

# Fact sheet: Your consumer rights

## In summary...

*For almost any products, you have the legal right to a refund, repair or replacement if they are faulty. You are also entitled to compensation for damage or loss. It is illegal for businesses to deny you this right.*

*You have similar rights for services.*

*If you are having problems getting a business to honour its obligations, a number of government fair trading authorities and independent ombudsmen can pursue them on your behalf. Kai Legal would also be happy to help.*

## Introduction

The Australian Consumer Law provides you with guarantees that any goods or services you buy will work, and do what you asked for. All Australian retailers must honour these guarantees.

In practice, many businesses are not aware of their obligations, or do not honour them. We've all experienced businesses who claim that you:

- cannot get a refund or exchange for sale items or gifts;
- have to go to the manufacturer for repairs;
- have no rights after the warranty period; or
- cannot get a refund, but they will provide store credit instead.

This guide will outline your rights, and help you enforce them against these businesses.

## What is covered by the guarantees?

Generally, goods or services sold, hired or leased for less than \$40,000 are covered.

Goods or services over that amount are also covered if they are the type usually bought for personal or household use (eg. a family car).

## When are you not covered?

You are not entitled to these rights when:

- there is nothing wrong with the goods or services: you just changed your mind (although some retailers voluntarily offer change-of-mind policies);
- you knew about or were informed about the fault before you bought the product;
- you misused the product in a way that caused the fault;
- you bought the goods so that you can re-sell it; or

- you bought the goods at auction, or as a once-off from a private seller (eg. at a garage sale).

Separate rules cover insurance or financial services products.

## What are the guarantees?

The most important guarantee with goods is that they are of **acceptable quality**. This means that they:

- have no faults;
- are safe;
- last as long as you would expect those types of goods to last; and
- do all the things that someone would normally expect them to do.

Other important guarantees include that the goods:

- match any descriptions given in advertising or by salespeople, or any demonstration models or samples;
- are suitable for any purposes that the seller told you they would be, or any purpose that you made known to the seller before purchasing; and
- meet any voluntary warranties given by the seller or manufacturer, like money back offers or satisfaction guarantees.

With services, the guarantees are that:

- they are delivered within a reasonable time, if no date was agreed;
- are performed with due care and skill; and
- are fit for purpose.

## What are you entitled to?

If your goods do not meet the guarantees, then you are entitled to a refund, repair or replacement. With services, you are entitled to a refund or a re-performance of the services.

When the fault is minor, the supplier can choose whether to give you a repair, refund or replacement. When it is a major fault, you have the right to choose. It can be quite a grey area whether a particular fault is minor or major: in those cases, try to agree to a solution that is acceptable to both you and the supplier.

If you also suffered damage or loss, and the damage or loss was foreseeable by a supplier, then you are also entitled to compensation.

## Who can you claim from?

The retailer or service provider who supplied the goods or services to you is primarily responsible. They cannot refuse to help you by redirecting you to the manufacturer or importer.

In some cases, you are entitled to claim directly from a manufacturer. However you are not entitled to the full range of remedies, and only for certain guarantees. Find out more at <https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees#who-to-claim-a-remedy-from>

## How do you claim?

Be factual and clear when you make a claim:

- have proof of purchase on hand. If you lost the original receipt, bank statements showing the purchase can substitute. Some suppliers will also use their records to find your purchase for you;
- explain the problem you are having;
- if the supplier has a returns policy that suits your needs, read it first and refer to the relevant part of the policy;
- refer to your rights under the Australian Consumer Law;
- be clear about what you want the supplier to do;
- tell them that you will contact consumer affairs and (if relevant) the industry ombudsman; and
- if you don't solve the problem with the supplier, write down when and to whom you raised the issue with the supplier, and the details above.

## What if the supplier doesn't cooperate?

If you think the supplier has breached the law in refusing to honour your claim, there are several bodies that can provide you with extra information, or help for free:

- consumer affairs in the relevant State or Territory. You can contact Consumer Affairs Victoria at <http://www.consumer.vic.gov.au/>
- the Australian Competition and Consumer Commission at <http://accc.gov.au/consumers>
- your local Community Legal Centre at <http://www.nacclc.org.au/>

Several specific industries also have Ombudsman services to assist:

- telecommunications: <http://www.tio.com.au/>
- energy and water: there are separate ombudsmen for each State and Territory. The Victorian one is at <http://www.ewov.com.au>
- financial services: <http://www.fos.org.au/>
- credit and investments: <http://www.cosl.com.au>

Make sure to have details of what your problem was and what the supplier has told you ready.

## If you are a business owner

It is very important to ensure that your returns policies and procedures comply with the law. The Australian Competition and Consumer Commission proactively investigates non-compliant businesses, and regularly obtains substantial penalties against them.

For example, nine Harvey Norman franchisees were penalised \$234,000 for misleading consumers about their rights in May 2014. In 2013, Hewlett Packard was penalised \$3 million for similar reasons. See the ACCC media releases register for more details - <http://www.accc.gov.au/media/media-releases>

In addition to the penalties, these cases cause substantial reputational harm, as well as disruption to the business during the investigation and legal action.

## Find out more

Call us on (03) 9041 7733 if you would like to find out more.

We can also help you with pursuing a claim, or if you are a business owner, help you review or implement a compliant refund and returns policy.

## About the author



Kai is an experienced consumer lawyer, being a former senior associate in the Competition and Consumer law team at the top tier international law firm Allens Linklaters. He

continues to consult in the Competition and Consumer law group there.

Kai's relevant experience includes advising on the returns policy for a major international car manufacturer, a national auto servicing chain and an international sportswear supplier. Kai has also provided training to the staff of numerous major Australian retailers and manufacturers.

## About Kai Legal

Kai Legal is a modern commercial law practice based in the Melbourne CBD.

Our focus areas are:

- property law, in particular property development and planning;

- state and federal taxes, in particular Victorian stamp duty and other property-related taxes;
- competition and consumer law; and
- general commercial law.

We aim to give you peace of mind over all of your legal matters.

## About this publication

Kai Legal fact sheets provide general information, and are not legal advice. These are not complete summaries of the law, and only touch on select points and scenarios that may be relevant to our readers.

This fact sheet is current as of 16 January 2015.

© Kai Legal 2015