warranties', made to the consumer about such things as the quality, state, condition, performance or characteristics of the goods. You guarantee that the goods will satisfy those promises. For example - a supplier tells the consumer that a bed will last for 10 years, if the bed only lasts for 6 years, the consumer will be entitled to a remedy.

However you must still also meet 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 an express warranty, or the goods are out of warranty.

Claims for 'consequential loss'.

When goods and services fail to meet a consumer guarantee, the consumer can also claim for consequential losses or compensation for their reasonably foreseeable costs in time and money because something went wrong.

Limits on compensation for non-household goods and services.

Suppliers and manufacturers can limit their liability under the consumer guarantees to a consumer for problems with goods or services not used for personal, domestic or household purposes. You can limit remedies to:

- replacing or repairing goods;
- reimbursing the consumer for repairing or replacing goods;
- re-supplying services; and,
- reimbursing the consumer if they have paid someone else to supply the services.

You can only do this if it is fair or reasonable. What is 'fair and reasonable' will depend on the circumstances, including whether:

- the consumer had no choice but to agree to limit the compensation;
- the consumer was given something in return for buying the goods or services from you, at the expense of buying from someone else;
- the consumer knew or should have known about the limit on compensation; and,
- the goods were a special order for the consumer.

What you cannot tell a consumer.

When it comes to consumer guarantees you must be very careful about what you say to consumers about their rights, and the wording of any signs, advertisements or any other documents. You must not tell a consumer that a consumer guarantee:

- does not exist;
- may be excluded; or,
- may not have a particular effect.

You also must not tell a consumer that they are required to pay for any rights equivalent to a consumer guarantee. This means that when selling an extended warranty, a supplier or manufacturer should be very clear exactly what it offers over and above the consumer guarantees.

Consumers cannot surrender their rights by agreeing that the consumer guarantees do not apply. The maximum civil penalty for providing false or misleading information is \$220,000 for an individual and \$1.1 million for a body corporate. Criminal penalties for the same amounts may also be imposed.

'No refund' and other signage.

Signs that state 'no refunds' are unlawful, because they imply it is not possible to get a refund under any circumstances, 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'; and,
- '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. You can display a sign, at the point of sale, alerting consumers to their rights under the consumer guarantees, even if your business is online.

It is not compulsory to display a sign but the Commonwealth Minister responsible for the administration of the Australian Consumer Law can make it mandatory. The Minister can specify the content, size, form and position of the sign, to ensure consumers notice it.

Responsibility for consequential loss.

You cannot write a term into your sales contract that says you will not be responsible for any extra loss suffered by the consumer because something went wrong with the goods or the services. If you do, you could be misleading consumers about their legal rights to compensation for consequential loss.

Recreational service providers.

Recreational service providers may be able to tell consumers their rights are limited.

Key points about warranties and consumer guarantees.

Consumers have rights under consumer guarantees, regardless of any other warranty provided by the supplier or manufacturer. 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; and
- honour any extra promise made to the consumer.

A consumer can insist a supplier meets a consumer guarantee, even if the goods are covered by any additional warranties.

When selling an extended warranty you should make it very clear exactly what it offers the consumer over and above the rights they already have under consumer guarantees.

Express warranties.

Suppliers and manufacturers often make extra promises, sometime called express warranties, about such things as the quality, state, condition, performance or characteristics of goods.

An express warranty is not necessarily about the product breaking, it is about living up to promises. For example - When a consumer buys a deck chair, the supplier says that the chair will hold up to 100kg. This is an express warranty about what the goods can do.

If you provide an express warranty, you guarantee the goods will satisfy that warranty. For example - A supplier that tells a consumer that a bed will last for 10 years, but the bed only lasts for 6 years, the consumer is entitled to a remedy.

Warranties against defects - manufacturer's warranties.

Suppliers or manufacturers may provide a warranty that promises consumers that:

- goods or services will be free of defects for a certain period of time; and,
- defects will entitle the consumer to repair, replacement, refund or compensation.

This is called a warranty against defects, also commonly called a manufacturer's warranty. For example - A consumer buys a deck chair that comes with a written warranty. The warranty says the manufacturer will replace the deck chair if it breaks within 2 years of the purchase date.

From 1 January 2012, a warranty against defects must be in writing and:

- be expressed in a transparent way, in plain language, legible and presented clearly;
- contain the warrantor's name, business address, telephone number and email address if applicable;
- set out relevant claim periods or procedures; and,
- include a statement that rights under the warranty sit alongside the consumer guarantees, which cannot be excluded.

Failing to meet these criteria may lead to a maximum civil penalty of \$50,000 for a body corporate and \$10,000 for an individual. Criminal penalties for the same amounts also apply.

When a warranty against defects includes an express warranty.

Under the Australian Consumer Law, suppliers and manufacturers guarantee goods will meet any express warranties made. A warranty against defects differs from an express warranty.

A warranty against defects deals with what the manufacturer promises to do when something goes wrong with goods whereas an express warranty focuses on promises. For example - about what goods will look like, are capable of doing and for how long.

However a warranty against defects may contain an express warranty. For example - When a consumer buys a deck chair and the written warranty against defects states the chair can hold up to 100kg, this is an express warranty about what the goods can do. If the chair breaks holding only 50kg, the consumer can insist that the express warranty contained in the warranty against defects be honoured. If not they will be entitled to a remedy.

Where an advertisement or promotional brochure that simply mentions that a car comes with a '4 year warranty' it does not give enough detail about the nature of the warranty to determine whether it is a warranty against defects or an express warranty.

Extended warranties.

Some suppliers and manufacturers offer extended warranties to lengthen the coverage of their basic manufacturer's warranty. Usually consumers are offered the chance to buy an extended warranty after, or

at the time of, purchasing the goods. For example - when a consumer purchases a deck chair the retailer says the consumer can pay an extra \$20.00 for an extended warranty, to make sure the manufacturer's warranty applies for 3 years instead of 2 years.

Some suppliers or manufacturers also tell the consumer an extended warranty provides extra protection, which the consumer would not have unless they buy it. This is not necessarily true. The consumer guarantees provide rights that exist despite anything the supplier or the manufacturer may say or do. Extended warranties are optional and you must not:

- pressure consumers to buy an extended warranty; or,
- tell a consumer that they must pay for any rights equivalent to a consumer guarantee.

When selling extended warranties, you should explain to the consumer what it will provide over and above the consumer's rights under consumer guarantees.

For example - A consumer buys a plasma television for \$6,000 and it stops working 2 years later. The supplier tells the consumer they have no rights to repair or other remedy as the television was no longer covered by a manufacturer's warranty. The supplier says the consumer should have bought extended warranty, which would have given 5 years' coverage. This may also amount to misleading a consumer about their rights.

A reasonable consumer would expect more than 2 years of use from a \$6,000 television. Under the consumer guarantees, the consumer therefore has a statutory right to a remedy on the basis that the television is not of acceptable quality. The supplier must provide a remedy free of charge.

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