

Consumer Law

Did you know you have basic consumer rights when buying goods or services?

The vast majority of the time when you buy goods or services, you are covered by a set of rights and remedies for defective goods and services called consumer guarantees.

Among other things consumer guarantees apply to:

- any type of goods or services up to \$40,000
- goods or services over \$40,000 normally used for personal, domestic or household purposes including the following: -
 - bundled products and services
 - second-hand goods taking into account age and condition
 - gifts with proof of transaction such as a receipt, invoice or credit card statement
 - sale items
 - online products and services bought from Australian businesses

They do not apply to goods or services:

- bought before 1 January 2011 which will still be covered by statutory warranties
- from one-off sales by private sellers such as garage sales and fetes
- at auctions, where the auctioneer acts as agent for the owner
- for insurance contracts
- where you misused a product in any way that caused a problem
- got what you asked for but changed your mind or saw it cheaper elsewhere
- knew of or were made aware of faults before you bought the product
- plan to on-sell or change the product so you can re-supply it as a business

If you have a consumer query about any goods or services to which the consumer guarantees do not apply, you should seek advice from the SUPRA legal service.

Under consumer guarantees, all goods you buy must be:

- of acceptable quality, i.e., be safe, lasting, with no faults, look acceptable and meet the basic level of quality and performance expected, considering their description, price and other relevant circumstances
- suit a particular purpose (if you have made a specific purpose known to the seller and relied on the seller's skill or judgment)
- be and remain free of debt, charges or mortgages, unless this debt is disclosed or known to you before you agree to buy the goods
- match any description or sample
- comply with any applicable product information and safety standards, such as care labels on garments and textiles and safety instructions on dangerous goods
- have accurate information provided with them including any information required by law, such as price, content details and weight of goods without packaging

All services you buy must be:

- carried out with acceptable skill, care and technical knowledge and taking all steps necessary to avoid loss and damage
- fit for the purpose for which they are acquired (if you have made a specific purpose known to the seller and relied on the seller's skills or judgment)
- be delivered within a reasonable time when there is no agreed end date.

It is illegal for retailers to mislead you about products or use high-pressure selling tactics.

Remedies

Always keep a copy of receipts, dockets, invoices or contracts in a safe place as you may need them if you want to return, repair or exchange the goods or complain about the services.

Consumer guarantees apply to both minor and major failures with goods and services. If something goes wrong, the consumer should seek a remedy from the supplier who, in turn, can seek a remedy from the manufacturer. When seeking a remedy, consumers are not required to return the goods to the supplier in the original packaging.

If you have a consumer problem, you should try to resolve it with the other party first. If you have not been able to resolve your problem, you can lodge a complaint with NSW Fair Trading under the legislation that applies to your situation. You can get more information about consumer laws at www.fairtrading.nsw.gov.au or www.consumerlaw.gov.au

Refunds

Legally, refunds are only available in fairly limited circumstances.

You are entitled to ask the seller for a refund if the item you bought is:

- not of acceptable quality
- not the same as the sample shown or described in advertising or by the salesperson
- not fit for the purpose you made known to the seller and you have relied on the seller's judgment.

You are not automatically entitled to a refund if you simply change your mind or you later discover that you picked the wrong colour or the item doesn't fit. However, many large retailers have generous, 'hassle-free' refund policies to encourage you to shop at their outlets.

The following signs in stores are illegal as they misrepresent your rights if the product is, for example, faulty: 'No refunds', 'No refunds after 7 days', 'We will exchange or repair or give credit note but we do not refund', 'No refund on sale items', 'Exchange or credit note only for return of sale item'. However, a sign which states: 'No refund for incorrect choice' or 'No refunds if you change your mind', is legal.

Deposits

A lot of people think deposits are refundable. But when you place a deposit on an item, you may be entering into a binding agreement to proceed with the transaction. If you change your mind, the trader may be entitled to retain all or part of your deposit, the actual amount of which depends on the circumstances. As a gesture of goodwill, many traders will return your deposit. However, it is always best to think the deal through before handing over a deposit.

Consumer Scams

It is estimated that every year 1 in 20 people in Australia fall victim to scams. You may have been a victim of a scam yourself. Scams target everyone regardless of background, age and income and they come in many forms and reach you in many ways – mail, online, E-mail, telephone and door-to-door.

Scams are often designed to trick you into giving away your money or your personal details. Scams succeed because they look like the real thing. Scammers are manipulative: they push the right buttons to produce the response they want. Many scams originate from outside Australia and once money is sent overseas it is virtually impossible to recover. For more information on scams visit www.scamwatch.gov.au

Ombudsman Services

There are a number of ombudsman services that operate in specific areas of Consumer Law. They offer free investigation and alternative dispute resolution services to consumers who have been unsuccessful in trying to resolve a dispute with a service provider.

Financial Ombudsman Service (FOS)

The FOS covers consumer disputes with financial services including banking, credit, loans, general insurance, life insurance, financial planning, investments, stock broking, managed funds and pooled superannuation trusts. The FOS can investigate your complaint and issue a written decision on your case which is binding on the financial services provider. Their website is at www.fos.org.au

Telecommunications Industry Ombudsman (TIO)

The TIO covers small business and residential consumers in Australia with unresolved complaints about their telephone or internet services. The TIO has jurisdiction to investigate complaints about standard telephone services, mobile services, internet access, pay-phones, delays in telephone connections, printed and electronic white pages, fault repair, privacy, land access and breaches of the Customer Service Guarantee and Industry Codes of Practice. More information is on their website at www.tio.com.au

Energy & Water Ombudsman NSW (EWON)

EWON deals with consumer complaints about all electricity and gas suppliers in New South Wales and some water suppliers. They can investigate complaints about disputed accounts, high bills, debts, arrears, disconnection or restriction of supply, actions of a supplier that affect your property, reliability of supply, quality of supply (including claims for compensation), connection or transfer issues, negotiated contracts, marketing practices and poor customer service. Visit their website at www.ewon.com.au

The SUPRA Legal Service is also available to advise and assist you with consumer legal issues and can help you to make an Ombudsman complaint.

Disclaimer:

This information is intended as a guide to the law as it applies to people who live in or are affected by the law as it applies in NSW. It does not constitute legal advice.

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