

STUDENT LEGAL: CONSUMER RIGHTS



Every time you buy goods or services, you are entering into a contract. This means you will have certain rights and responsibilities, as will the trader. Under the Australian Consumer Law (ACL), products you buy come with an automatic guarantee that they will do what they are supposed to do. Where this doesn't happen, the ACL will be applied. The type of remedy will depend on your circumstances but may include a repair, replacement, refund or having the service performed again.

Who is a consumer?

A consumer can be a person or a business if:

- They purchase goods or services that cost less than \$40,000
- The goods or services cost more than \$40,000, but were purchased for domestic, household or personal use or consumption, or
- The goods are a commercial road vehicle or trailer used primarily to transport goods on public roads

Consumer Guarantees – Am I Covered?

The consumer guarantees are intended to ensure you get the product you paid for and that it does what it's meant to do. Consumer guarantees apply every time you buy goods and services. If the manufacturer doesn't have an office in Australia, the importer will be responsible for meeting the manufacturer's guarantees to you. If you receive goods or services as a gift, you have the same rights as the person who purchased them.

Consumer guarantees do NOT apply if you:

- Misused a product in any way that caused the problem
- Got what you asked for but changed your mind or saw it cheaper elsewhere
- Knew of or were made aware of the faults before you bought the product
- Bought a one-off item from a private seller, for example at a garage sale
- Plan to re-sell or change the product so that you can use it for your business.

Guarantees on Products

Products must be of acceptable quality, that is:

- Safe, lasting, with no faults
- Look acceptable
- Do all the things someone would normally expect them to do.

Acceptable quality takes into account what would normally be expected for the type of product and cost.

Guarantees on services

Services must:

- Be provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage
- Be fit for the purpose or give the results that you and the business had agreed to
- Be delivered within a reasonable time when there is no agreed end date.

Goods bought at Auction

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

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

Online Shopping

When you buy goods or services online from a business based in Australia, you are protected by the same Australian Consumer Law that applies to physical purchases.

If you buy goods or services from an overseas trader, the Australia Consumer Law may not apply and only offer you limited protection. From a practical view, it would also be difficult in getting a remedy from an overseas-based buyer. Always make sure you read the terms and conditions of the contract before you buy.

Private Sellers

Generally, the law does not apply when buying from private sellers.

Store return policies and 'No Refund' Signs

Signs or cash register receipts that state 'No Refunds' are misleading as they give the impression that you have no rights even if there is a major problem. The following are examples of signs that are unlawful:

- 'No refund on sale items'



- 'Exchange or credit note only for return of sale items'
- 'No refunds after 30 days'

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

Second-Hand Goods

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

Myth or Fact?

'I don't like it but I can always return it and get my money back'

Legally, refunds are only given in limited circumstances and you are not always entitled to a refund for change of mind. In some cases, the retailer may offer a return as a sign of good will.

'They have to sell it to me at the lowest marked price'

Not necessarily. Legally, if an item is marked with two prices, the retailer should sell you the item at the lower price. In some cases, the retailer can withdraw the item from sale.

'I've changed my mind, but I can still get my deposit back'

This depends on the terms of the document you signed. If you change your mind, the retailer may be entitled to keep part of your deposit for the time and expense that was given to your order. Traders will usually return your deposit out of good will.

'I have to keep the original packaging for the product and return it to the supplier if something goes wrong'

You are not required to return the goods in the original packaging, however you do need to have proof of the transaction.

'The item I bought doesn't look the same as it did online! Guess I can't return it'

If you purchased the item from an Australian-based business, you have the same consumer rights as anyone else. The seller must guarantee the goods will match their description.

Taking Action!

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

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. Put it in writing so that you have a record of your contact.

2. Contact the Australian Competition & Consumer Commission (ACCC) or another third party

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.

3. Take legal Action

Consider getting independent legal advice about what options are available and suit your circumstances. . You may be entitled to take your complaint to the small claims court or tribunal, or alternatively take private legal action.

Some of this information is from Fair Trading and the Australian Competition & Consumer Commission Website.

**By Roya Aran, Events Coordinator & Jayd Raffoul,
Solicitor, Student Legal Services**

UWS Student Legal Service is a joint venture with Macquarie Legal Centre. The service is at the UWS Parramatta Community Justice Clinic, Parramatta Local Court.

Student Legal Services provides legal advice to currently enrolled UWS students. The service is provided to UWS students through SSAF funds.

Disclaimer: The information is general. It does not constitute and should not be relied on as legal advice. For advice contact Student Legal Services on 8688 7875 or studentlegalservices@uws.edu.au