

Electrical and whitegoods

An industry guide to the Australian Consumer Law



This guide was developed by:

- Australian Capital Territory Office of Regulatory Services
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Consumer Affairs and Fair Trading Tasmania
- Consumer Affairs Victoria
- New South Wales Fair Trading
- Northern Territory Consumer Affairs
- Office of Consumer and Business Affairs South Australia
- Queensland Office of Fair Trading
- Western Australia Department of Commerce, Consumer Protection

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Introduction

The Australian Consumer Law (ACL) is Australia's national consumer law, replacing previous consumer protection laws in the Commonwealth, state and territories. The ACL applies at the Commonwealth level and in each state and territory.

This guide provides information on the ACL for electrical and whitegoods businesses.

It covers key aspects of the law such as refunds, replacements and repairs, focusing on issues where:

- > industry bodies have requested more detailed guidance for business
- > consumers frequently report problems to national, state and territory consumer protection agencies.

Most of the information in this guide is intended for retailers; however, some sections also deal with manufacturers' or importers' obligations.

This guide gives general information and examples – not legal advice or a definitive list of situations where the ACL applies. You should not rely on this guide for complete information on all your obligations under the ACL.

Other ACL guides and information

This guide supplements the ACL guides for business and legal practitioners, available from consumerlaw.gov.au:

- > Consumer guarantees
- > Sales practices
- > Avoiding unfair business practices
- > A guide to unfair contract terms law
- > Compliance and enforcement: how regulators enforce the Australian Consumer Law
- > Product safety.

For more information, view:

Australian Consumer Law website
consumerlaw.gov.au

Australian Competition & Consumer Commission (ACCC)
acc.gov.au

State and territory consumer protection agencies

Australian Capital Territory: Office of Regulatory Services
ors.act.gov.au

New South Wales: Fair Trading
fairtrading.nsw.gov.au

Northern Territory: Consumer Affairs
consumeraffairs.nt.gov.au

Queensland: Office of Fair Trading
fairtrading.qld.gov.au

South Australia: Consumer and Business Services
cbs.sa.gov.au

Tasmania: Consumer Affairs and Fair Trading
consumer.tas.gov.au

Victoria: Consumer Affairs Victoria
consumer.vic.gov.au

Western Australia: Department of Commerce
commerce.wa.gov.au

Terminology

For the purposes of this guide:

A **supplier** is anyone – including a trader, a retailer or a service provider – who, in trade or commerce, sells products or services to a consumer.

A **manufacturer** is a person or business that makes or puts products together or has their name on the products. It includes the importer, if the maker does not have an office in Australia.

Trade or commerce means in the course of a supplier's or manufacturer's business or professional activity, including a not-for-profit business or activity.

A **consumer** is a person who buys any of the following:

- > any type of products or services costing up to \$40,000 (or any other amount set by the ACL in future) – for example, a photocopier or cash register
- > a vehicle or trailer used mainly to transport goods on public roads. The cost of the vehicle or trailer is irrelevant
- > products or services costing more than \$40,000, which are normally used for personal, domestic or household purposes.

A person is **not** a consumer if they buy products to:

- > on-sell or resupply
- > 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.

Major failure and **minor failure** refer to failures to comply with consumer guarantees. The ACL does not use the term 'minor'; it only makes reference to a failure that is 'major' and 'not major'. However, throughout this guide the term 'minor failure' is used for simplicity and will apply to circumstances where a failure will not be major.

A **representation** is a statement or claim.

Consumer guarantees on products

Under the ACL, there are nine consumer guarantees that apply to products:

1. Suppliers and manufacturers guarantee that products are of acceptable quality when sold to a consumer
2. A supplier guarantees that products will be reasonably fit for any purpose the consumer or supplier specified
3. Suppliers and manufacturers guarantee that their description of products (for example, in a catalogue or television commercial) is accurate
4. A supplier guarantees that products will match any sample or demonstration model
5. Suppliers and manufacturers guarantee that the products will satisfy any extra promises made about them (express warranties). See 'Warranties' on page 8
6. A supplier guarantees they have the right to sell the products (clear title), unless they alerted the consumer before the sale that they had 'limited title'
7. A supplier guarantees that no one will try to repossess or take back products (clear title), or prevent the consumer using the products, except in certain circumstances
8. A supplier guarantees that products are free of any hidden securities or charges and will remain so, except in certain circumstances
9. Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities for a reasonable time after purchase.

Whether new or second-hand, products will be covered by the consumer guarantees, and the guarantees cannot be excluded even by agreement.

Leased or hired products are covered by the consumer guarantees, with the exceptions of the guarantees as to title and undisclosed securities. The guarantee for undisturbed possession applies only for the term of the lease or hire.

Products sold by auction are not covered by the guarantees, other than those relating to clear title, undisturbed possession and undisclosed securities.

Acceptable quality

The test for acceptable quality is whether a reasonable consumer, fully aware of a product's condition (including any hidden defects) would find it:

- > fit for all the purposes for which products of that kind are commonly supplied – for example, a toaster must be able to toast bread
- > acceptable in appearance and finish – for example, a new toaster should be free from scratches
- > free from defects – for example, the toaster's timer knob should not fall off when used for the first time
- > safe – for example, sparks should not fly out of the toaster
- > durable – for example, the toaster must function for a reasonable time after purchase without breaking down.

This test takes into account:

- > the nature of the product – for example, a major appliance such as a fridge is expected to last longer than a toaster
- > the price paid for the product – for example, a cheap toaster is not expected to last as long as a top-of-the-range one
- > representations made about the product – for example, in any advertising, on the manufacturer's or retailer's website or in the instruction booklet
- > anything you told the consumer about the product before purchase, and
- > any other relevant facts, such as the way the consumer has used the product.

The guarantee of acceptable quality does not apply if:

- > you alert the consumer to the defect before the consumer agrees to the purchase
- > the consumer examines the product before buying and the examination should have revealed it was not of acceptable quality
- > the consumer uses the product in an abnormal way – see 'Abnormal use' on page 5.

For more information on the guarantee of acceptable quality, see *Consumer guarantees: a guide for business and legal practitioners*, available from consumerlaw.gov.au.

Major vs minor failures

When a product fails to meet a consumer guarantee, your obligations depend on whether the failure is major or minor.

Major failures

A major failure with a product is when:

- > a reasonable consumer would not have bought the product if they had known about the problem. For example, no reasonable consumer would buy a washing machine if they knew the motor was going to burn out after three months
- > the product is significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a red food mixer from a catalogue, but the mixer delivered is green
- > the product is substantially unfit for its normal purpose and cannot be made fit within a reasonable time. For example, an underwater camera turns out not to be waterproof because it is made from the wrong material

- > the product is substantially unfit for a purpose that the consumer told the supplier about, and cannot be made fit within a reasonable time. For example, a video card is unsuitable for a consumer's computer – despite the consumer telling the supplier their computer specifications
- > the product is unsafe. For example, an electric blanket has faulty wiring.

When there is a major failure, the consumer can choose to:

- > reject the product and choose a refund or an identical replacement (or one of similar value if reasonably available), or
- > keep the product and ask for compensation for any drop in its value caused by the problem, and
- > seek compensation for any other reasonably foreseeable loss or damage.

Minor failures

A minor failure is where a problem with a product can be fixed in a reasonable time **and** does not have the characteristics of a major failure (see 'Major failures' above).

Minor faults do not initially allow the consumer to reject the product and demand a refund, replacement or compensation for the difference in value.

When the problem is minor, you can choose between providing a repair or offering the consumer a refund or an identical replacement (or one of similar value if reasonably available).

If you have identified a minor fault, but have not been able to fix it within a reasonable time, the consumer can choose to get the job done elsewhere and charge you the reasonable costs of this repair.

Otherwise, a fault that cannot be repaired, or is not repaired within a reasonable time, can be treated as a major failure and the buyer can reject the product and demand a refund, replacement or the difference in value, accordingly.

Inability to repair within a reasonable time

A major failure can also arise where there is a minor failure that can be fixed but is not actually fixed within a reasonable time.

Determining what constitutes a reasonable time will vary depending on the circumstances of each case, such as:

- > whether the product is new or second-hand
- > how many times you have tried to repair the fault
- > the nature of the fault, and whether it can be identified.

If you initially consider the fault is minor and can be repaired within a reasonable time, the consumer must give you a chance to do so.

If you have made several attempts at the repair, this indicates the original assessment may have been wrong and the fault was not one that could be fixed within a reasonable time. The consumer would therefore be entitled to the remedies for a major failure.

Abnormal use

Products are not expected to be indestructible; a consumer's use of a product can affect its durability.

The guarantee of acceptable quality will not apply if the consumer:

- > uses a product abnormally
- > causes the quality of a product to become unacceptable
- > fails to take reasonable steps to avoid the quality becoming unacceptable.

The law does not define 'abnormal use'. However, examples of abnormal use include:

- > a mobile phone is dropped in water or is left out in the rain
- > a television is broken by an object hitting the screen
- > a small electric lawnmower is used to mow four hectares every fortnight.

There is a difference between damage caused by abnormal use, and gradual deterioration (also called 'wear and tear') caused by a consumer's normal use of a product. Wear and tear involves the eventual wearing out of the product to the point where it no longer works, as well as such things as scuffing, scratching or discolouration that would predictably occur over time when a product is used normally.

If a consumer uses a product normally, and its condition deteriorates faster or to a greater extent than would usually be expected, then the product may have failed to meet the guarantee of acceptable quality and the consumer may be entitled to a remedy.

Change of mind

You do not have to give a refund when a consumer simply changes their mind about a product; for example, they no longer like it, or they found it cheaper elsewhere.

However, you can choose to have a store policy to offer a refund, replacement or credit note when a consumer changes their mind. If so, you must abide by this policy.

'No refund' signs and other exclusions

Be very careful about what you say to consumers about their refund rights. This includes the wording of any signs, advertisements or any other documents.

You cannot seek to limit, restrict or exclude consumer guarantees, and consumers cannot sign away their guarantee rights.

Signs that state 'no refunds' are unlawful because they imply it is not possible for consumers to get a refund under any circumstance – even when there is a major problem with a product. For the same reason, the following signs are also unlawful:

- > 'No refund on sale items'
- > 'Exchange or credit note only for return of sale items'.

However, signs that state 'No refunds will be given if you have simply changed your mind' are acceptable – see 'Change of mind' on page 5.

Compliant refund policy signs are available free to download from the Australian Consumer Law website at consumerlaw.gov.au

Product recalls

You may need to recall a product if it is found to be hazardous, non-compliant with a mandatory standard, or subject to a ban. Recalls are usually initiated voluntarily by a business, but they may also be ordered by the Commonwealth or a state or territory minister responsible for competition and consumer policy.

The purpose of a recall is to prevent injury by removing the source of the hazard and to offer affected consumers a remedy in the form of a repair, replacement or refund.

A recalled product is not automatically considered 'unsafe' for the purposes of failing the guarantee of acceptable quality under the consumer guarantees. The two regimes operate independently and the reason for the recall will still need to be considered in relation to the test of 'acceptable quality'.

A recall remedy will normally be consistent with the consumer guarantees obligations. However, the consumer guarantees provide rights that exist despite any remedy offered by a supplier under a recall. For example, where the failure amounts to a major failure, a consumer will still be entitled to reject the product and choose a refund despite the offer of replacement under the supplier's recall.

Electrical equipment recalls are administered by state and territory electrical safety regulators with the support of the ACCC.

For more information, refer to:

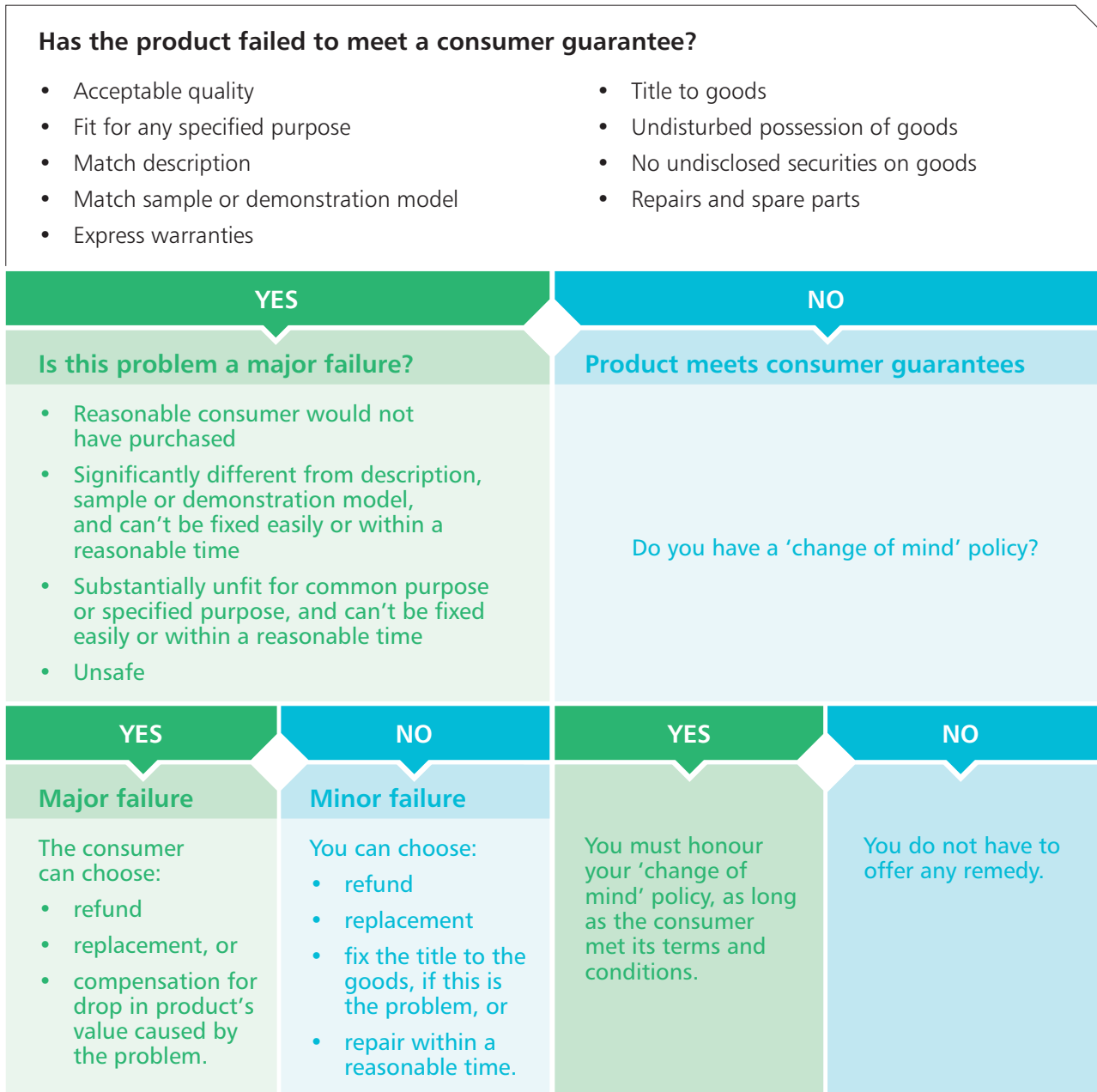
- > the *Electrical Equipment Safety Recall Guide* available from the Electrical Regulatory Authorities Council website at erac.gov.au
- > *Product safety: a guide for businesses and legal practitioners*, available from consumerlaw.gov.au
- > the Recalls Australia website at recalls.gov.au, where you can register to receive automatic alerts whenever a new recall is listed.

Mandatory reporting of product safety issues

If you become aware of a death, serious injury or illness associated with a consumer product or product-related service you supply, you must report this to the ACCC within two days.

For more information, or to submit a mandatory report, visit productsafety.gov.au.

Summary decision chart – Refunds, replacements and repairs



Warranties

Express warranties

Suppliers and manufacturers often make extra promises (sometimes called 'express warranties') about such things as the quality, state, condition, performance or characteristics of products.

If so, they guarantee that the products will satisfy those promises.

Example:

A supplier tells a consumer that a food processor's blade is strong enough to cut through tin cans. If the blade breaks after cutting through tin cans, the consumer will be entitled to a remedy.

Warranties against defects or 'manufacturer's warranty'

Suppliers or manufacturers may provide a warranty that promises consumers that:

- > products or services will be free from defects for a certain period of time
- > defects will entitle the consumer to repair, replacement, refund or other compensation.

This is called a 'warranty against defects', also commonly called a 'manufacturer's warranty'. Statements like 'Two year warranty' or '12 month replacement guarantee' on the packaging, label or receipt indicate this type of warranty.

Example:

A consumer buys a dishwasher that comes with a written warranty. The warranty says the manufacturer will replace the dishwasher if it breaks within two years of the purchase date.

A warranty against defects document must meet a number of requirements, including that it:

- > contains the mandatory text:

'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'

- > is expressed in a transparent way – in plain language, legible and presented clearly
- > prominently states the warrantor's name, business address, phone number and email address (if any), and
- > sets out relevant claim periods or procedures.

Warranties against defects may set out requirements that consumers must comply with; for example, ensuring any repairs are carried out:

- > by qualified staff
- > according to the manufacturer's specification
- > using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the *Competition and Consumer Act 2010*. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, see 'Exclusive dealing notifications' on the ACCC website at acc.gov.au.

Sometimes a warranty against defects may contain an express warranty.

Example:

When a consumer buys a set of electronic bathroom scales, the written warranty (the warranty against defects) states that the scales can hold up to 200 kilograms. This is an express warranty about what the product can do. If the scales break after a person weighing 100 kilograms stands on them, the consumer can insist that the express warranty contained in the warranty against defects be honoured. If not, they will be entitled to a remedy.

Extended warranties

Some suppliers or manufacturers offer extended warranties to lengthen the coverage of their basic manufacturer's warranty. Usually, consumers are offered the chance to buy an extended warranty after, or at the time, they buy the product.

Some suppliers or manufacturers also tell the consumer an extended warranty provides extra protection, which the consumer would not have unless they buy it.

This is not necessarily true. The consumer guarantees provide rights to consumers that exist despite anything the supplier or manufacturer may say or do. Extended warranties are optional. They are in addition to, and do not replace, the consumer guarantees.

You must not:

- > pressure consumers to buy an extended warranty
- > tell a consumer that they must purchase an extended warranty when such a warranty does not provide them with any benefits above and beyond their consumer guarantees rights.

When selling extended warranties, you should explain to the consumer what an extended warranty would provide, over and above the consumer's rights under the consumer guarantees.

Example:

A consumer buys a top-of-the-range plasma television for \$1800. It stops working two years later. The supplier tells the consumer they have no rights to repairs or another remedy as the television was only under the manufacturer's warranty for 12 months. The supplier says the consumer should have bought an extended warranty, which would have given five years' cover.

A reasonable consumer would expect to get more than two years' use from a \$1800 television. Under the consumer guarantees, the consumer therefore has a statutory right to a remedy on the basis that the television is not of acceptable quality. The supplier must provide a remedy free of charge.

This may also amount to misleading a consumer about their rights.

Extended warranties may set out requirements that consumers must comply with; for example, ensuring any repairs are carried out:

- > by qualified staff
- > according to the manufacturer's specification
- > using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the *Competition and Consumer Act 2010*. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, see 'Exclusive dealing notifications' on the ACCC website at accc.gov.au.

Common issues

Charging for repairs

You must not tell a consumer that they are required to pay for any rights equivalent to a consumer guarantee – this includes repairs.

This means you cannot charge a consumer for repairs that are to remedy a failure to meet a consumer guarantee under the ACL.

Example:

A consumer bought a new washing machine. After a short period of normal usage, the door broke and fell off. The retailer offered to install a new door, but they charged the consumer a callout fee of \$120. In this case, the retailer should not have charged the consumer a fee, as the repairs were to fix a problem covered by a consumer guarantee (the guarantee of acceptable quality).

However, you can charge for repairs to fix a problem not caused by a failure to meet a consumer guarantee – for example, damage to a mobile phone caused by a consumer dropping it in water.

Who pays the cost of returning a product?

If a consumer wants to return a product with an alleged major fault for a refund or replacement, they will have to cover the initial cost of shipping and/or posting the product back to you unless:

- > the product cannot be easily returned, and
- > there would be a significant cost to the consumer.

Examples of products where you would need to pay the shipping costs (or arrange to collect the products yourself) are a wide-screen TV or a dishwasher.

If a consumer wants to return a product with an alleged minor fault for repair or replacement, the shipping/postage costs will be at the consumer's expense, whether or not the cost is significant.

Once the returned product has been assessed, and found to have either a minor or major fault (as the case may be), the consumer is likely to be entitled to recover from you any shipping/postage costs they have paid, as compensation for a reasonably foreseeable consequential loss. From a practical

perspective, if these costs have not been paid already, you should waive them.

Make sure you discuss with consumers any shipping/postage costs that you intend (or are permitted) to ask them to pay up front, before the products are returned. This will help avoid disputes.

Disclosing these costs will help consumers decide whether they can afford to pay the costs of returning the products. Keep these costs to a reasonable amount, as failure to do so could be a breach of your obligations under the ACL not to engage in misleading, deceptive or unconscionable conduct.

Sending consumers to the manufacturer

Under the ACL, consumers can claim a remedy from:

- > the supplier, if products do not meet the consumer guarantees as to:
 - » fitness for any disclosed purpose
 - » matching sample or demonstration model
 - » title
 - » undisturbed possession, or
 - » undisclosed securities
- > the manufacturer, if products do not meet the consumer guarantees as to repairs and spare parts
- > the manufacturer and the supplier, if products do not meet the consumer guarantees as to acceptable quality, express warranties and matching description.

You cannot avoid your legal responsibilities by referring a consumer to the manufacturer; and consumers retain the right to deal with you if they prefer.

You may be in breach of the law if you:

- > tell consumers there is no problem when you know that there is
- > tell consumers that their only form of recourse is under the manufacturer's warranty or directly with the manufacturer.

You should provide assistance to resolve a consumer's complaint where the consumer requests such assistance.

Example:

A consumer bought an mp3 player from an online retailer for \$180. On the first use, she discovered it was faulty.

The consumer lodged a complaint via the retailer's website, but they told her only the manufacturer could deal with her problem. She then looked up the manufacturer's website, which stated that they did not deal directly with consumer complaints and any faulty products should be returned to the place of purchase.

The consumer made a copy of this statement and sent it to the retailer, which finally agreed to replace the product.

In this case, neither the retailer nor the manufacturer should have refused to handle the consumer's complaint. The consumer was entitled to approach either of them for a remedy when a product did not meet the consumer guarantee of acceptable quality.

When it is acceptable to refer a consumer to the manufacturer

Some manufacturers prefer to deal directly with consumers (rather than retailers) regarding complaints, and therefore make arrangements with retailers to refer consumers directly to them.

In these instances, it is acceptable to refer consumers to the manufacturer to have a faulty product assessed or repaired, as long as the consumer agrees.

However, this type of arrangement between you and the manufacturer does not alter your legal responsibilities. It is the consumer's choice whether they deal with the manufacturer, or you deal with the manufacturer on their behalf. You still have an obligation to assist the consumer to resolve their complaint.

Generally, it is your responsibility to return products to the manufacturer for repair.

Seeking reimbursement from a manufacturer

Where a consumer asks you, not the manufacturer, to deal with a problem where a product:

- > is not of acceptable quality
- > does not match a description provided by or on behalf of the manufacturer, or
- > is not fit for a purpose made known to the manufacturer either directly or through you as the supplier

the manufacturer must reimburse you.

You have three years to ask the manufacturer for reimbursement, from the date that:

- > you fixed any problems with the consumer's products, or
- > the consumer took legal action against you.

The amount can include any compensation paid to the consumer for reasonably foreseeable consequential losses. For more information on consequential loss, refer to *Consumer guarantees: a guide for business and legal practitioners*, available from consumerlaw.gov.au.

Manufacturers cannot contract out of this obligation to reimburse you. However, you and the manufacturer can make an agreement about what you will each cover, as this does not affect the consumer's rights.

Repairs offered instead of refunds

If you offer to repair a faulty product, you must take into account whether the problem amounts to a major failure.

When there is a major failure, the consumer can:

- > reject the products and choose a refund or a replacement, or
- > ask for compensation for any drop in value of the products.

The consumer gets to choose, not you or the manufacturer.

When the problem is minor, you can choose between providing a repair or offering the consumer a replacement or a refund.

You should consider the likelihood of repeated breakdowns and whether the goods can be repaired in a reasonable time when offering to provide a repair for a faulty product. If a repair does not resolve the problem, then it may be considered a major failure and the consumer is entitled to choose a replacement or refund. In addition, it may be cheaper for you to replace the faulty product rather than incur the cost of repeated repairs.

When you replace a product, the consumer guarantees apply to the replacement product in the same way as a newly purchased product. Warranties against defects may or may not apply to replacement products, depending on the terms of the warranty.

For more information about major and minor failures, see page 4.

Example:

A consumer bought a coffee machine for \$1800, which broke down and was repaired several times during the following weeks. After the third repair, the supplier offered a replacement machine. However, the replacement also broke down on three occasions and had to be repaired.

The consumer returned the machine to the supplier, and successfully sought a refund.

Replacing faulty products with second-hand items

You may provide a second-hand, reconditioned or refurbished product as a replacement for a faulty product. However, you must:

- > tell the consumer, at the time they return their faulty product for repair, that the replacement may be a used item. Use a 'repair notice' as described below
- > ensure the replacement is of the same type and similar value as the original product; if not, the consumer can seek a repair or refund
- > provide an appropriate remedy if there is a problem with the replacement product. Consumer guarantees apply to replacement products in the same way as a newly purchased product.

Example:

A consumer bought a new printer for \$400. It stopped working after a short period of use, so she took it back to the supplier for a remedy. Instead of repairing the printer, the supplier provided a replacement product; however, this was reconditioned and not new. The supplier made this clear by giving the consumer a repair notice.

The replacement printer also failed. As the supplier could not fix the problem in a reasonable time, they gave the consumer a refund.

Repair notices

If you sometimes use refurbished parts to fix defective products (rather than new parts), or sometimes replace defective products with a refurbished version, you must always give the consumer a 'repair notice' before accepting products for repair.

This notice must include the following specific wording required by the ACL:

Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

You must provide this repair notice whether or not you know, before inspecting the products, that you will use refurbished parts or supply refurbished products instead of repairing the products.

You must also provide a repair notice for products capable of storing data created by the user (known as user-generated data). This notice must advise the consumer that repairing the product may result in loss of the data. User-generated data includes, for example, songs, photos, telephone numbers and electronic documents.

You can include a repair notice in another document (for example, terms and conditions for the repair) as long as:

- > the document states the repair notice is given under the ACL, and clearly distinguishes it from other information
- > the repair notice is easy to see (for example, not hidden in fine print)
- > you provide the document before accepting the product for repair.

For more information on repair notices, view consumerlaw.gov.au.

Unreasonable times to repair faulty products

When providing repairs, you must fix the problem within a reasonable time. What is 'reasonable' will depend on the circumstances.

For example, you would be expected to respond quickly to a request for a repair to an essential household item, such as a water heater. For products used less often, such as a lawnmower, the reasonable time for repair would be longer. Telecommunications suppliers should see 'Mobile phone handsets' below for guidance on reasonable times for mobile phone repairs.

If you refuse or take more than a reasonable time to repair a product, the consumer can:

- > take the product elsewhere to be fixed and ask you to pay reasonable costs of this repair
- > reject the product and ask for a refund, or
- > reject the product and ask for a replacement, if one is reasonably available to you.

Example:

A consumer bought a fridge for \$3000. When he reported a fault to the supplier, they arranged for a technician to assess the problem. However, two weeks later, the required repairs had still not been completed. The supplier agreed to replace the fridge, as the repair had taken more than a reasonable time.

Mobile phone handsets

When a consumer's mobile phone handset requires repairs, they are understandably anxious to have it back and working as soon as possible.

Australian consumer protection agencies have conducted research with telecommunications businesses to better understand their repair processes and turnaround times. According to this research, a consumer could reasonably expect their phone to be repaired within one to two weeks. This includes the time it takes you to assess the phone, communicate the nature of the fault and remedy with the consumer, and carry out repairs.

Consumer protection agencies also encourage businesses to provide consumers with loan handsets during the repair period. This is especially important where:

- > the mobile handset is the consumer's only means of communication
- > the consumer lives in a remote area, or
- > the handset is linked to a mobile phone plan.

Products damaged on arrival

If a consumer finds their new electrical or whitegoods product damaged on arrival, it may not meet the consumer guarantee of acceptable quality.

'Acceptable quality' means a reasonable consumer, fully aware of the products' condition (including any defects), would find them:

- > fit for all the purposes for which products of that kind are commonly supplied
- > acceptable in appearance and finish
- > free from defects
- > safe
- > durable.

Depending on the type of damage, products that arrive damaged may not meet these tests. The consumer may be entitled to a remedy.

Example:

A consumer went to a store to purchase a new refrigerator. The cost included delivery by the supplier.

On delivery of the new fridge, the consumer noticed its door handle was broken. He contacted the supplier, who said the damage must have occurred in transit and was not a fault with the product. Nevertheless, the supplier had an obligation under the consumer guarantees to supply a product of acceptable quality.

Availability of spare parts

Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities (a place that can fix the consumer's product) for a reasonable time after purchase.

How much time is 'reasonable' will depend on the type of product. For instance:

- > it would be reasonable to expect that spare parts for a refrigerator will be available for many years after its purchase
- > it may not be reasonable to expect that spare parts for an inexpensive mp3 player are available at all.

A manufacturer or importer does not have to meet the guarantee on repairs and spare parts if they advised the consumer in writing, at the time of purchase, that repair facilities and spare part would not be available after a specified time.

Example:

A consumer purchased a new washing machine. Eighteen months later, the machine needed repairs and he went back to the supplier to purchase spare parts. He was told the manufacturer no longer stocked any.

However, it was reasonable for the consumer to expect he could buy spare parts for an 18-month-old washing machine, so he was entitled to recover costs from the manufacturer, which includes an amount for reduction in the product's value.

Consumers returning products without receipts

A consumer who wants to make a claim about a faulty product will generally need to show that they obtained the product from you. The same applies to people who received the product as a gift.

The best proof of purchase is a tax invoice or receipt.

A number of other forms of evidence are also generally acceptable. Among these are:

- > a lay-by agreement
- > a confirmation or receipt number provided for a telephone or internet transaction
- > a credit card statement that itemises the goods
- > a warranty card showing the supplier's details and the date or amount of the purchase
- > a serial or production number linked with the purchase on the supplier's database
- > a copy or photograph of the receipt.

Sometimes a consumer may need to provide more than one type of proof of purchase to support their claim – for example, when a credit card statement does not clearly itemise the faulty product.

Electronic copies and digital photographs are valid proofs of purchase, as long as they are clear enough to show the purchase details. If the consumer cannot provide a printed copy, it is sufficient for them to provide the proof in electronic form.

Example:

A consumer bought a well-known brand of toaster using cash at a medium-sized store. The toaster malfunctioned within the first week.

The consumer took the toaster back to the supplier, but had lost the receipt. The supplier had no record of the transaction and declined to provide a replacement or repair.

The consumer contacted the manufacturer, who identified the serial number of the toaster as one of a recent batch and agreed to accept the claim.

Had the toaster been part of an older product line (three or four years old), it may have been difficult for the manufacturer to know whether the problem was a malfunction or due to wear and tear by the consumer.

Consumers returning products without original packaging

When a consumer chooses a refund for a major failure with a product, you must not refuse a refund or reduce the amount because the product was not returned in the original packaging or wrapping.

For refunds or exchanges under a voluntary 'change of mind' policy, you can require the product to be in its original packaging as long as this is stated in your policy.

Example:

A consumer bought an automated soap dispenser for \$20. It did not work, so she took it back to the retailer. They refused to provide a refund or replacement, on the basis that the product was not returned in its box. However, this was irrelevant. As the product was faulty, the consumer was entitled to a remedy even though she did not have the original packaging.

Businesses as consumers

Under the ACL, a business has certain consumer rights when it purchases products or services. You cannot refuse a remedy to a consumer simply because their purchase was made for or on behalf of a business.

A business is protected by consumer guarantees if it buys:

- > products or services that cost up to \$40,000
- > products or services that cost more than \$40,000 and are of a kind ordinarily acquired for domestic, household or personal use or consumption
- > a vehicle or trailer primarily used to transport goods on public roads.

However, the consumer guarantees will not apply if a business buys products to resell or transform into a product to sell.

Example:

A small business owner buys a printer costing \$300 for use in her business. She tells the office-supply store manager she wants it to be able to print in photographic quality on a particular type of card, and he tells her it can.

However, when she unpacks the printer and reads the instructions, she discovers it is not fit for the purpose she had specified to the store manager. She takes it back to the store and seeks a refund so she can buy another, more suitable printer.

The small business owner can rely on the consumer guarantees for a remedy to this problem. However, if she had bought the printer to resell to consumers, she would not be able to rely on the consumer guarantees.

Where a product is not normally acquired for personal, domestic or household purposes, liability for failure to comply with a consumer guarantee can be limited by contract to one or more of the following:

- > replacement of the product or the supply of an equivalent product
- > repair of the product
- > payment of the cost of replacing the product or acquiring an equivalent product
- > payment of the cost of having the product repaired.

For more information, contact your local consumer protection agency.

Australian Capital Territory

Office of Regulatory Services

GPO Box 158
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ors.act.gov.au

Queensland

Office of Fair Trading

GPO Box 3111
Brisbane QLD 4001
T. 13 QGOV (13 74 68)
fairtrading.qld.gov.au

Northern Territory

Northern Territory Consumer Affairs

PO Box 40946
Casuarina NT 0811
T. 1800 019 319
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Tasmania

Consumer Affairs and Fair Trading

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T. 1300 654 499
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GPO Box 3131
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NSW Fair Trading

PO Box 972
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