

# CONSUMER GUARANTEES

## Are my goods covered by consumer guarantees?

Your goods are covered if they were:

- sold by a person or business in trade or commerce in the course of their business or professional activity, even non-profit activity, and
- bought by a consumer. This is a person who buys: any type of goods costing up to \$40,000, or any other amount set by the Australian Consumer Law in future. For example:
  - a photocopier or cash register
  - a vehicle or trailer used mainly to transport goods. The cost of the vehicle or trailer is irrelevant
  - goods costing more than \$40,000, which are normally used for personal, domestic or household purposes. For example, a car or landscaping design.

Your goods are covered even if they are second-hand, leased or hired.

Some consumer guarantees apply regardless of whether the goods are sold in trade or commerce – these are the guarantees that you are buying goods:

- with a clear title, unless told otherwise before the sale
- with a right to undisturbed possession – no-one has a legal right to take the goods away or prevent you from using the goods
- that do not carry any undisclosed securities – the goods do not have any hidden securities or charges.

## What goods are not covered?

You will not be covered by consumer guarantees for goods:

- bought before 1 January 2011. These are covered by laws that were in force before 1 January 2011 – contact us for more information.
- bought from one-off sales by private sellers, such as garage sales and fêtes
- bought at auctions, where the auctioneer acts as agent for the owner
- costing more than \$40,000 that a person would normally buy for business use, for example, machinery and farming equipment
  - you buy to on-sell or re-supply
  - you want to use, as part of a business, to:
    - manufacture or produce something else, for example, as an ingredient
    - repair or otherwise use on other goods or fixtures.

## Who is responsible for fixing the problem with my goods?

Either the supplier or manufacturer, depending on what the problem is.

The supplier is the person or business who sold you the goods, for example, a retailer or a trader.

The manufacturer is the person or business who:

- made the goods
- put the goods together
- has their name on the goods, or
- imported the goods, if the maker does not have an office in Australia.

## What do they guarantee about goods?

Both the supplier and the manufacturer guarantee that goods:

- are of acceptable quality. This means they will be safe, durable and free from defects. They will be acceptable in appearance and finish, and do the job such things are usually used for
- match the description, they will match any description given to you
- match the sample or demonstration model shown to you.

A supplier also guarantees that you are buying goods:

- with a clear title, unless they told you otherwise before the sale. This means they have the right to sell the goods, unless they told you before sale that they had 'limited title'
- a right to undisturbed possession, they promise no-one has a legal right to take the goods away or prevent you from using the goods
- that do not have any undisclosed securities, the goods do not have any hidden securities or charges
- fit for any disclosed purpose, the goods will do the job you were told they would.

A manufacturer guarantees repairs and spare parts.

When goods do not meet these guarantees, the supplier or manufacturer must attempt to put the situation right – offer you a remedy. Common remedies are repairs, replacements and refunds.

### **When you cannot claim under consumer guarantees**

A supplier or manufacturer does not have to put a situation right when they did not meet consumer guarantees due to something:

- someone else said or did, unless it was their agent or employee, or
- beyond human control that happened after the goods or services were supplied to you.

### **Can I get a refund, replacement or other compensation?**

Whether you get a repair, replacement, refund or other 'remedy' depends on whether the problem is:

- major – cannot be fixed or too difficult to fix
- minor – can usually be put right.

You may also be able to claim for compensation for your costs in time and money because something went wrong with the goods.

### **For major problems with goods**

You can:

- reject the goods and get a refund
- reject the goods and get an identical replacement, or one of similar value if reasonably available, or
- keep the goods and get compensation for the drop in value caused by the problem.

You get to choose, not the supplier or manufacturer.

A major problem with goods is when:

- a reasonable person would not have bought the goods if they had known about the problem. For example, no reasonable person would buy a washing machine if they knew the motor was going to burn out after three months
- the goods are significantly different from the description, sample or demonstration model shown to you. For example, a person orders a red bicycle from a catalogue, but the bicycle delivered is green
- the goods are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time. For example, a ski jacket is not waterproof because it is made from the wrong material
- the goods are substantially unfit for a purpose that you told the supplier about, and cannot easily be made fit within a reasonable time. For example, a car is not powerful enough to tow a consumer's boat because its engine is too small – despite the consumer telling the supplier they needed the car to tow a boat.
- the goods are unsafe. For example, an electric blanket has faulty wiring.

### **For minor problems with goods**

If the problem can be repaired within a reasonable time, you cannot immediately reject the goods and demand a refund.

You must give the supplier a chance to fix the problem. The supplier may choose to:

- provide a refund
- replace the goods
- fix the title to the goods, if this is the problem

- repair the goods. It is the supplier's responsibility to return goods to the manufacturer for repair. If the cost of repairing the goods is more than the value of the goods, they can offer you a replacement instead.

## **Rejecting and returning goods**

### **How do I reject goods?**

You must tell the supplier if you intend to reject goods, and explain why, and:

- return the rejected goods to the supplier, or
- ask the supplier to collect the rejected goods, if the goods cannot be returned without significant cost to you.

You cannot reject goods when:

- the goods have been thrown away, destroyed, lost or damaged through no fault of the supplier, after they were delivered to you
- the goods have been attached to other property and cannot be removed without damage. For example, removing wallpaper will damage it
- too much time has passed. The right to reject the goods runs from the date of the supplier provided the goods to you, until the fault or problem would reasonably be expected to appear. This depends on:
  - the type of goods
  - how a consumer is likely to use the goods
  - the length of time the goods could reasonably be used, and
  - the amount of use the goods could reasonably be expected tolerate before the problem or fault became apparent.

You do not have to return goods with the original packaging.

### **Who is responsible for returned goods?**

When you tell the supplier that you are returning the goods, the goods become the supplier's property. They are responsible for any loss or damage to the goods from this time.

You must return the goods unless the cost of returning, removing or transporting is significant, for example, the size makes transportation costly. If so, the supplier must collect the goods at their own expense and within a reasonable time.

Examples of goods a supplier would have to collect:

- a 127 cm LCD TV
- a bed
- a swimming pool filter connected to a pool by fixed pipes
- an extension ladder stuck in the extended position.

### **Goods linked to a service**

People often buy goods linked to certain services. An example is a mobile telephone, often linked to a contract for network services. This is sometimes called a 'linked service contract'.

If you are returning goods within a reasonable time and are entitled to a refund, you can also cancel the linked service contract. You can do this when returning the goods, or within a reasonable time. These contracts do not automatically end.

*For example:*

A consumer signs up for a package that includes a modem and internet access. She rejects the modem because it turns out to be faulty but chooses to keep her internet connection. Alternatively, she could reject the faulty modem and cancel the connection.

When you cancel a linked service contract, you are entitled to a refund or can refuse to pay for any services that you have not yet received.

The supplier does not have to give a refund for any services you received up to the time you rejected the goods. For example, a consumer subscribes to 12 editions of a cooking magazine for \$200, including \$80 for delivery. She receives only three editions in six months, so cancels the subscription and delivery. The supplier must refund \$150 for nine magazines not received - \$90 for the magazines and \$60 for delivery.