

Bitey's Guide to Your Consumer Rights

+ Second Hand Goods Supplement
+ Extended Warranties Supplement

I've written this guide due to the overwhelming number of people buying electronic-goods (tv's dvd players etc) who are being shafted by retailers and manufacturers that are failing to meet their obligations under law.

This seems to be due to lack of knowledge on the buyers side, ignorant or devious retailers whom either do not understand statutory law or rely on the fact consumers do not understand it.

Firstly – this is a generalised guide only, please check with the appropriate government agency in your state for the specifics (see references below).

Difference between Statutory Conditions and Manufacturers Warranties

Statutory Conditions – Are between you and the Retailer (Sales Contract).
Manufacturers Warranty – Is between you and the Manufacturer (Goods).

It is VERY important to understand the difference between the Statutory Conditions and Manufacturer's Warranty when you have a problem with the Goods.

Manufacturer's Warranty:

When you buy a good it comes with a manufacturer's warranty – the manufacturer warrants (promises) the good will work for a period of time (eg 12 months), if it doesn't then the manufacturer will repair it, or replace it. A warranty is between YOU and the MANUFACTURER or their service-agent – it has nothing to do with the retailer. Laws require the manufacturer to honour any warranties provided or offered.

Statutory Conditions:

When you buy a good (tv, dvd player etc) from a retailer you have certain entitlements or rights. These rights stem from the fact that when you buy something you have established a contract with the retailer for that good – you've agreed to buy it and they have agreed to supply it – this is called a sales contract. The sales contract doesn't need to be a physical contract that you've both signed etc. the passing of money and the issue of a receipt is enough. Your rights (statutory conditions) are for the sales contract between YOU and the RETAILER* – the manufacturer of the goods or their service agent has nothing to do with your sales contract. Your rights CANNOT be waived, no matter what signage a retailer has displayed or whatever they tell you - you are entitled to them by LAW. Traders (Retailers, Manufacturers, Wholesalers and Service Providers) cannot exclude, restrict or modify your statutory rights in any way. They risk legal action if they do so or even attempt to mislead you about your legal rights.

* If you purchased the good directly from the manufacturer, or a wholesaler or a service provider then they are a 'RETAILER' for this purpose.

Statutory Conditions provide a legal obligation on the Retailer to provide the goods in your sales contract that are:

- Of Merchantable Quality – Goods must meet a basic level of quality considering the price and how the goods are described. Eg. You shouldn't expect a \$30 dvd player to last longer than its warranty.
- Free from Defects – The goods must work! And not contain any hidden defects.
- Fit for the Purpose – The goods must do what they say they do in the manual / on the box or what the salesperson told you they would do. They shouldn't break when used as described in the user-manual.
- Match Description or Sample – The goods provided to you by the retailer must match the description of the goods or the sample shown or demo'd to you. Eg. If you've been shown

If you have a problem with the goods YOU need to choose how YOU want to get it resolved. You have two choices – Warranty or Statutory Conditions (Rights).

Invoking the Manufacturer Warranty Policies:

Most manufacturers have a DOA replacement policy, that being, if the goods are broken or break within XX days after you receive them and you report the problem to them within this time, they will replace the good – sometimes they will send a technician to verify the problem. The duration of this DOA period varies between manufacturers – however 14 days is fairly common.

If you are outside their replacement guidelines then they will offer to repair the goods – this may involve some back and fourth with technicians. If they are unable to repair the problem within a reasonable amount of time then you can ask them for a replacement if they will not replace the goods you can escalate the matter to your fair trading/office of business and consumer affairs department/authority (see references below). Alternatively you can cancel the sales contract (see Invoking Statutory Conditions below) with your retailer and demand a refund.

Invoking Statutory Conditions:

Most good retailers have a refund/replacement policy, that being if the goods are broken or break within a short period (14 days is not uncommon) they will replace the goods or offer a refund. This is actually just your entitlement under Statutory Conditions. Very Good retailers will also do (for most goods) this even if there is nothing wrong with the goods and you've just changed your mind! (Dick Smiths / Tandy for example).

If the Retailer does not have a policy, then depending on how long it has been since you bought it – they will either offer a replacement or they will tell you to call the manufacturer (or service agent) to have the good repaired (under Manufacturers Warranty).

If your Statutory Conditions have been breached (defective, not fit for purpose etc) then you are entitled to return the goods & cancel your Sales Contract with the Retailer and receive a full refund; or return the goods and have them replaced; or the retailer will arrange to repair the goods (usually warranty). Retailers will try to fob off at any opportunity to the manufacturer for warranty repairs - remember Statutory Conditions are for the Sales Contract between YOU and the Retailer - it has NOTHING to do with the Manufacturer - remind the Retailer of this fact if they try to fob you off rather than provide a replacement or refund.

Whatever the course of action it must be agreed by BOTH parties - that being the Retailer and Yourself.

If you cannot agree with the retailer on course of action, then you MUST put your request in writing to the Retailer (email is fine) – give them a reasonable period to respond in writing (5 working days). Detail the problem, the list of events (phone calls you've made, who you have spoken with what was said / agreed / disagreed and the times/dates) and what you would like done. If the retailer still refuses you can escalate the issue to the fair trading/consumer and business affairs authority/department in your state (see links below).

Some General Rules of Thumb / Observations:

Note: These may or may not apply in your individual circumstances - but I think they're reasonable.

If the goods are less than a month old – you should expect a replacement or a refund without much fuss. Contact the retailer first.

If the goods are between 3 and 6 months old you might get a replacement / refund without much fuss (depends on the good, value, warranty term etc). Contact the Retailer first.

If the goods are more than 6 months old you should invoke the Manufacturers Warranty. Contact the Manufacturer/Service Agent first.

If the goods are repeatedly breaking with the same/similar problems after being repaired, seek a replacement from the manufacturer through the Manufacturers Warranty – if you cannot agree on a resolution with the manufacturer – contact the retailer inform them that they are in breach of your statutory conditions (defect free and merchantable quality) and if they do not replace the goods you will cancel your sales contract and seek a full refund.

General Advice:

Keep your receipts – if you do not have a receipt it can be difficult to obtain warranty, replacements or refunds. If you've lost your receipt – contact the retailer they may be able to re-issue it (especially if you can tell them the date and/or credit card statement). Failing that you can make a statutory declaration, which you may have success in using instead of a receipt.

Don't get angry or abusive – this will just delay everything. Keep your cool – know your rights and don't let a retailer / manufacturer push you around.

Keep a LOG/Journal of problems, telephone conversations, whom you've spoken to -when and what about, service calls, service reports (if you can get a copy) and of course the problems.

If you cannot agree an outcome (repair, replace, refund) with a trader (retailer / wholesaler / service provider / manufacturer) you WILL need to put your request to them in writing (email is fine). Include your LOG to provide evidence of events to date. Give the trader a reasonable amount of time to respond (in writing) eg 5 working days – tell them you intend to escalate this issue to your office of consumer and business affairs.

Consumer and Business affairs will NOT do anything UNTIL you have put your request to the trader in writing, and have their reply in writing. The role of the office of consumer and business affairs is to generally mediate between the parties.

Remember: If the goods supplied are in breach of ANY of your statutory conditions, then you can cancel your sales contract with the retailer and demand a full refund. Keep this in mind when a Retailer is trying to shaft you, fob off to the manufacturer (trying to force you to invoke the Manufacturers Warranty) or providing poor customer service in resolving a problem. Remind them of this fact (it's LAW and it's YOUR right).

Supplement 1: Second Hand Goods, Warranties & Statutory Rights

Many questions arise from people that have purchased second hand goods where the seller is claiming x amount of warranty remaining (residual warranty). Whilst this may be true for the original owner, the ability for the second (or tertiary) owner(s) to invoke the warranty may be nil. This can be a serious problem should something go wrong with the goods from both a statutory rights and manufacturer's warranty perspectives.

Second hand goods purchased from Australian businesses are also covered by your Statutory Rights, however reasonable consideration of the goods age and price need to be taken into account when invoking your Statutory Rights.

Manufacturers Warranty (also known as the limited or express warranty) and Second Hand Goods:

The issues stem from the manufacturer's warranty (also known as an express or limited warranty) wording and the specific issue of transferability. To put it simply some manufacturer's warranties cannot be transferred to another owner.

If the manufacturer's warranty states in its terms (wording of the limited/express warranty statement, usually found in the owners manual or as a supplement or separate document accompanying the goods) that it is non transferable then its non transferable. If it doesn't specify different terms for the s/w and h/w components than the one statement covers both.

My advice for prospective buyers is to investigate the warranty transferability prior to buying a used product and where it is transferable obtain copies of the original receipt and warranty terms/conditions (usually in the book) from the seller – don't just rely on a manual (which includes the warranty statement) you can download, these are often different to the one supplied with the original item and often vary things such as the

warranty term or statement wording. If you're still unsure, contact the manufacturer and ask them directly about transferability of any residual warranty and if they suggest it is not transferable ask them to direct you to the particular clause(s) that limit the warranty to the original owner in the original warranty terms shipped with the goods (eg. the original user manual usually has this upfront). If they cannot direct you to the specific clause then you are well positioned to argue your case and may still be able to invoke the manufacturer's warranty.

Where a manufacturer's warranty is not transferable (the wording of the limited/express warranty specifically states it is not transferable, or only applied to the original owner) you're out of luck.

I have however seen cases where buyers agree with the seller that the seller will return/contact the service division the faulty goods on behalf of the purchaser (I wouldn't, but people at least say they will) - A note on this approach: Not only is this unfair for the manufacturer it is fraud and there may be severe legal consequences, the least of which is any residual warranty will not be honoured.

Statutory Rights and Second Hand goods:

Your statutory rights still apply when purchasing second hand goods from an Australian business; their age and price need to be taken into consideration as to your expectations regarding how long they will last, or how well they will work (compared to a new one). They do however need to be fit for purpose, and of course work without needing any repairs.

Please note that if you purchase goods from a person (eg an individual, a private seller) that is not an Australian based trading corporation such as a business or retailer then your Statutory Rights do not apply. Statutory Rights **ONLY** apply for goods or services purchased from Australian trading corporations.

For non-Australian traders, there are usually similar rights in other countries (where the trader is based), however these may be difficult to access. If the trader is a business, then you may be able to contact the consumer affairs or consumer protection authority in the traders' country.

Supplement 2: Extended Warranties

Many stores and manufacturers will offer an extended warranty, however there are some things you should be aware of when considering purchasing one. Usually the sales person won't be particularly helpful in these situations, so you should get the booklet and familiarise yourself with it.

You need to consider your statutory rights that are designed to offer you a level of protection should your goods fail. So if your TV dies 13 days out of warranty - your statutory rights should still protect you. Typically you'd be able to seek a full refund under statutory rights within 2 years of buying a quality product. You can still use your statutory rights for an item under an extended warranty and/or under manufacturer's warranty.

There are quite a few things to consider with extended warranties that may not be apparent from the booklets available in the stores; and the salespeople may not understand the nuances of the policy. You should always contact the underwriter/insurer and ask for a copy of the full terms and conditions and read them **PRIOR** to buying an extended warranty. Also ask about a cooling off period - sometimes extended warranties are a pressure-sell and *apparently ONLY* available at the time of sale sometimes this just hard-sell tactics and the extended warranty can actually be purchased within X days after purchase.

Some real gotchas to be aware of and ask the underwriter about (or look for in the terms & conditions) specifically:

-Capped liability; aggregated repairs

This is where the policy has a set-limit (the purchase price), repairs deduct this amount until its gone. For example if you buy a \$2,000 tv and have a 4yr extended warranty (assuming 12 month manufacturer warranty) and your TV needs a \$500 repair in year 2, a \$1,000 repair in year 3 then dies completely in year 4 - you'll only get a store credit for \$500 as your 'replacement' because that's all that is left on your set-limit.

-Depreciated value

This is where your TV's value is depreciated over the term of the policy. Your TV (assuming \$2000 tv again) in year 5 your TV might have depreciated down to \$500 - and that's all they'll pay out in year 5 for replacement value

-Freight

This is where you need to pay for the TV to be sent back to the repairer - you need to box it up and ship it to the insurers repair agent (might even be in another state). The TV remains in your possession until its @ the repairer - any damage in transit is your responsibility, so you also need to include insurance along with any courier fees. Sometimes you'll need to pay for this EACH WAY...

-In Home Repairs

Some policies have in-home clauses, sometimes there are only invoked under weight/size limits; or within certain service-areas (you need to investigate where the service agents are); not all policies will pay for a call-out fee, or additional in-home service fee and/or travel time by a repairer.

-Choice of repairer

Sometimes you will be locked into a specific repairer chosen by the insurer. This may not be near you and you may need to ship it (see freight above) or take it

there yourself).

-Replacements

Not all policies include a replacement clause - that after X repairs; or X repairs on the same component they will replace the goods. Some policies may also ONLY cover repairs and NOT replacements.

-Manufacturers Extended Warranty also available (usually in the box)

Some manufacturers offer to extend their own warranty for an additional fee - these are usually the same terms & conditions of the initial manufacturers warranty - but its worth making sure.

-Maintenance or special activity

Some policies require specific maintenance or actions to be carried out for the policy to remain valid - failure to have a good serviced/maintained in accordance with the policy may void it.

-Parts & Labour; or just Parts

Be sure to investigate if the policy is for parts only; or whether it includes parts and labour (also see freight) - sometimes the biggest cost of a repair is the labour & call out fee.

-Claims & Excess

Some policies have a claim limit (also see repair/capped liability) whereby you can only make X claim(s); or where you need to pay an excess for each claim (each repair or replacement).

-Replacement or repairs cancel policy

Some policies will expire / or be fulfilled if the provider replaces the good(s), some may also end when a repair limit is reached, or a capped limit is reached.

-Transferability

If you sell the goods, some policies are NOT transferable.

-Proof of Purchase and/or Policy number

Some policies require you to keep, and produce the proof of purchase and or policy number to honour a claim.

-Moving House

Consider the service conditions, or service agency service areas - are these valid/available in your new location

You should also be aware of who is actually providing the warranty - the retailer, manufacturer or a 3rd party (insurance company).

Other considerations: your statutory rights; the cost of the extended warranty; the life expectancy of the goods; the value of the goods; the terms and conditions of the extended warranty - Is it worth it?

References & Contact Details:

ACCC: <http://www.accc.gov.au/content/index.phtml...omItemId/337487>

Ph. 1300 302 502

Fair Trading Departments / Advocates / Statutory Authorities

South Australia:

<http://www.ocba.sa.gov.au/consumeradvice/s...warranties.html>

Ph. (08) 8204 9777

email: metro.cab@agd.sa.gov.au

Queensland:

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

Ph. 13 13 04

Emails / Local Office Contacts: <http://www.fairtrading.qld.gov.au/oft/oftw...amp;l1=About+Us>

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

Ph. 1300 55 81 81

Email: consumer@justice.vic.gov.au

Tasmania:

http://www.consumer.tas.gov.au/_data/asse... Warranties.pdf

Ph. 1300 65 44 99

email: consumer.affairs@justice.tas.gov.au

Northern Territory:

http://www.nt.gov.au/justice/graphpages/cb...er_rights.shtml

Ph. (08) 8999 1999

Email: consumer@nt.gov.au

Western Australia:

<http://www.docep.wa.gov.au/>

Ph. 1300 30 40 54

Email: consumer@docep.wa.gov.au

Supplemental References:

[NSW Fair Trading](#)

[Choice Magazine](#)

Now Available in [PDF](#) for your pleasure (PDF does not include supplementary docs ).

PS: If you're replying in this thread (and want me to read something), please drop me a PM letting me know - i sometimes miss the posts...

Good Hunting,
Bitey

This post has been edited by **Mr.Bitey**: Jul 24 2009, 08:01 AM