

Consumer Guarantees

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CASE STUDY

Mary purchased a watch from a jeweller. Three days after she bought it, the watch stopped working. Mary called CCLS to see whether she could get a refund or a replacement from the jeweller. CCLS has advised Mary that under section 54 of the Australian Consumer Law, the jeweller must guarantee that the watch is of acceptable quality. Because the watch stopped working after only three days, this is likely a major failure (as opposed to a minor failure). Therefore, even if the Jeweller is able to repair the watch, Mary is entitled to choose between an exchange and refund.



What are consumer guarantees?

Under the Australian Consumer Law (**ACL**), businesses must guarantee the products they sell. These guarantees are mandatory standards of quality that products sold, manufactured, or imported by businesses must meet.

These guarantees set out consumer rights that apply when goods and services are defective in certain ways. Generally, businesses must guarantee their products:

- are of acceptable quality.
- match the descriptions made on its packaging, in advertisements and by the business.
- be fit for the purpose the business told you it would be fit for and
- be fit for any purpose you told the business it would be used for prior to purchase.

A number of guarantees also apply to services provided by a business. Examples of a service include building or plumbing services, and tutoring services. Businesses must guarantee that their services are:

- provided with care and skill.
- fit for the purpose the business told said it would be fit for and
- carried out within a reasonable time.

If a product does not comply with 1 or more of the consumer guarantees what are my remedies?

Free Repair

If the problem with your product is *minor*, you must accept a free repair if the business offers you one. If the business does not repair your product within a reasonable time, or the business cannot repair your product, you may:

- get the product repaired elsewhere and ask the business to reimburse you for the cost of having it repaired.
- ask for a replacement or
- ask for a refund.

If a product has a *minor* problem with a service that can be fixed, you are not entitled to a refund immediately. You must give the business a chance to fix the issue.

Exchange or Refund

If the problem with your product is *major*, you may ask the business for an exchange or a refund.

Signs that state 'no refunds' or 'exchange or credit note only for return of sale items' are unlawful because they imply it is not possible to get a refund in certain circumstances, even when there is a major problem with the goods.

How do I know if a problem is major or minor?

A product has a *major* problem when:

- it is unsafe.
- it is significantly different from its description.
- it does not do what the business said it would, or what you asked for, and it cannot be easily repaired or
- it has a fault, and if you had known about the problem, you would not have purchased the product.

Can I be compensated for any loss that I suffer as a result of a business's failure to comply with my consumer guarantees?

You are entitled to be compensated by a business when you suffer loss or damage if:

- your loss or damage arose because of a failure by the supplier to comply with a consumer guarantee; and
- it was reasonably foreseeable that the loss or damage would take place as a result.

Example: Mary purchased a brand-new laptop bag so she could carry around her laptop. Due to faulty stitching, a tear appeared in the bag causing her laptop to fall out of the bag and break. Mary will be entitled to be compensated for the costs of repairing or replacing the laptop.

How do I claim a remedy against a business?

You can seek a remedy from a business by speaking to their salesperson or manager. If this is unsuccessful, you may wish to make a complaint in writing.

In your complaint letter, you should specify:

- the fault with your product.
- when and how you discovered the fault.
- any action you have taken to remedy the matter.
- the outcome you want.
- a date on which you wish to receive a response from the business by and
- any action you will take if the business does not respond to your letter, or if you are dissatisfied with their response.

You should also attach any relevant documents to your letter. This may include a receipt or an invoice.

What happens next?

If the business does not respond to your complaint letter, or if you aren't happy with their response, you can lodge a formal complaint with Consumer Protection WA by calling 1300 30 40 54, or online at <http://forms.commerce.wa.gov.au/consumer-protection/complaint>. You can also lodge a formal complaint with the Australian Competition & Consumer Commission by calling 1300 302 502.

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| For further information contact |
| Consumer Credit Legal Service Website: www.cclswa.org.au Advice line: (08) 9221 7066 |
| Australian Competition & Consumer Commission Website: www.accc.gov.au Phone: 1300 302 502 |
| Consumer Protection – Department of Mines, Industry Regulation & Safety Website: www.commerce.wa.gov.au/consumer-protection Phone: 1300 304 054 |