

REPAIR NOTICES

When consumers take their goods to have them repaired they do not always realise that the goods may contain stored data that could be lost in the repair process. This is most likely to happen with items such as mobile phones, computers, portable music players and other similar electronic goods.

The Australian Consumer Law (ACL) Regulations require that from 1 July 2011 repair notices must be provided by a repairer to a consumer before they accept goods for repair, where:

- The goods being repaired are capable of retaining user-generated data; or
- It is the repairer's practice to supply refurbished goods rather than repair defective goods, or to use refurbished parts in the repair of defective goods.

These obligations apply even if goods were purchased prior to 1 July 2011 and whether or not the goods were initially purchased online or as second-hand goods.

Who must provide a repair notice?

Any business that repairs goods is a repairer and must provide a repair notice to a consumer before accepting goods for repair. In some cases, a business that sells or manufactures goods will accept goods for repair on behalf of a repairer. In such circumstances, that business must provide a repair notice on behalf of the repairer.

Who must the repair notice be provided to?

The repair notice must be given to the consumer before the repairer accepts the goods for repair. It does not matter whether the consumer is the original consumer or a representative of the original consumer.

How must the repair notice be provided?

Where goods are accepted for repair in person, the consumer must be provided with a written repair notice. It is not enough to refer consumers to a sign at your business premises; the consumer must be given a copy of the repair notice.

Where there is no face-to-face contact, for example, where a consumer sends the goods to the repairer, they must be given written (e.g. by e-mail, mail or facsimile) notice before the business accepts the goods for repair.

When the repair notice is provided by mail, the repairer must allow a reasonable time for the consumer to receive the notice before accepting the goods for repair. What is reasonable will depend on the circumstances, but the repairer should allow sufficient time for the consumer to receive and respond to the notice.

It is good business practice for repairers to seek the consumer's consent to the repairs before accepting the goods and commencing any repairs.

What information should be in the repair notice?

User-generated Data

A notice relating to the repair of goods that are capable of retaining user-generated data must state that the repair of the goods may result in the loss of the data. For example, the repair notice could say:

The repair of your goods may result in the loss of any user-generated data. Please ensure that you have made a copy of any data saved on your goods.

or

During the process of repair, some or all of your stored data may be lost. Please ensure that you have saved this data elsewhere prior to repair.

What is user-generated data?

User-generated data is any data stored on goods, such as:

- Files stored on a computer hard drive
- Telephone numbers stored on a mobile telephone
- Songs stored on a portable media player/mobile phone
- Games saved on a games console
- Files stored on a USB memory stick.

User-generated data includes data that is generated through use of the device (such as the incoming call log on a mobile phone). It is unlikely to include data generated by the manufacturer.

Refurbished goods or parts

If a repairer sometimes uses refurbished parts to fix defective goods (rather than new parts), or sometimes replaces defective goods with a refurbished version, they must also give the consumer a repair notice before accepting goods for repair. Unlike the notice for goods capable of storing user-generated data, the notice must include specific wording required by the ACL. This wording is:

Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

A repairer must provide this repair notice whether or not they know before inspecting the goods that they will use refurbished parts in a particular repair or supply refurbished goods instead of repairing the goods.

What is a refurbished good/part?

A refurbished good or part is likely to be considered as a used good/part that has been reconditioned or restored to an acceptable working order.

What if I repair goods that contain user-generated data and it is also my practice to use refurbished parts/goods when providing repairs?

If both repair notices are relevant to your business, you should ensure that both notices are included, whether they are provided as a single document or two separate documents.

What if a repair notice is not provided?

If a business does not give a repair notice when the Regulations say they must, they may face penalties of up to \$50,000 for corporations and up to \$10,000 for individuals.

Please note that while this material provides general information about businesses' obligations, it should not be relied on as legal advice or a definitive list of how the law applies.

Want to know more? Call our office on **1800 019 319** or email us at consumer@nt.gov.au.