

Facts



Information

www.consumer.tas.gov.au

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Warranties

Warranty is a term used to describe certain guarantees or promises that a manufacturer or retailer may make on goods or products they sell or supply, or services they provide. However, there are certain basic statutory rights implied into nearly all consumer contracts, regardless of any action or promise made by the manufacturer/seller.

Statutory Rights

Under the *Trade Practices Act 1974* there are certain conditions or guarantees implied into all consumer contracts. These are referred to as statutory rights or implied warranties, and they apply regardless of whether or not there is a written contract in place. They cover all consumer transactions for cash, credit, hire purchase, lease, hire, second-hand goods or exchange. A business must not exclude, restrict or modify the statutory rights, and any term of a contract that attempts to do so will be void.

Statutory Conditions

The Trade Practices Act implies the following conditions into consumer contracts:

- The supplier must be able to give the consumer clear title to the goods, including goods bought at auction.
- The goods must be of 'merchantable quality'. That is, they must meet a basic level of quality and performance.
- The goods must be fit for their purpose.
- Goods that are supplied by description or sample must correspond with the description or sample.

Statutory Warranties

The Trade Practices Act implies the following statutory warranties into consumer contracts:

- The consumer is entitled to 'quiet possession' of the goods and to own the goods outright.
- Services must be carried out with due care and skill.
- Services and any materials associated with them must be fit for the purpose for which they are supplied.

Warranty Cards

The statutory rights listed above apply whether or not the purchaser returned a manufacturer's warranty card or notice.

Sometimes a manufacturer or supplier will provide a specific warranty with their product or service. This should be seen as additional to the above statutory rights, and does not replace them. A trader cannot limit their liability in relation to these rights and cannot exclude, restrict or modify them.



Warranty Claims

The seller must deal with any problems that arise under the statutory rights. However, if the problem is the fault of the manufacturer, the seller can seek reimbursement from the manufacturer after compensating the consumer.

Breach of a statutory condition

The seller should accept return of the goods and refund the customer's money where:

- The goods are defective.
- The goods are not suitable for any particular purpose the consumer made known to the supplier, or purpose that is obvious from the circumstances of the sale.
- The goods do not match the description or sample provided prior to purchase.

Goods do not have to be returned with the original packaging to obtain a refund.

Breach of a statutory warranty

Where there has been a breach of a statutory warranty, consumers may be entitled to:

- repair costs;
- replacement of goods;
- performing services again; and/or
- damages caused by the breach.

Seller's Rights

Generally, sellers do **not** have to give refunds, credit or exchanges if consumers:

- change their minds, decide they do not like the goods or have no use for them;
- have discovered they can buy the goods more cheaply elsewhere;
- examined the goods before buying and ought to have seen some obvious fault;
- had the defect drawn to their attention before buying;
- damaged the good by unreasonable or unintended use.

'No Refund' Signs

Businesses must not mislead consumers about their statutory right to a refund. Signs that say, for example:

No Refunds

No Refunds after 7 Days

We will exchange or credit but not refund

are likely to give the impression that the consumer has no right to a refund when their statutory rights say they do. However, if a business has a policy on refunds, it is reasonable to display a sign to advise consumers before they buy. Just ensure that it is not misleading.

Similarly, some service providers try to limit their responsibility by using signs such as:

No responsibility for loss or damage

Goods left for repair at your own risk

All care but no responsibility

Such signs are misleading because they imply that consumers have no rights for services that are not carried out with due care and skill.