



## Your rights to return goods bought online—a scan of the return policies of online retailers in Australia

December 2011

### Overview

In December 2011, Consumer Action Law Centre looked at the refund and return policies of 12 leading online businesses operating in Australia.<sup>1</sup> The purpose of this research was to investigate whether online retailers understood their obligations under the Consumer Guarantees provisions of the Australian Consumer Law (which protect consumers if they are sold goods or services that are faulty) and whether they reflect that understanding in the information they provide to consumers.

We sorted the policies into three categories:

- **Good practice:** policy does not mislead consumers and sets out consumer rights clearly and comprehensively;
- **Pass:** policy is ok, but has minor problems or could be clearer; and
- **Fail:** policy seriously departs from good practice, risks misleading consumers regarding their rights or places unreasonable barriers to returning faulty goods.

What we found was pretty disappointing. In our assessment:

- only two of the retailers we looked at, **Deals Direct** and **Crazy Sales**, met the good practice standard, with refund and return policies that were both compliant with the Consumer Guarantees and demonstrate good practice;
- **Target** and **Big W** had passable policies, but still need improvement; and
- the remaining eight businesses, including some big names like **Apple**, **Coles Online** and **Officeworks**, had policies with many serious deficiencies.

Since reviewing the policies in December 2011, some of these companies have said that they will review or change their policies. Be aware that the problems we identify below may have been addressed.

### What this document contains

- Some background on what consumer guarantees are, including when they do and don't apply, and what remedies are available if a retailer breaches the guarantees
- Common problems—claims that retailers make in their returns policies that are likely to breach the guarantees, and a discussion of each of the policies we looked at; and
- Advice on how to get some more information on your rights

## **Background on consumer guarantees**

Consumer Guarantees are legal protections for consumers buying goods or services. They provide you with rights when you buy goods or services, by guaranteeing they won't be faulty or unsafe, and will do what you reasonably expect them to do. The consumer guarantees are part of the Australian Consumer Law, which has been in force since 1 January 2011.

The information below is only a background on the consumer guarantees and how they work. For more detail see the Australian Competition and Consumer Commission's [Consumer Guarantees - A Guide for Consumers](#).

### **What do the guarantees cover?**

Consumer guarantees apply every time you purchase goods or services from an Australian business that cost less than \$40,000. Things that cost more than \$40,000 are also covered if they are normally used for personal, domestic or household purposes. Vehicles and trailers are covered regardless of their cost.

The guarantees apply regardless of whether you buy something online or in a store. They also apply when you buy products which are on sale, 'scratch and dent' items and second-hand goods. If you receive something as a gift, you have the same rights as if you bought it yourself.

### **What are the guarantees?**

The main guarantees when you purchase goods are:

- they must be of acceptable quality, meaning they are safe (for intended or predictable uses), durable and not faulty;
- if you have told the seller what you plan to use the goods for, or if the seller has told you that the goods will do a certain thing, they must be able to be used that way;
- if you have purchased goods based on a description from the seller, the goods must match the description;
- if you have purchased goods based on having seen a sample or demonstration model, the goods must match the sample or demonstration model, including being of the same quality and in the same condition;
- the manufacturer of the goods must take steps to ensure that repairs and spare parts are available for a reasonable time after the purchase;
- if the manufacturer or the seller has given guarantees in addition to your rights under the law (for example a 'lifetime guarantee'), they must honour those guarantees;

The main guarantees when you purchase services are:

- services must be carried out with the care and skill you would expect;
- if you have told the seller the purpose that you have purchased the services for, the services must fulfil that purpose; and
- services must be carried out within a reasonable time.

## When do the guarantees not apply?

Consumer Guarantees are designed to provide a reasonable balance between the needs of consumers and retailers. They don't allow you to return goods or services if:

- you want to return something just because you changed your mind. However, some retailers will still allow you to return the item for a change of mind;
- you have damaged the goods or used them in an unreasonable way;
- you examined the goods before buying them and should have seen any obvious fault, or if the sales staff showed you a defect before you bought it;
- you bought the goods from a private seller in a one-off sale, like a garage sale. The guarantees only cover sales between consumers and businesses.
- you are unhappy because goods or don't do something you want them to do, but the seller told you they couldn't be used for that purpose;
- an event occurs that was beyond the seller's control (for example bad weather or delays in delivering the product from the manufacturer to the seller);

### **Buying second-hand or 'scratch & dent' goods**

The Consumer Guarantees apply to all goods you buy, including second hand or 'scratch & dent' goods. However, the guarantees don't cover faults that were obvious at the time of sale.

For example, if you buy a fridge in a 'scratch and dent' sale, you can't then return it because it is scratched or dented. But you could return it if the motor stops working (as it wasn't obvious when you bought it that there was a problem with the motor).

- if the product is a financial service like credit or insurance (similar protections exist for financial services under other laws, including that they be performed with due care and skill, and that they be fit for their purpose);
- if goods or services cost more than \$40,000 and are not used for domestic or household purposes (except vehicles and trailers, which are covered).

## **What if the seller says they don't allow returns?**

Some stores say that they don't allow returns or refunds on certain items (like sale items), or that they only allow them for a certain time, or that the business takes 'all care but no responsibility' for services they provide.

What a business says makes absolutely no difference to your rights under the law. If goods or services you buy breach the Consumer Guarantees, you are entitled to either a replacement, refund, exchange or another remedy. Your rights are provided by the law and cannot be taken from you by a business.

The business itself may be breaching the law if the statements it makes about your rights in relation to consumer guarantees are misleading.

## **Remedies for breach of Consumer Guarantees**

A consumer has the right to a remedy if goods or services do not meet a Consumer Guarantee, but the remedy may differ depending upon whether the problem is a major or minor failure. For a major failure, you can choose a refund or exchange. If the problem is not major, the problem should be repaired within a reasonable time. If it is not repaired in a reasonable time, you can choose a refund or replacement.

A problem will be major where the item:

- has a problem that would have stopped someone from buying it had they known about it;
- is unsafe;
- is significantly different from the sample or description; or
- doesn't do what the trader said it would, or what you asked for and can't be easily fixed.

Consumers can also seek compensation of any consequential or associated damage resulting from a failure to meet the guarantees. So, for example, a consumer who purchases a faulty toaster that causes a fire may be entitled to recover any damage caused by the fire, not just the cost of the toaster.

## **Warranties against defects**

From January 1, 2012, suppliers must also comply with certain requirements if they offer a 'warranty against defects'. A warranty against defects is a representation made to a consumer at the time of sale about what the supplier will do to fix problems with the goods or services they are selling.

If a supplier provides a warranty against defects, they must provide specific information including what they will do if the product is faulty, what the consumer must do to claim the warranty, and other things.<sup>1</sup>

In our view, all of the policies discussed below include warranties against defects. However, we have not considered whether those policies meet these new requirements as they were not in force when we examined them.

---

<sup>1</sup> For more information, see: <http://www.accc.gov.au/content/index.phtml/itemId/996742>

## Common problems

Of the 12 retailers we looked at, 10 had returns policies that we think breach the consumer guarantees in some way, and 8 had policies with what we considered were multiple or more serious breaches. Note that these problems may have been fixed since the time of review.

We considered policies which give clear and complete advice on consumer rights to be good practice, and policies which could mislead consumers to be poor practice. Often the poor policies told consumers about some rights but not others. Businesses might argue that this is fine—the law doesn't require them to provide this information at all. But we think that mentioning some rights and not others could be misleading, as many consumers will assume they only have the rights in the store policy, not the full set under the law.

With that in mind, the most common problems we found were:

- ✘ **Stores recognising some consumer guarantees but not others:** Some stores say in their policy that they allow returns for goods that arrive faulty (commonly known as 'Dead on Arrival'). However, many don't say anything about whether they will allow a return for breaches of another guarantee, for example that goods will match a description or demonstration model, or do something the salesperson said it would do.
- ✘ **Stores saying that consumers who want to return faulty goods must do so at their own expense:** A similar claim is that consumers return the goods 'at their own risk'. It is true that consumers will usually need to return faulty goods themselves, and when buying online, that will usually mean paying return goods by post. But if returning the goods would involve significant costs (for example, if transporting the goods would be very costly because they are very large) then the store must pick them up.
- ✘ **Time limits or other unreasonable requirements on return of goods:** Many stores say that faulty goods can only be returned within a set time. This will be unlawful if it is reasonable for the consumer to return them after that date. For example, a product could be faulty at the time of purchase but the fault may not become obvious until later. In that case, the consumer could return the goods when they notice the fault even if that happens months or years later. A person who pays a premium price for a quality fridge or washing machine would expect it to last many years. If it stopped working after a year, it would be reasonable to return that product.
- ✘ **Policies which claim the retailer can choose what remedy the customer gets:** If a product has a minor fault, it is true that the seller can choose what remedy the customer will receive (for example, whether they get a replacement, refund, repair). But if the fault is a major failure—for example if the product is unsafe, or if it is substantially unfit for its normal purpose and can't be fixed—the consumer may choose the remedy. If a product has a major failure and the consumer requests a refund, it must be in the form the customer chooses. A store can't require refunds to be in store credit.
- ✘ **Policies that claim or suggest that the customer cannot return a product unless they have a receipt:** It is always a good idea to keep your receipts, and it is reasonable for stores to check that they sold the goods you want to return. However, the law doesn't require you to have a receipt to make a return. Other evidence should be accepted, for example a bank statement which shows you bought something for that price from that store, a receipt number given through an internet transaction. In some cases, evidence from another person who was with you when you made the purchase, or that the brand is only sold by one retailer is relevant.

## How each business rated



### Deals Direct

<http://www.dealsdirect.com.au/page/?p=terms-conditions#guarantees>

Deals Direct allow you to return goods within 14 days if you simply change your mind (this is a bonus—the law doesn't require them to do this), but Deals Direct are clear that you can still return products after this time if they breach the guarantees. Most traders don't make this clear.

Deals Direct also acknowledge that, if goods have a major failure, a consumer can choose either a) a refund, b) a replacement, or c) to keep the product and ask for compensation. Most businesses don't seem to know that consumers can choose option c), so extra credit to Deals Direct for doing their homework.



### Crazy Sales

[http://www.crazysales.com.au/index.php?show\\_aux\\_page=11#warranty](http://www.crazysales.com.au/index.php?show_aux_page=11#warranty)

Another good policy. Crazy Sales also have a change of mind return policy (30 days) and, like Deals Direct, they are clear that customers still have rights to return goods after this period if they breach the guarantees.

Crazy Sales also pay for the costs of returning goods which don't meet the required standard. They don't have to do this—generally the consumer has to cover costs of return (except where this will involve significant costs).



### Big W

<http://www.bigw.com.au/help/returns-policy-content>

- ✘ **Manufacturer determines if fault is minor or major**
- ✘ **Policy on who pays to return faulty goods is unclear**

Big W's policy says that sometimes a returned product will have to be forwarded to the manufacturer who will 'assess the product and determine' whether the fault is major or minor. We accept that faults might need to be assessed by the manufacturer, but the consumer also has a say in determining if a fault is minor or major. For example, a failure is major if the consumer wouldn't have purchased the product had they known about the problem.<sup>ii</sup>

Big W also need to be clearer about who pays to return faulty goods to the store. Near the top of their policy, Big W say that 'any cost incurred by you bringing the product to [the store] will be borne by you'. This is true, except that under the law Big W must collect the goods at their own cost if returning the product would be significantly costly. Big W's policy acknowledges this further down the page, but to avoid confusion, they really should mention this exception when they first talk about who pays to return goods.



## Target

<http://shop.target.com.au/help/refund-policy.html>

- ✗ **Limiting choice of remedy**
- ✗ **Unreasonable policy on proof of purchase**

If you want to return a Target brand product because it is faulty and you don't have 'proof of purchase', Target will only offer you 'an exchange voucher to the value of the current selling price or a repair where applicable'.

We think that if the product is Target brand, it's clear you bought it from Target, so you shouldn't need further proof of purchase. If the problem with the product is a major failure, the consumer gets to choose the remedy—Target can't limit it to an exchange voucher or a repair. If it is a major failure, you can ask for a refund in cash if you like, or an exchange.



## Apple

<http://store.apple.com/au/browse/open/salespolicies>

- ✗ **Unreasonable time limits**
- ✗ **Guarantees don't apply to all products**
- ✗ **Limits the remedies available to customers**

Apple's policy is probably the worst we saw. It had multiple problems, a few of which we've discussed here. Apple is careful to say that you have rights under the Australian Consumer Law and that therefore their terms and conditions may not apply, but their policy is written as though those rights don't exist and actually claims to take away a number of them. This is poor practice—most people won't know their rights under the law and will think that the lower standard offered by Apple is all they are entitled to. It also places Apple at risk of misleading consumers as to their rights, itself a breach of the law.

Apple's policy says they will not allow any goods to be returned more than 14 days after the customer receives them. But under the law, a customer can return goods at any time if they breach a consumer guarantee as long as that time is reasonable in the circumstances. Apple also say they won't allow returns of engraved or customised goods unless they are considered 'Dead on Arrival' (and even then only within 10 days), and they don't accept returns of non-Apple branded products at all. The law requires Apple to take responsibility for all the products they sell, including customised and non-Apple branded products, and requires Apple to allow returns on products that don't meet the guarantees.

This policy also attempts to limit the remedies available to consumers. In their 'Dead on Arrival' policy, Apple says that if a product arrives 'Dead on Arrival', Apple will offer the customer either a replacement or a service—but if the customer chooses to have the product serviced, they are not permitted to replace it in future. This raises a number of issues. If a product has a major failure, the consumer (not Apple) can choose the remedy, including a refund. In addition, this policy suggests that if a product arrives faulty and the consumer

chooses to have it serviced, they cannot seek a replacement later, even if the product is still faulty. However, in this situation the law would allow the consumer to seek a remedy for the faulty product and also for the faulty servicing.



### Shopping Square

<http://www.shoppingsquare.com.au/terms.php>

- ✗ Policy suggests that only some goods are covered
- ✗ Policy suggests returns can only be made within a certain period
- ✗ Guarantees don't extend to gift recipients
- ✗ Policy covers some guarantees but not others

Shopping Square's policy states that 'new' products sold will include a warranty provided by its parent company, Apus Corp, for a specified period. The policy is a little unclear, but on our reading, Shopping Square will not provide any remedies for items that aren't new, that don't have an Apus Corp Warranty or if a claim is not made in the warranty period. But under the law, Consumer Guarantees apply to all products sold (new and second hand) and if a trader sells products which breach the guarantees, they cannot require the consumer to return them within a certain time.

Another issue is that Shopping Square claims their warranty only applies to the original purchaser, which is incorrect. Consumer Guarantees also protect people who receive goods as a gift, not only the original purchaser.

But the most shocking part of this policy is where Apus Corp says that it "disclaims all warranties, express or implied, including... merchantability and fitness for a particular purpose". The policy later says that it does not intend to override the law, but this is still bad practice and potentially misleading. The Consumer Guarantees require all traders to ensure goods sold are fit for the purpose they are generally used for, or purposes the trader said they were suitable for. Shopping Square is bound by this law, and cannot disclaim it.



### OO Sales Direct

<http://www.oo.com.au/warranty-and-returns-policy/>

- ✗ Policy suggests that consumer guarantees don't even exist
- ✗ Unreasonable time limits
- ✗ Limits the remedies that can be claimed

OO say that they will replace a product which is 'Dead on Arrival' but only within 14 days after it leaves the warehouse. This is not what the law says. Faulty goods can be returned any time after receiving them, as long as they are returned in a reasonable time in the circumstances. Apart from the 'Dead on Arrival' warranty, OO says that "many items" also come with a longer warranty, but consumer guarantees actually apply to every item that they sell.



OO also says that if a product is damaged or faulty and can't be repaired, it will provide a credit voucher or a refund (but apparently not a cash refund or an exchange). OO should be clear that if a fault is a major failure, the customer can choose whatever remedy they like. If the customer wants a refund in cash, OO can't insist on providing store credit instead.



### **Coles Online**

<http://www.colesonline.com.au>

('Customer Agreement' and 'Frequently Asked Questions')

- ✘ **Unreasonable time limits**
- ✘ **Policy covers some guarantees but not others**
- ✘ **Offers guarantees on some goods but not others**

Coles Online says that they don't allow refunds, credit or replacements unless the customer calls within 24 hours of delivery to report a problem. This is arguably unlawful and definitely unreasonable. Someone could buy non-perishable groceries and not find out until weeks later that there was a problem. Coles also suggests that customers can only request a refund, credit or replacement if a product ordered was not delivered or the quality was unsatisfactory (ignoring the other guarantees) and that only "appropriate items" can be returned. In other words, Coles appears to only provide some consumer guarantees, and only for some products.



### **Red Balloon**

<http://www.redballoon.com.au/help/terms-conditions>

- ✘ **Offers guarantees on some goods but not others**
- ✘ **Unreasonable time limits**

Red Balloon offers refunds and exchanges on some products but not on others, including gift certificates and gift boxes. Like a few other businesses here, they seem unaware that all products they sell are covered by the consumer guarantees. If a consumer purchases a product which is faulty, it may be returned by either the purchaser or a gift recipient and where there is a major failure, the consumer may choose their remedy. Red Balloon also says they won't consider requests for a refund more than 14 days after the purchase date. It will be unlawful to insist on this time limit if it is reasonable for the customer to return the goods at a later point. The way the policy is presented also runs the risk of misleading consumers as to their rights, itself a breach of the law.



### Peters of Kensington

<http://www.petersofkensington.com.au/Public/CustomerCare.aspx>

- ✗ Unreasonable conditions for returning items
- ✗ Seems to recognise some guarantees but not others

This policy requires customers to report faulty or damaged goods within 48 hours of delivery, which will be unlawful and unreasonable in many cases. Peters also say that "undamaged" items may only be returned within 30 days of purchase, in original condition, in unopened packaging and with proof of purchase. However the law allows a customer to return goods which aren't damaged if they do not match description, do not do what the customer was told they would do, and for other reasons. The store must accept returns for these reasons and cannot require them to be returned in a given time, or in original condition in unopened packaging. Again, there is a serious risk of misleading consumers as to their rights.



### OfficeWorks

<http://www.officeworks.com.au/retail/landing/return-policy.html>

- ✗ Guarantees don't seem to apply to all goods
- ✗ Poor policy regarding returns where goods are unfit for purpose

OfficeWorks only say they offer a refund or exchange on 'most' products, and it is unclear which products aren't covered. OfficeWorks also state that the return policy only applies to computer software 'if the product is unopened'. This begs the question—how would a consumer know whether computer software was defective if they haven't opened it? Consumer guarantees apply to all consumer products, including computer software.



### Zazz

<https://www.zazz.com.au/termsandconditions.php>

- ✗ Unreasonable time limits
- ✗ Poor policy regarding returns where goods are unfit for purpose

Zazz is another seller that claims defective goods must be returned within 14 days and also that returned goods must be in their original condition. This is untrue—in many circumstances the law will allow return of faulty goods after 14 days regardless of condition. Zazz also says that they can choose whether to accept returns of "non-defective" items. However, they are required by law to accept returns of goods which aren't defective but breach other guarantees, for example, because they don't meet their description or aren't fit for a purpose Zazz said they were fit for.

## **If you have bought a product which doesn't comply with the Consumer Guarantees**

You have a right to a refund, repair, exchange or other remedies if goods or services you buy don't comply with the consumer guarantees. The law protects you regardless of what the business' returns policy says.

If you think a product you have bought breaches a consumer guarantee, go to the business first and say you want to return the item. Be reasonable, but be clear that you don't think the product is acceptable and say you want a refund, an exchange or another remedy. Most business owners want to keep you as a customer and will respond reasonably.

If you are not happy with the business' response, contact one of the consumer protection bodies below.

If you want more information on consumer guarantees, call one of the numbers below or try the ACCC's publication [Consumer Guarantees - A Guide for Consumers](#).

### **Nationwide:**

The Australian Competition and Consumer Commission (ACCC)

<http://www.accc.gov.au/>

1300 302 502

### **ACT:**

Office of Regulatory Services

[http://www.ors.act.gov.au/community/fair\\_trading](http://www.ors.act.gov.au/community/fair_trading)

02 6207 3000

### **Northern Territory:**

Consumer Affairs

<http://www.nt.gov.au/justice/consaffairs/>

1800 019 319

### **South Australia:**

Consumer and Business Services

<http://www.ocba.sa.gov.au/>

131 882

### **Western Australia:**

Consumer Protection

<http://www.commerce.wa.gov.au/consumerprotection>

1300 30 40 54

### **New South Wales:**

NSW Fair Trading

<http://www.fairtrading.nsw.gov.au>

13 32 20

### **Queensland:**

Office of Fair Trading

<http://www.fairtrading.qld.gov.au>

13 74 68

### **Tasmania:**

Consumer Affairs and Fair Trading

<http://www.consumer.tas.gov.au>

1300 65 44 99

### **Victoria:**

Consumer Affairs Victoria

<http://www.consumer.vic.gov.au>

1300 55 81 81

---

<sup>i</sup> We looked at the return policies between the 8th and 12th of December 2011.

<sup>ii</sup> See ACCC (2010) Consumer Guarantees: A Guide for Consumers, p 13.