

## **CONSUMER LAW BASICS: Information Sheet**

**As consumers, do we have guarantees or warranties when we purchase a product or service from a business?**

Yes we do! Schedule 2 of the *Competition and Consumer Act 2010* (Cth) contains what is known as “The Australian Consumer Law”. This legislation puts in place a range of guarantees and warranties that apply to both goods and services that you purchase, providing:

- (a) The good or service cost no more than \$100,000.00; or
- (b) if the good or service cost over \$100,000.00, it is of a kind ordinarily acquired for personal or household use or consumption, or in the case of a vehicle or trailer, it is acquired for use principally in the transport of goods on public roads (see clause 3 of *The Australian Consumer Law*).

The implied guarantees and warranties provided by way of *The Australian Consumer Law* apply in addition to any express warranty or guarantee given to you by the business that sold you the good or service. An example is when you buy a vehicle (new or used) from a business. The Manufacturer or business may or may not sell the vehicle with an express warranty. However, even if the manufacturer or business says the vehicle is sold without a warranty, you still have guarantees and warranties implied into the purchase of the vehicle by way of *The Australian Consumer Law*.

**Does the Australian Consumer Law apply to both private sellers and businesses?**

No it does not. *The Australian Consumer Law* only applies to those sellers that are engaged in ‘trade or commerce’, which typically limits the guarantees and warranties to businesses only.

Private sales between individuals are known as consumer-to-consumer transactions and whilst the full protections afforded by way of *The Australian Consumer Law* are not provided, you are still entitled to limited protections including the right to expect title on the goods free from any security or charge.

An example of this is when you purchase a used vehicle from a private seller who advertised their vehicle on *Facebook Marketplace* or *Gumtree*. In this case, you have entered into a consumer-to-consumer transaction. You therefore do not receive the suite of implied guarantees and warranties via *The Australian Consumer Law* which you would have otherwise received had you have purchased that same vehicle through a motor vehicle dealer.

**What are the consumer guarantees under *The Australian Consumer Law*?**

*The Australian Consumer Law* gives consumers certain statutory rights against suppliers of goods and services which are known as consumer guarantees. When it comes to goods, there are **nine** consumer guarantees and in the case of services, there are **three**.

*Goods Must:*

1. Come with full title and ownership;
2. Come with undisturbed possession (a guarantee that nobody will try to repossess the goods from you after purchase);
3. Be free from any security, charge or encumbrance (unless disclosed and agreed to by the consumer at the time of the supply);
4. Be of acceptable quality (free from defects, safe, durable etc);
5. Be fit for the purpose the business told you it would be fit for or for any purpose the consumer made known to the business prior to making the purchase and the supplier represented it was reasonably fit for;
6. Match the description on packaging, labels, promotions and advertising and/or the description made by the salesperson;
7. Match any demonstration model or sample the consumer is shown;
8. Have spare parts and repair facilities available for a reasonable time after the good is supplied to the consumer; and
9. Have the supplier comply with any additional express warranty provided to the consumer.

*Services Must:*

1. Be rendered with due care and skill;
2. Be reasonably fit for the particular purpose; and
3. Be delivered within the agreed time, or if no time is stipulated, a reasonable period of time.

**Are there any exceptions to these guarantees and warranties?**

Yes there are and they include:

- You simply changed your mind;
- You found the product cheaper elsewhere;
- You misused the product which caused the problem or fault it is experiencing;
- You knew of or were made aware of a defect or fault in the product before you purchased it; or
- You asked for a service to be performed a certain way against the advice of the supplier.

**If a business fails to fulfill the consumer guarantees, what is the consumer entitled to?**

When it comes to a product, you may be entitled to a:

- (a) Repair;
- (b) Replacement; or
- (c) Refund.

Generally speaking, if you have a minor problem, the business can choose whether to repair, replace or refund the item. In the case of a major problem, you can generally choose whether you wish for a replacement or refund.

When it comes to a service, if you experience a minor problem, you may be entitled to a partial refund or rectification of the issue. In the case of a major problem that cannot be fixed within a reasonable period of time, you may have the right to cancel the service contract (if one exists).

In addition, with both goods and services you may also be entitled to compensation for damages or loss.

**What if you purchase a product online from a business, do you still get these guarantees and warranties?**

Yes you do.

**What if you purchase an item that is marked as “On Sale”. Does this affect those consumer rights?**

No. You have those identical consumer protections as with full priced items.

The exception to this is if the product is marked down due to minor damage or another defect, notice of which was provided by the seller. In this case, as you have been told of the issue prior to purchase, you cannot rely on such a disclosed defect to seek a repair, refund or exchange at a later date.

**Can a shop put up a sign which says “No Refunds” and rely on that?**

No they cannot. It is also against the law to display such a sign.

Whether a refund is appropriate will always come down to the individual case.

**How long do the consumer guarantees and warranties last after purchase?**

There is no fixed time regarding how long a good or service must remain free from any defect(s). A good (or service) purchased from a business is expected to be durable enough to perform its intended function for a reasonable amount of time. What is said to constitute a ‘reasonable amount of time’ is a case-by-case analysis and requires consideration of a range of factors. These factors include:

- Whether the good was purchased new or second hand;
- The nature/type of good or service;
- The price of the good or service;
- Statements made about the good or service by the supplier or manufacturer;
- The amount of use the good has had during its period of ownership; and
- Any abnormal use of the good.

Ultimately, it is the balancing of these factors that will determine whether the consumer guarantees and warranties remain within time to apply to the product or service in question.

Disputes regarding whether the consumer is out of time to be afforded a remedy under *The Australian Consumer Law* will ultimately be a question for a Court of competent jurisdiction to determine, in circumstances where there is uncertainty and agreement cannot be reached with the seller/supplier.

### **What should you do if you have a problem with a good or service?**

The steps you may consider taking are as follows:

1. Contact the seller and politely explain the issue and what you are seeking from them as a result. It is best if you do this in writing or follow up any face to face or telephone communication in writing to ensure there is a clear record of what has transpired.
2. Contact *Consumer Building & Occupational Services* (CBOS). They are Tasmania's building and consumer regulator. See <https://cbos.tas.gov.au/topics/products-services> for further information.
3. Contact us. We can provide you with advice with respect to your matter including advice and guidance with respect to commencing a civil claim if required.

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