

New vehicle warranties & servicing

Many consumers ask the ACCC whether a manufacturer's new vehicle warranty will be affected if the vehicle is serviced by an 'alternative' repairer—that is, a different repairer to the one approved by the manufacturer or the dealer from whom they bought the vehicle.

'Will not affect new car warranty'?

Any statements about the effect of services on new vehicle warranties (both implied and express) must be accurate and not mislead or deceive consumers. To do otherwise risks contravening provisions of the Trade Practices Act and exposes the business, and any of its employees, to the risk of legal action from the ACCC or others, including competitors.

Particularly important are claims that vehicle warranties will not be affected or voided. If a business chooses to make representations that vehicle warranties will be unaffected by servicing, they should ensure that they comply with the conditions stipulated in all warranties attached to the vehicle—whether granted by a manufacturer, reseller or any other party.

Businesses that fail to ensure this could breach the Act's provisions on misleading and deceptive conduct.

Additionally, if the consumer suffers loss or damage due to poor workmanship of faulty parts, the manufacturer may not honour their express warranty, and they may be able to pursue the business for any consequential loss or damage.

Types of warranty: which will be affected?

Most issues raised by both businesses and consumers can be traced to confusion about the types of warranties attached to new vehicles.

Statutory warranties implied by the Act cannot be excluded and any attempt to do so is void—therefore, they will exist whether a consumer chooses to take their vehicle to an alternative repairer or to have it serviced by the dealer under an express warranty.

Unlike with statutory warranties, businesses are allowed to place limitations on their **voluntary and extended warranties**. The terms and conditions specified in voluntary and extended warranties will vary but generally state a specific time period and what services/parts are covered.

Therefore, alternative repairers claiming that their service will not affect warranties must ensure that they abide by all conditions in all warranties, otherwise they risk breaching the warranty provisions, which will lead to the consumer losing their warranty. If this happens, the consumer may be able to pursue the repairer for damages.

Although conditions and limitations can be placed on an express warranty, the provisions of a statutory warranty cannot be restricted. For example, an express warranty may contain a provision that voids the warranty if non-genuine parts are fitted. Breaking this condition may void the express warranty but would not affect the statutory warranty as long as the parts were suitable and the service was carried out with due care and skill.

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ACCC Infocentre

At the ACCC Infocentre trained staff are ready to take complaints and inquiries on trade practices, business and consumer issues. Matters requiring detailed follow up are referred to specialist staff in relevant regional offices.

Call **1300 302 502** between 8.30 am and 5.30 pm.

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ACCC website www.acc.gov.au



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Introduction

Warranty and refund issues are important to consumers. They want to buy with confidence, and knowing where they stand if they ever need to seek a repair or refund can go a long way towards reassuring them

Unfortunately, many businesses and consumers have misconceptions about warranty and refund rights. What consumers see as their 'legal rights' are often based on incomplete or incorrect hearsay. It is therefore important that retailers know their rights and responsibilities under the law.

Fostering a cooperative, fair marketplace is important to the ACCC. Ensuring that both retailers and consumers understand their rights and obligations means that consumers get a 'fair deal' and retailers the opportunity to compete fairly against one another.

This edition of *Retail flash* provides clear guidance on how retailers should deal with warranty and refund issues. It includes what your obligations are, situations where you can refuse a refund request,

and the kinds of signage you can place in your store to communicate your refund policy to your customers.

As I announced in last year's Christmas edition of *Retail flash*, the ACCC has established a dedicated small business helpline. Small business operators can speak directly to ACCC staff about small business and franchising issues by calling 1300 302 021.

The ACCC also provides a wide range of publications and business updates free of charge. Go to our small business easy access point on the ACCC homepage at www.acc.gov.au.

I urge any retailers with queries or complaints to contact us on the helpline or the online easy access point.

On behalf of all at the ACCC I wish retailers throughout Australia best wishes for the festive season and a strong trading future in 2007.

John Martin | Commissioner Small Business

Warranties—in a nutshell

Refunds are one of the most common areas of confusion among retailers. Generally, retailers have to give refunds when some kind of condition has been breached. Therefore, it is important that retailers understand what these warranties are and how they can affect your business.

There are three main types of warranties that may be attached to the goods that you sell: voluntary, statutory and extended.

Voluntary warranties are given by the retailer or manufacturer, generally free of charge. Almost all goods, particularly electronic and electrical goods, come with some kind of manufacturer's voluntary warranty. A statement such as 'Comes with 12 month warranty' on an item is generally a voluntary warranty.

Retailers will also often give limited warranties as store policy. The most common voluntary warranty is where a retailer offers to refund or exchange goods if the customer changes their mind.

As the name suggests, voluntary warranties are given voluntarily by either the retailer or manufacturer; businesses are not required to give such warranties if they do not want to. Voluntary warranties may cover anything that the business owner wants.

However, just because they are voluntary does not mean that they are unenforceable. When a business, whether a retailer or a manufacturer, has given a voluntary warranty, they must abide by it. Failure to honour a voluntary warranty risks breaching the *Trade Practices Act 1974* (the Act) and may have implications under contract law.

Extended warranties are another form of voluntary warranty—generally, extra rights that a business gives to consumers. However, they often cost extra to obtain. They are most common in electrical and whitegoods retailing. An example is an offer for a consumer to buy a 'five-year extended warranty'.

As with voluntary warranties, retailers do not have to provide an extended warranty if they do not wish to—but where they have offered one, they must honour it.

Retailers must not misrepresent the need for extended warranties. Telling a customer that they cannot return a faulty product unless they purchase an extended warranty is a serious breach of the Act, as it may be misrepresenting the consumer's statutory rights.

Statutory warranties are warranties imposed by legislation, including the Trade Practices Act, which we are mostly concerned with in this newsletter. Statutory warranties contained in the Act are automatically implied in most consumer transactions and cannot be limited or excluded by retailers.

Statutory warranties allow the consumer to seek a refund where the goods or services:

- don't meet a basic level of performance (given the price and description)
- don't perform the intended function (when this intention was made known to the retailer)
- don't match the description given prior to sale
- have hidden defects that affect the performance or quality of the goods or services.

Please pass on to:

STATUTORY CONDITIONS, WARRANTIES AND REFUNDS

The Trade Practices Act implies certain conditions and warranties in most consumer sales. Referred to as 'statutory rights', they give consumers a basic, guaranteed level of protection for the goods and services they buy.

This brochure deals only with protections implied under the Trade Practices Act. For details of any other statutory rights that may affect your business, contact your state or territory fair trading agency.

Statutory rights (whether conditions or warranties) are intended to protect private rather than corporate consumers. Because of this, some limitations are placed on these rights.

Statutory rights will only apply where the goods or services in question:

- cost \$40 000 or less
- are of a type normally bought for personal or household use, regardless of cost
- are a commercial road vehicle or trailer of any cost that is used primarily to transport goods on public roads.

Goods also must not have been bought for the purpose of resale or to be used in commercial production or in repairing other goods.

Where these conditions have been met, statutory rights will attach to the goods. Subject to the limitations mentioned above, many transactions by small businesses will also be protected by statutory rights. Therefore, if you buy a computer for use in your business, it is likely to be covered; however, it is unlikely that buying inventory or supplies will carry statutory rights (although you may have other rights under your contract or under the Act).

Statutory rights apply whether the goods are new, 'seconds' or second-hand. The consumer is entitled to expect that they will still meet basic requirements.

Conditions versus warranties

Statutory rights fall under two categories: statutory conditions and statutory warranties. The main difference between them is the remedies available when they are broken.

Breaking a statutory condition gives consumers a right to seek a refund.

Breaking a statutory warranty may give rise to other remedies.

Statutory conditions

Statutory conditions apply to any agreement with a consumer, subject to the above conditions. Briefly, the Act implies the following statutory conditions:

- Suppliers must have a right to sell the goods. This means that ownership of the goods will not be challenged by any other party.
- Goods must be of merchantable quality, meeting the basic level of quality and performance that could reasonably be expected of them, taking into account their price and any description provided.
- Goods must be fit for the purpose, whether the consumer made that purpose clear or the purpose is obvious from the circumstances.
- Goods must match descriptions or samples provided to the consumer.

Breaking any of the statutory conditions will give the consumer an automatic right to seek a refund.

Statutory warranties

Warranties are secondary considerations that are important but do not 'make or break' the deal. Breaking a statutory warranty does not give the consumer an automatic right to break the contract but may give rise to another remedy, such as damages, repair or replacement.

- Services must be carried out with due care and skill, and materials used must also be fit for the purpose for which they are supplied.
- Consumers are entitled to undisturbed possession of goods and to own goods outright. This means that ownership and possession of the goods will not be challenged by any other party—unless impediments are disclosed or known to the consumer prior to the sale.

What happens when one of these rights is breached?

To seek a refund or some other remedy, a consumer should write to the seller, giving details of a problem or defect, and return the goods to the seller with full details of the problem.

However, usual commercial practice is for goods to be returned with proof of purchase and details of the problem.

In many circumstances, the retailer is not in the best position to determine whether the goods are faulty—specially with electronic and electrical goods.

In those cases it may be more efficient for you and the customer if you return the goods to the manufacturer or replace the goods and then deal with the manufacturer separately.

This does not release you from your obligations to the consumer—rather, it is simply a quicker and easier course of action for all parties.

If you fail to honour statutory conditions or warranties, the consumer has the right to pursue you in court to recover their money. Obviously, this wastes both your time and theirs—time which you probably can't spare!

Are there any limitations on statutory rights?

Statutory rights cannot be restricted or excluded by businesses. Any attempt to exclude or limit consumers' statutory rights is unenforceable and can breach the Act—leading to penalties of up to \$1.1 million for a company and \$220 000 for an individual.

There is no requirement under the Act for goods to be returned in their original packaging. Insisting that consumers return goods unopened or in their original packaging may breach the Act. For example, with software or audio discs it is impossible for the consumer to discover the fault without first removing the packaging.

Consumers are not required to show a receipt to obtain a refund. They must, however, be able to prove that they bought the goods from your store. Proof may also be provided by a credit/debit card receipt or stock number or by others present at the time.

Retailers may reject a refund request if the consumer caused the goods to become unmerchantable or the goods were damaged by abnormal use. However, they should be able to demonstrate that the goods were not defective when sold.

There is no time limit within which consumers must return goods to obtain a refund, repair or replacement under statutory warranties. However, it must be within a 'reasonable period'. The length of this period will vary depending on the nature of the goods—reasonable periods for a motor vehicle and a pizza are unlikely to be the same.

ACCC SMALL BUSINESS PUBLICATIONS

The ACCC Publishing Unit produces a wide range of publications for small businesses, covering all areas of trade practices law.

Small business and the Trade Practices Act is a comprehensive publication which summarises the Trade Practices Act in plain English for small business owners.

Advertising and selling is the ACCC's guide to pricing and advertising for small business owners.

Small business guide to unconscionable conduct examines this complex area of law with simple explanations and clear examples. It describes how to recognise situations where unconscionable conduct may have occurred and how you can avoid becoming a victim.

The franchisees guide is intended both for small businesses operating in a franchise system and for those considering entering into such a business. The mandatory Franchising Code of Conduct is explained, as well as other provisions of the Act that may directly affect a franchised business.

Infolink is a bimonthly small business newsletter which covers different areas of trade practices law directly relevant to small businesses.

ACCC briefing is a bimonthly update of recent ACCC activity, particularly as it relates to small businesses.

All publications can be obtained by calling the ACCC Infocentre on 1300 302 502 or downloaded free of charge from our website (www.accc.gov.au).

WARRANTY & refund signs

Warranty and refund issues are generally not well understood by consumers. Often, consumers have either an exaggerated view of their rights to a refund (assuming they can always get a refund on goods, regardless of circumstances) or are unaware of any rights they have. Therefore, consumers often rely upon the honesty and knowledge of the business they are dealing with.

To help ease confusion, stores often display signs outlining their refund policies. Clear, concise signage can help explain your policy on warranties and refunds, ensuring that consumers know where they stand when dealing with you and your business.

A clear refund policy enables consumers to know what to expect when entering into a transaction with your business. This has the potential to boost your reputation as an honest, forthright trader who can be trusted to do the right thing by consumers, and it can bring long-term benefits to your business.

However, it is essential that any signage or store policy documents you choose to display are accurate and fully reflect the rights of your customers. Misrepresenting consumers' refund rights is a serious offence under the Trade Practices Act, carrying heavy penalties.

What does the law say?

Under the Act it is illegal to make a false or misleading representation on the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy. This includes statutory, voluntary and extended warranties.

The most common way retailers breach this section of the Act is through a 'refund policy' sign that does not reflect the statutory rights of consumers to seek a refund in certain circumstances. This can mislead consumers about their right to a refund, breaching several sections of the Act.

Some of these breaches have the potential for heavy penalties—up to \$1.1 million for a company and \$220 000 for an individual—and a range of corrective orders, such as injunctions, damages and adverse publicity orders.

So what should my sign say?

There is no legal requirement for businesses to have a sign outlining their warranty and refund policies, but signs can be of great assistance to consumers and are perfectly legal, as long as they follow a few simple rules.

If a store chooses to display a refund sign, they should ensure that it:

- doesn't misrepresent the protections given by statutory rights
- accurately states your store policy
- is easy to understand.

The key is to not mislead consumers. Therefore, make the information on your sign accurate and understandable—and be prepared to make allowances for consumers who may have misunderstood what you meant.

You should also be careful to avoid the common practices below.



'No refunds' signs

Signs stating 'No refunds', 'No refunds after seven days' or 'No refunds on clearance items' may breach the Act and result in serious penalties. Consumers may be led to believe that they have no right to a refund under any circumstance, which is untrue as they will likely have statutory rights.

This includes signs that state things like 'No refunds on items due to health regulations'. Even if these regulations actually exist (and in most cases, they don't) consumers will still be entitled to a refund under the statutory warranties in the Act, and these signs may mislead consumers.

Inflexible store policies

Inflexible store policies such as 'No refunds after 30 days' are likely to breach the Act in many circumstances because statutory conditions have no specified time limits.

Original packaging

Goods do not necessarily have to be returned unopened or with their original packaging to obtain a refund.

Receipts

There is no legal requirement that consumers show a receipt to obtain a refund for a breach of statutory condition; they simply have to be able to prove that they bought the goods from your store.