

# Motor vehicle sales and repairs

An industry guide to the Australian Consumer Law



This guide was developed by:

- Access Canberra, Australian Capital Territory
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Consumer Affairs Victoria
- Consumer, Building and Occupational Services Tasmania
- New South Wales Fair Trading
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# INTRODUCTION

The Australian Consumer Law (ACL) is Australia's national consumer law, replacing previous consumer protection laws in the Commonwealth, states and territories. The ACL applies at the Commonwealth level and in each state and territory.

This guide provides information on the ACL for the motor vehicle (vehicle) sales and repair industries—including motorcycles.

It covers issues about which industry bodies have requested more detailed guidance and which consumers have frequently reported to national, state and territory consumer protection agencies.

This information will be relevant to:

- authorised vehicle dealers (including of vehicles and motorcycles)
- mechanics and vehicle servicers and repairers
- vehicle manufacturers, distributors and importers.

The guide's main focus is on consumer issues related to defects and failures (both one-off and repeated) in new and used vehicles.

In particular, it provides guidance on the legal rights and obligations created by consumer guarantees provided by the ACL. Remedies are available when there is a:

- major failure to comply with a consumer guarantee
- minor failure to comply with a consumer guarantee that cannot be fixed within a reasonable time, or
- minor failure to comply with a consumer guarantee that can be fixed (whether or not it is capable of being fixed within a reasonable time).

## What is not in this guide

This guide gives general information and examples—not legal advice or a definitive list of situations where the ACL applies. You should not rely on this guide for complete information on all your obligations under the ACL.

In addition, this guide does not cover your obligations under state and territory vehicle trader licensing laws; e.g. the *Motor Dealers and Repairers Act 2013* (NSW).



## Other ACL guides and information

This guide supplements the ACL guides for business and legal practitioners, available from the [Australian Consumer Law website](#):

- Consumer guarantees
- Sales practices
- Avoiding unfair business practices
- A guide to unfair contract terms law
- Compliance and enforcement: how regulators enforce the Australian Consumer Law
- Product safety.

For more information, visit:

[Australian Consumer Law website](#)

[Australian Competition and Consumer Commission \(ACCC\) website](#).

## State and territory consumer protection agencies

[Australian Capital Territory: Access Canberra website](#)

[New South Wales: Fair Trading website](#)

[Northern Territory: Consumer Affairs website](#)

[Queensland: Office of Fair Trading website](#)

[South Australia: Consumer and Business Services website](#)

[Tasmania: Consumer, Building and Occupational Services website](#)

[Victoria: Consumer Affairs Victoria website](#)

[Western Australia: Department of Mines, Industry Regulation and Safety \(Consumer Protection\) website](#)

## Terminology

For the purposes of this guide:

A **manufacturer** is a business that makes or puts products together or has its name on the products. It includes the importer, if the maker does not have an office in Australia, and/or any agent (including a distributor) which holds itself out to the public as the manufacturer or official importer of the vehicles. Examples of manufacturers include Ford, Holden, Hyundai, etc.

A **dealer** is any business that supplies vehicles to consumers, including:

- new vehicle dealers that are authorised by manufacturers, usually via a franchise agreement (often referred to as a dealer agreement), to be the primary seller of the manufacturer's vehicles and replacement parts produced by, or for, an original equipment manufacturer, and also a provider of authorised repair and servicing for new and used vehicles, within a defined geographic area
- used vehicle dealers that supply used vehicles to consumers, and also repair and service new and used vehicles, generally with no official endorsement by or affiliation with the manufacturer.

An **independent repairer** is a business that repairs and services vehicles, but is not officially endorsed by or affiliated with the manufacturer or dealer. Examples of independent repairers include smaller owner-operator workshops and larger conglomerates (e.g. Kmart Tyre & Auto Service, Midas Australia, Ultra Tune, etc.).

**Trade or commerce** means in the course of a manufacturer's or dealer's or independent repairer's business or professional activity, including a not-for-profit business or activity.

A **consumer** is a person who buys any of the following:

- any type of products or services costing up to \$40 000 (or any other amount set by the ACL in future)
- a vehicle or trailer used mainly to transport goods on public roads. The cost of the vehicle or trailer is irrelevant
- products or services costing more than \$40 000, which are of a kind ordinarily acquired for personal, domestic or household purposes (such as the family car).

A person is **not** a consumer if they buy products to:

- on-sell or resupply
- use, as part of a business, to:
  - manufacture or produce something else (for example, buying rubber to make tyres)
  - repair or otherwise use on other goods or fixtures.

**Major failure** and **minor failure** refer to failures to comply with consumer guarantees. The ACL does not use the term 'minor'; it only makes reference to a failure that is 'major' and 'not major'. However, throughout this guide the term 'minor failure' is used for simplicity and will apply to circumstances where a failure will not be major.

A **representation** is a statement or claim.

# CONSUMER GUARANTEES ON VEHICLES

Under the ACL, there are numerous consumer guarantees that apply to new and used vehicles sold to a consumer. Table 1 outlines the automatic, statutory consumer guarantees relating to the supply of vehicles.

**Table 1: The consumer guarantees relating to the supply of vehicles**

A supplier guarantees:*	A manufacturer guarantees:
<ul style="list-style-type: none"><li>• goods will be of acceptable quality**</li><li>• goods will be fit for any purpose disclosed before sale</li><li>• goods will match their description</li><li>• goods will match the sample or demonstration model</li><li>• they will honour any express warranties</li><li>• consumers have title to the goods</li><li>• consumers have undisturbed possession of the goods</li><li>• there are no undisclosed securities on the goods</li></ul>	<ul style="list-style-type: none"><li>• goods will be of acceptable quality**</li><li>• goods will match their description</li><li>• they will honour any express warranties</li><li>• they will make available repair facilities or spare parts for a reasonable time</li></ul>

\* For the purpose of the ACL, the term 'supplier' refers to dealers. The term 'supplier' would also refer to a manufacturer if it sells or otherwise supplies vehicles directly to consumers, including via online platforms; this would be in addition to their inherent classification under the ACL as 'manufacturers'.

\*\* Goods are of acceptable quality if they are safe, durable and free from defects, are acceptable in appearance and finish and do everything that they are commonly used for (see page 11).

## Vehicles bought from private sellers

Vehicles bought from one-off sales by private sellers are only covered by the guarantees as to title, undisturbed possession and undisclosed securities. However, the implied warranties under state and territory sale of goods legislation also apply to private sales, unless excluded by the contract.

## Vehicles bought at auction

Vehicles bought by way of 'sale by auction' are only covered by the guarantees as to title, undisturbed possession and undisclosed securities. A 'sale by auction' is an auction that is conducted by an agent (or auctioneer), whether the agent acts in person or by electronic means. Not all auctions are 'sales by auction', for example, auctions conducted by eBay are not considered as 'sales by auctions', because eBay does not act as the agent (or auctioneer) for the person supplying the goods.

However, the implied warranties under state and territory sale of goods legislation apply to auction sale contracts, unless excluded by the contract.

## Leased or hired vehicles

Leased or hired vehicles are covered by the consumer guarantees, with the exceptions of the guarantees as to title and undisclosed securities. The guarantee for undisturbed possession applies only for the term of the lease or hire.

For more information on rental vehicles, see the *Australian Consumer Law industry guide: rental cars*, available from the [Australian Consumer Law website](#).

## Linked credit providers

Sometimes vehicle sellers have 'linked credit providers'—for example, a finance company to which they regularly refer people under an agreement with that company. These credit providers can be liable under the ACL for the loss or damage someone suffers when that seller fails to meet certain consumer guarantees.

## Other exclusions

Other types of vehicles not covered by consumer guarantees include those:

- bought before 1 January 2011. These are covered by statutory implied conditions and warranties under the *Trade Practices Act 1974* and state and territory legislation in force before 1 January 2011
- bought to on-sell or resupply. These sales are covered by the implied fitness for purpose warranties under state and territory sale of goods legislation, unless excluded by the contract.

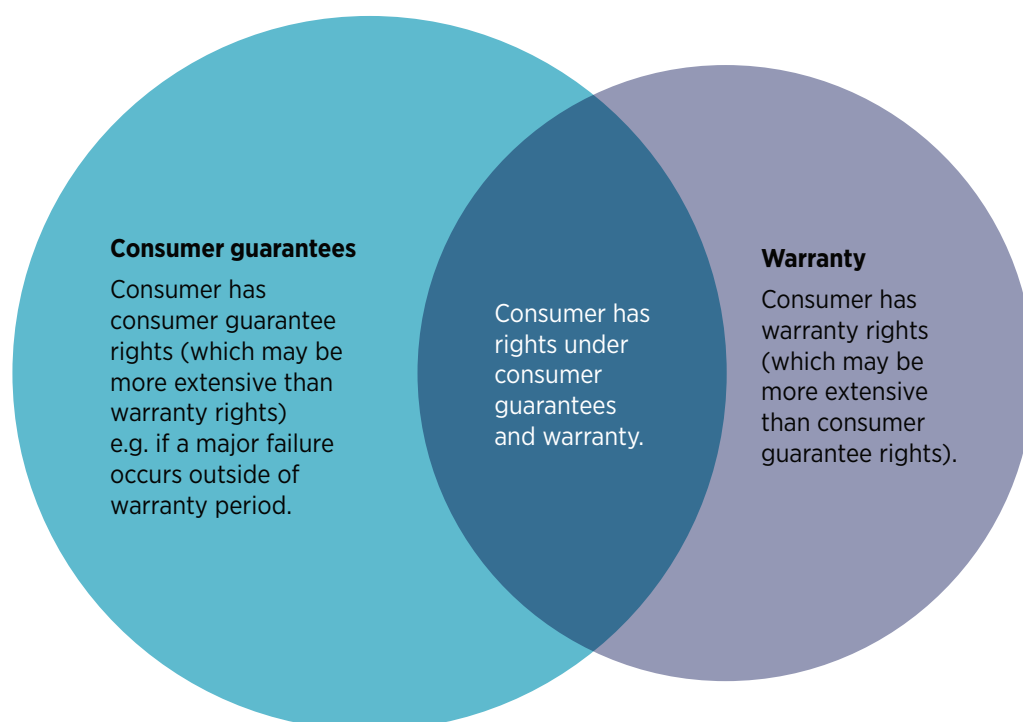


## Interaction between warranties and consumer guarantees

A warranty does not change your responsibilities under the ACL. Consumer guarantees cannot be replaced, limited or removed by any agreement, contract or warranty. Consumer guarantees apply for an unspecified but reasonable period, to be determined by a range of factors, including the nature and cost of the goods. The consumer guarantees apply in the same way regardless of whether a vehicle is covered by a manufacturer's warranty, an express warranty or an extended warranty, and consumer guarantees may continue to provide protections after warranties have expired (warranties are discussed further at page 20).

When explaining customers' rights under warranty, you should be careful not to represent that customers have no other legal right to address a defect. To ensure you do not risk breaching the ACL when dealing with your customers, you should ensure that consideration of customers' consumer guarantee rights and your obligations as either a manufacturer or dealer are embedded in all systems, policies and procedures that make up your complaints handling system. An updated complaints handling system will, as a matter of best practice, help ensure that a consumer's statutory rights under the ACL are given due consideration at the outset of responding to a claim.

**Figure 1: Remedies from consumer guarantees and warranties**



**Example 1:**

A vehicle that was just over three years old suffered from a manufacturing defect that resulted in excessive jerking and shuddering when accelerating to such an extent that the vehicle was not drivable. The vehicle was substantially unfit for its normal purpose because despite many attempts at a repair, the dealer could not permanently fix the issue (see also discussion about 'major failure', at page 12). The vehicle has failed to meet the consumer guarantee of acceptable quality. As the vehicle is not drivable, the failure would constitute a major failure to comply with a consumer guarantee.

The dealer cannot avoid providing a remedy merely because the problem occurred one month after the expiry of the manufacturer's three year warranty period applicable for that vehicle (or 1000 kms after the 100 000 km warranty distance, as the case may be). If the defect is a manufacturing defect, then the consumer may reject the vehicle and ask whoever supplied the vehicle (e.g. the dealer) to provide the consumer's choice of a repair, replacement or refund under the consumer guarantee provisions, regardless of whether the warranty has expired.

There are several factors that make it reasonable for a consumer to reject a vehicle in response to a major failure (and seek a refund/replacement), more than three years after purchase. These factors include that the consumer's use of the vehicle was consistent with a reasonable consumer's likely use, and that it would be reasonable for the vehicle to be used for longer than three

years before the manufacturing defect becomes apparent (see discussion about the 'rejection period', at page 15).

**Example 2:**

A manufacturing defect prevented a two-year-old vehicle from shifting into reverse gear. The vehicle has failed to meet the consumer guarantee of acceptable quality. The dealer spent two months unsuccessfully attempting to repair the vehicle, and the consumer then requested a replacement or refund under the consumer guarantees. Given the vehicle failed to meet a consumer guarantee and could not be repaired within a reasonable time (see discussion about 'major failure', at page 12), the failure is a major failure to comply with a consumer guarantee. The consumer may reject the vehicle and ask whoever supplied the vehicle (e.g. the dealer) to provide a replacement or refund under the consumer guarantee provisions. This applies regardless of whether the vehicle may have been able to be repeatedly repaired under the manufacturer's warranty. The consumer may, however, wish to keep the vehicle and have it repaired, in which case the dealer is entitled to repair the vehicle rather than replace it or provide a refund.

As a matter of best practice, and also to minimise the risk of contravening the provisions of the ACL, which prohibit misrepresentations and misleading or deceptive conduct (e.g. where the consumer has requested a remedy under the consumer guarantees), you should also:

- when providing a remedy, make it clear to the consumer when you are providing remedies under the consumer guarantee provisions—rather than simply describing such remedies as ‘goodwill’
- when not providing a remedy, consider providing consumers with written reasons for refusing to provide a remedy under the consumer guarantee provisions.

### Acceptable quality

The test for acceptable quality is whether a reasonable consumer, fully acquainted with a vehicle’s condition (including any defects) would find it:

- fit for all the purposes for which vehicles of that kind are commonly supplied
- acceptable in appearance and finish
- free from defects
- safe
- durable.

This test takes into account:

- the nature of the vehicle, for example:
  - a new vehicle would be expected to last longer than a used vehicle
  - a dedicated four-wheel-drive vehicle may have a higher standard for off-road use than a ‘soft off-roader’

– a high-performance vehicle may require more maintenance to keep up its performance level

- the price of the vehicle, for example, a consumer may reasonably expect a top-of-the-range model in a particular vehicle class to be more durable than a cheaper competing model in the same class
- representations made about the vehicle; for example, in any advertising, on the manufacturer’s or dealer’s website or in the vehicle manual
- anything the dealer told the consumer about the vehicle before purchase
- any other relevant facts, such as the way the consumer has driven or used the vehicle.

The guarantee of acceptable quality does not apply if:

- the dealer alerts the consumer to the defect in the vehicle before the consumer agrees to the purchase
- the consumer examines the vehicle before buying and the examination should have revealed it was not of acceptable quality. The examination does not require the consumer to find hidden defects or ones that are difficult to detect; for example, engine, brake or gearbox faults, which may not be easily detected
- the consumer causes the vehicle to become of unacceptable quality or does not take reasonable steps to prevent the vehicle from becoming of unacceptable quality, for example, the consumer puts petrol in a diesel vehicle

- the consumer uses the vehicle in an abnormal way. 'Abnormal' use has not been defined under the ACL. However, certain uses for vehicles will be inherently abnormal, for example, a small hatchback is not designed for towing a horse float. Information provided in the manufacturer's handbook and any other operating instructions may also be relevant.
- the vehicle is substantially unfit for its normal purpose and cannot easily be made fit within a reasonable time. For example, the engine of a vehicle with a stated towing capacity of 3500 kgs and normally used for towing, has a design flaw that cannot be easily fixed which causes it to overheat when it tows a load of more than 2500 kgs
- the vehicle is substantially unfit for a purpose that the consumer told the dealer about, and cannot easily be made fit within a reasonable time. For example, a vehicle does not have enough towing capacity to tow a consumer's boat, despite the consumer telling the dealer the specifications required to tow the boat
- the vehicle is unsafe. What is 'unsafe' will depend on the circumstances of each case. For example, a vehicle has faulty brakes that cause the vehicle to require a significantly greater braking distance than would be safe for normal use.

## Major vs minor failures

When a vehicle fails to meet a consumer guarantee, your rights and your obligations to the vehicle owner depend on whether the failure is major or minor and whether you sold or otherwise supplied the vehicle to the consumer (e.g. see reference to 'supplier' in table 1 and table 2).

### Major failures

A major failure to comply with the consumer guarantees includes the following:

- a reasonable consumer would not have bought the vehicle if they had known about the full extent of the problem. For example, no reasonable consumer would buy a new vehicle with so many recurring faults that the vehicle has spent more time off the road than on it because several qualified repairers have been unable to solve the problem
- the vehicle is significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a vehicle with a diesel engine after test-driving the demonstration model, but the vehicle delivered has a petrol engine

When there is a major failure to comply with a consumer guarantee, the consumer can choose to:

- reject the vehicle and choose a repair, refund or an identical replacement (or one of similar type and value if reasonably available) from whoever supplied the vehicle (e.g. the dealer), or

- keep the vehicle and ask for compensation, from the dealer or the manufacturer, for any drop in its value caused by the failure of the vehicle to comply with a consumer guarantee, and compensation for any reasonably foreseeable loss suffered due to the failure of the vehicle to meet the consumer guarantees.

#### **Additional guidance on criteria for determining a major failure**

While examination of a vehicle will likely be required to identify the nature of a fault, the ACL does not require an involved process of diagnosis to determine if a vehicle's failure is 'major'. You should approach consumer claims for remedies from the perspective of whether a reasonable consumer would have bought the vehicle if they had known of the full nature and extent of the failure at the time of purchase. In particular:

- if a manufacturing defect causes a vehicle to become immobile and not drivable, and this defect cannot be easily repaired with the result that the vehicle is not able to be used within a reasonable time, this is likely to constitute a major failure to comply with the consumer guarantee of acceptable quality
- where a vehicle experiences multiple minor failures which necessitate multiple or repeated repairs with the result that the vehicle cannot be used by the owner for unreasonable periods of time (e.g. because the vehicle is not in the owner's possession), this is likely to constitute a major failure to comply with the consumer guarantee of acceptable quality.

#### **Example 1:**

Within the first 60 days after purchase, a manufacturing defect caused a vehicle to become immobile and not drivable, and the dealer was unable to repair the vehicle within a reasonable number of days. The vehicle is unlikely to meet the consumer guarantee of acceptable quality, and a reasonable consumer is unlikely to have bought a vehicle if they had known the vehicle would develop such serious defects shortly after purchase. Therefore, the failure is likely to be a major failure of the vehicle to comply with the consumer guarantee of acceptable quality.

#### **Example 2:**

Shortly after purchase, a manufacturing defect caused a vehicle to develop excessive noisiness. During each attempted repair, the vehicle was not able to be used by the consumer for extended periods (e.g. because the vehicle was not in the owner's possession), for a combined period of five weeks. The vehicle is unlikely to meet the consumer guarantee of acceptable quality, and moreover, a reasonable consumer is unlikely to have bought a new vehicle if they had known the full extent of the vehicle's problems. Therefore, the failure is likely to be a major failure of the vehicle to comply with the consumer guarantee of acceptable quality.

### Example 3:

A vehicle is approximately three years old. During the three years, a few relatively minor issues have occurred. Firstly, after about one year, a piece of interior trim came loose and the dealer was able to repair it. After about two years the satellite navigation system developed a glitch, which the dealer was easily able to fix with a software update. At three years of age, the boot latch broke, which the dealer was able to quickly and easily replace. Each issue was able to be easily repaired, and the vehicle was able to be used normally. Therefore, even though each individual failure is likely to be a minor failure of the vehicle to comply with the consumer guarantee of acceptable quality, these failures, which occurred over a three-year timeframe and do not reflect a recurrent or systemic issue, do not constitute a major failure.

### Minor failures

Minor failures to comply with the consumer guarantees of acceptable quality or fitness for purpose include those where a vehicle has a fault that significantly affects its operation, but can be fixed within a reasonable time. For example:

- a vehicle where the windscreen wipers stop working
- a vehicle fault that can be rectified with a software update
- a vehicle with a small fault in its transmission, which the manufacturer can quickly resolve by, for example, replacing the entire transmission rather than repairing only the faulty component.

A minor failure does not initially allow the consumer to reject the vehicle and demand a refund, replacement or compensation for the difference in value—even if the vehicle is immobile and not drivable for a short period of time (e.g. several days).

### Example:

A consumer buys a new vehicle, and it soon develops a slight rattling noise that does not interfere with its normal operation. The consumer returns the vehicle to the dealer, who inspects it, determines the cause of the noise and offers to repair it in two days. The consumer refuses this offer and demands a refund, claiming a major failure to comply with the guarantee of acceptable quality. However, in these circumstances, the fault would most likely be considered a minor failure, if capable of being fixed within a reasonable time. The dealer would not have to offer a refund in this case.

When the failure to comply with a consumer guarantee is minor, you are not held to repairing it. You can choose between providing a repair or offering the consumer a refund or an identical replacement (or one of similar value if reasonably available).

If you have identified a minor failure, but have not been able to fix it within a reasonable time, the consumer can choose to get the job done elsewhere and charge you the reasonable costs of this repair or can treat the failure as major. This applies even if the delay is due to unavailability of parts. See 'Inability to repair within a reasonable time' on page 16.



### Major failure—when consumers are not entitled to reject goods

A consumer cannot reject a vehicle if the:

- rejection period has passed
- consumer has lost, destroyed or disposed of the vehicle
- vehicle was damaged after being delivered to the consumer
- vehicle, part or component has been attached to, or incorporated in, some other property and cannot be detached without damaging it
- consumer has caused the problem through their own action or inaction—see ‘Abnormal use’.

The ‘rejection period’ is the period commencing from the time a consumer bought a vehicle, during which it would be reasonable to expect a problem to appear.

The length of a vehicle’s ‘rejection period’ is yet to be the subject of significant judicial consideration, however, there is nothing in the ACL to suggest that its application is related to the concept of warranties. It is therefore entirely possible that the warranty period can end before the rejection period ends. It is also possible that a latent defect does not become ‘apparent’ until it has been identified and diagnosed. In determining whether the rejection period has passed, it is relevant to consider the:

- type of vehicle
- way in which the consumer is likely to use it
- length of time, and amount of use, that would reasonably be expected to elapse before the problem becomes apparent.

### Abnormal use

Vehicles are not expected to be indestructible; a consumer’s use of a vehicle can affect its durability.

The guarantee of acceptable quality will not apply if the consumer:

- uses a vehicle abnormally
- causes the quality of a vehicle to become unacceptable
- fails to take reasonable steps to avoid the quality becoming unacceptable.

The law does not define ‘abnormal use’. However, examples of abnormal use would include:

- a soft-top vehicle is left out in the rain with its roof open, resulting in damage to the interior
- a two-wheel drive vehicle being consistently driven in lower traction over rough surfaces that are better suited for four-wheel-drive vehicles.

There is a difference between damage caused by abnormal use, and gradual deterioration (also called ‘wear and tear’) caused by a consumer’s normal use of a vehicle. Wear and tear involves the eventual wearing out of parts to the point where they no longer work, as well as such things as scuffing, scratching or discolouration that would predictably occur over time when the vehicle is used normally. Normal wear and tear is not a minor or major failure.

If a consumer uses a vehicle normally, and its condition deteriorates faster or to a greater extent than would usually be expected, then the vehicle may have failed to meet the guarantee of acceptable quality and the consumer may be entitled to a remedy.

**Example:**

A consumer buys a new vehicle, and takes due care to maintain the condition of the vehicle's exterior. One year after purchase the dealer conducts a routine service and determines the vehicle needs to be repainted to prevent the onset of rust. The dealer cannot refuse to repaint the vehicle by claiming the consumer's use of the vehicle was abnormal.

**Inability to repair within a reasonable time**

A reasonable repair time, for the purpose of determining whether a fault is major, is assessed taking into account the nature of the problem and the difficulty in identifying it. Otherwise, the assessment is on the basis of all things being normal or equal; for example, that parts are available.

A failure that is initially assessed as minor but which is not fixed within a reasonable time, for example, because parts subsequently become unavailable, or because of any other reason beyond your control) gives the consumer the right to reject the vehicle. If multiple repair attempts are required to remedy a single minor failure, which is indicative of a systemic problem, you should consider the combined length of all the repair attempts (and not the individual length of each repair in isolation), when deciding if the repair time is 'reasonable'.

Similarly, if multiple repair attempts are required to remedy different types of minor failure, this may ultimately constitute a major failure of the guarantee of acceptable quality, for example if a reasonable consumer fully

acquainted with the combined length of those repair attempts would not have acquired the vehicle. If you initially consider the fault can be repaired within a reasonable time, the consumer must give you a chance to do so.

**Example 1:**

A two year old vehicle suffered from a manufacturing defect that caused the engine (and vehicle) to seize. The dealer initially assessed the repair as taking a day or two but despite the dealer's best attempts, the vehicle was unable to be repaired within five weeks. This indicates that the fault was not one that could be fixed within a reasonable time, there was a major failure to comply with the consumer guarantees, and the consumer was entitled to reject the vehicle under the consumer guarantees.

**Example 2:**

An 18-month-old vehicle had an intermittent electrical fault that caused a warning light to activate from time to time. The consumer accepted that the fault was minor and asked the dealer to repair it, but the warning light did not activate while the vehicle was in for repair, so it was not possible to identify the cause of the problem. The consumer returned the vehicle for a second and third attempted repair, and the dealer was eventually able to identify and repair the fault. The consumer was not entitled to reject the vehicle, as the time taken to remedy the fault was reasonable when the nature of the fault was taken into account.

## Change of mind

You do not have to give a refund when a consumer simply changes their mind about a vehicle; for example, they no longer like it, or they found it cheaper elsewhere.

However, you can choose to have a policy to offer a refund, replacement or credit note when a consumer changes their mind over and above your statutory obligations. If so, you must abide by this policy.

State or territory laws may have a mandatory cooling-off period for vehicles purchased from licensed dealers.

## Dealer's right to seek reimbursement from a manufacturer

Where a consumer asks a dealer to deal with a problem where a vehicle:

- is not of acceptable quality, or
- does not match a description provided by or on behalf of the manufacturer, or
- is not fit for a purpose made known to the manufacturer either directly or through you as the dealer

and in dealing with that problem in accordance with the dealer's legal obligations the dealer incurs costs, the manufacturer must reimburse the dealer for the costs that the dealer properly incurs.

The dealer has three years to ask the manufacturer for reimbursement, from the date that:

- the dealer fixed any legitimate problems with the consumer's vehicle, or

- the consumer took legal action against the dealer.

The amount can include any compensation paid to the consumer for reasonably foreseeable consequential losses. For more information on consequential loss, refer to *Consumer guarantees: a guide for business and legal practitioners*, available from the [Australian Consumer Law website](#).

Manufacturers cannot contract out of this obligation to reimburse dealers. However, dealers and manufacturers can make an agreement about what they will each cover, as this does not affect the consumer's rights.

## Additional guidance about dealer's right to seek reimbursement from the manufacturer

You have the statutory right to recover from manufacturers the costs of remedies incurred in meeting the buyer's rights under relevant consumer guarantees (namely the consumer guarantees as to acceptable quality, description provided or being fit for disclosed purpose), where the manufacturer was responsible for the failure. Your right to be indemnified by the manufacturer is not conditional on getting prior approval from the manufacturer for the remedy.

If you are obliged by your contracts with manufacturers to obtain pre-approval for repairs under warranty (e.g. if the cost of the repair is above a specified threshold), the manufacturer's approval should not be delayed unreasonably, as consumers also have a statutory right for services to be provided within a reasonable time. If you take too long to fix the problem (e.g. because you are waiting for the manufacturer's pre-approval) the consumer can get someone else to fix the problem and ask you to pay reasonable costs, and if the delay amounts to a 'major' failure, the consumer can demand that you refund or replace the vehicle.

Note also that the dealer's 'cost incurred' in replacing the defective vehicle can be reduced by the amount the dealer obtains when re-selling the defective vehicle (assuming the defective vehicle can be repaired and made compliant with the guarantee of acceptable quality—most importantly with regards to safety). In such circumstances, the 'cost incurred' can be properly calculated when the dealer repairs and re-sells the defective vehicle—so the cost incurred will be the cost of the refund or replacement vehicle and any costs associated with repairing the defective vehicle, less the amount the dealer obtains on the re-sale of the repaired defective vehicle.

#### **Example 1:**

During a repair under warranty, a dealer replaced a vehicle's engine control unit in accordance with manufacturer guidance about a defect in that vehicle model, which was in breach of the consumer guarantee of acceptable quality. The dealer's agreement with the manufacturer contractually obliged the dealer to obtain pre-approval for any repairs under warranty above a certain monetary threshold, which would in this case include replacing the engine control unit. However, the manufacturer unreasonably delayed its pre-approval for the repair, so the dealer decided to repair the vehicle and replace the engine control unit under the consumer guarantee provisions. The manufacturer was legally obliged to indemnify the dealer for providing a remedy under the ACL.

### Example 2:

Shortly after the expiration of a vehicle's three-year/100 000 km warranty period, an electrical fault, which was a manufacturing defect, caused a fire in the engine bay, and then the vehicle burst into flames. This constituted a major failure to comply with the consumer guarantee of acceptable quality under the ACL. Although the dealer was obliged, under its contract with the manufacturer, to obtain the manufacturer's pre-approval before providing a remedy (because the warranty period had expired), the dealer granted the consumer's request for a replacement, due to a breach of the consumer guarantee as to acceptable quality. The dealer had a statutory right to be reimbursed by the manufacturer for the reasonable cost of replacing the defective vehicle.

## Product recalls

You may need to recall a vehicle if it is unsafe, non-compliant with a mandatory standard or subject to a ban. Recalls are usually initiated by a business but a responsible Commonwealth, state or territory minister can also order a recall.

The purpose of a recall is to prevent injury by removing the hazard and offer affected consumers a remedy in the form of a repair, replacement or refund.

A product that is safe now may pose an injury risk in the future. A supplier should recall goods as soon as any present or future injury risk is identified.

A product may be recalled for a variety of reasons, and product safety recalls operate independently from the consumer guarantees provided

under the ACL. Separate to any remedy offered under a recall, consumers have rights under the consumer guarantees. Under the ACL, businesses that supply goods must guarantee that they are of acceptable quality, including that they are safe, regardless of any warranties that come with those goods.

A recall remedy may be consistent with the consumer guarantees obligations, though a recalled good is not automatically deemed to be unsafe under the consumer guarantees.

In the instance of a major failure, a consumer can assert their rights and ask the supplier for a refund or replacement. If an agreement cannot be reached between the consumer and the supplier, the consumer can make an application for consideration by an administrative tribunal.

Suppliers are able to contact the National Exchange of Vehicle and Driver Information System (NEVDIS) when they submit a vehicle recall notification. NEVDIS records vehicle identification number (VIN) data and can provide the last known address of a registered vehicle.

The Department of Infrastructure, Regional Development and Cities is responsible for monitoring vehicle recalls. You must notify the Department if you know that a vehicle, part, accessory or service may have a safety-related defect.

For more information, refer to:

- the [Department of Infrastructure, Regional Development and Cities website](#), for information on vehicle standards and safety

- *Consumer product safety: a guide for businesses and legal practitioners*, available from the [Australian Consumer Law website](#)
- the [Consumer Product Safety Australia website](#), where you can register to receive automatic alerts whenever a new recall is listed.

## Warranties

### Warranties against defects or 'manufacturer's warranty'

You, or the vehicle manufacturer, may provide a warranty that promises consumers that:

- products (such as vehicles) or services will be free from defects for a certain period of time
- defects will entitle the consumer to repair, replacement, refund or other compensation.

This is called a 'warranty against defects', also commonly called a 'manufacturer's warranty'.

#### Example:

A consumer buys a vehicle that comes with a manufacturer's warranty. The warranty says the manufacturer will repair the vehicle at no cost if it has a mechanical failure within three years of the purchase date.

A warranty against defects document must meet a number of requirements, including that it:

- contains the mandatory text: 'Our goods come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and compensation for any

other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'

- is expressed in a transparent way—in plain language, legible and presented clearly
- prominently states the warrantor's name, business address, phone number and email address (if any)
- sets out relevant claim periods or procedures.

Warranties against defects may set out requirements that consumers must comply with. For example, a warranty against defects on a vehicle may require the consumer to ensure any servicing is carried out:

- by qualified staff
- according to the manufacturer's specification
- using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the *Competition and Consumer Act 2010*. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, see 'Exclusive dealing notifications' on the [Australian Competition and Consumer Commission \(ACCC\) website](#).



### Warranty start date

You need to be clear about the date that your warranty commences, particularly in circumstances where a sale is recorded, or a vehicle is registered or otherwise in use before it has been purchased by a consumer. This can be the case in instances such as the use of and subsequent sale of demonstrator vehicles and can cause a vehicle's warranty to commence before the vehicle is purchased by a consumer. If the vehicle's warranty starts before the consumer buys the vehicle, you should disclose this to the consumer at the time of purchase.

### Express warranties

An express warranty is different from a warranty against defects or 'manufacturer's warranty'. As one of the consumer guarantees, vehicles must satisfy any extra promises—'express warranties'—you or a manufacturer has made about them.

An express warranty focuses on a promise or promises, for example, about what the vehicle will look like, will do (or is capable of doing) and for how long.

Sometimes a warranty against defects may contain an express warranty.

### Example:

When a consumer buys a utility vehicle, the written warranty (the warranty against defects) states that the tray can hold up to 1000 kgs, or if not, the tray will be replaced. This is an express warranty about what the vehicle can do. If the tray breaks after a load weighing 500 kgs is placed on it, the consumer can insist that the express warranty contained in the warranty against defects be honoured (i.e. a replacement tray). If not, they will be entitled to a remedy.

### Extended warranties

An extended warranty offered at the point of sale or at the end of a manufacturer's warranty extends the coverage provided in the original manufacturer's warranty, usually at an additional cost.

The consumer guarantees provide rights to consumers that exist despite anything the dealer or manufacturer may say or do. Extended warranties are optional. They are in addition to, and do not replace, the consumer guarantees.

If you are selling extended warranties, you need to ensure that you are offering something of value to the consumer—something that does not simply mirror consumers' rights under the law as this may be misleading.

You must not:

- pressure consumers to buy an extended warranty
- tell a consumer that an extended warranty provides them with additional protections when such a warranty does not provide them with any benefits above and beyond their consumer guarantees rights.

When selling extended warranties, you should explain to the consumer what an extended warranty would provide, over and above the consumer's rights under the consumer guarantees.

Extended warranties may set out requirements that consumers must comply with. For example, an extended warranty on a vehicle may require the consumer to ensure any servicing is carried out:

- by qualified staff
- according to the manufacturer's specification
- using appropriate quality parts where required.

If you wish to seek to restrict a consumer's freedom to choose, for example, who they use as a repairer, you should get legal advice on the prohibitions on 'exclusive dealing' found in the *Competition and Consumer Act 2010*. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal. For more information, see 'Exclusive dealing notifications' on the [ACCC website](#).

## Warranties and consumer guarantees

A warranty does not change your responsibilities under the ACL. The consumer guarantees apply in the same way regardless of whether a vehicle is covered by a manufacturer's warranty, an express warranty or an extended warranty, or whether those warranties have expired.

## Used vehicles

### Statutory warranties on used vehicles

State and territory motor car trader licensing laws require you to provide a statutory warranty on used vehicles that meet particular criteria. These warranties are in addition to the consumer guarantees.

For example, see s. 54 of Victoria's *Motor Car Traders Act 1986*, which provides that, subject to certain provisions, when a person buys a secondhand vehicle from a dealer that was manufactured not more than 10 years before the date it was sold and has been driven for less than 160 000 kms, that person has a particular statutory warranty that defects will be repaired or otherwise made good.

After a statutory warranty has expired, the consumer may still have rights to a remedy under the ACL if there is a problem with the vehicle. However, the level of protection will depend on things such as the vehicle's age and condition.

For more information on statutory warranties that apply to your business, check with your state or territory consumer protection agency or licensing authority.

### Used vehicles not covered by statutory warranties

Even if a used vehicle sold by a licensed trader is not covered by a statutory warranty, it will still be covered by the consumer guarantees.

#### **Example:**

A consumer buys a used four-wheel-drive vehicle which is not covered by a statutory warranty in the state or territory where the dealer is licensed as it has travelled too many kilometres. However, it is a top-of-the-range vehicle and is only three years old, so when the engine seizes three months after purchase due to a manufacturing defect, rendering the vehicle immobile and not drivable, this is likely to be a failure to meet the guarantee of acceptable quality under the ACL and the dealer should provide an appropriate remedy.

### Remedies available for a failure to meet the consumer guarantees relating to vehicles

Under the ACL, there are numerous remedies available when the consumer guarantees that apply to new and used vehicles sold to a consumer haven't been met. Table 2 outlines the automatic, statutory consumer guarantees relating to the supply of vehicles.

**Table 2: Outline of remedies for consumer guarantees relating to vehicles**

Type of failure	The remedy that is available
<p><b>Major failures</b></p> <p>These cannot be fixed or are too difficult to fix within a reasonable time. A failure is major if:</p> <ul style="list-style-type: none"> <li>• a reasonable consumer who was fully aware of the nature and extent of the failure would not have bought the vehicle, part or service, or</li> <li>• the failure prevents the consumer from using the vehicle, part or service for the purpose that vehicles, parts or services of that kind are commonly supplied for (or for a purpose they disclosed to the supplier before purchasing), and it cannot be fixed within a reasonable time, or</li> <li>• the vehicle, part or service is unsafe or creates an unsafe situation.</li> </ul>	<p>The <b>consumer</b> chooses between a repair, replacement or refund, or compensation for the drop in value of the vehicle or part from the supplier.*</p> <ul style="list-style-type: none"> <li>• The consumer may also recover damages from the supplier for any loss or damage they suffer.</li> </ul>
<p><b>Minor failures</b></p> <p>These can normally be fixed or resolved in a reasonable amount of time.</p>	<p>The supplier* chooses between a repair, replacement or refund.</p> <ul style="list-style-type: none"> <li>• Repairs must be done within a reasonable time and without charge. <ul style="list-style-type: none"> <li>– If not, the consumer can request a free replacement or refund, or repair elsewhere and recover the costs from the supplier.</li> </ul> </li> </ul> <p>The consumer may also recover damages from the supplier for any loss or damage they suffer.</p>

In some cases the consumer can approach the manufacturer directly to recover damages for both major and minor failures. If a manufacturer fails to meet a relevant consumer guarantee (including the guarantee of acceptable quality—as indicated in table 1), the consumer is entitled to recover damages from the manufacturer, and in some circumstances, additional damages for reasonably foreseeable consequential loss.

\* For the purpose of the ACL, the term ‘supplier’ refers to dealers. The term ‘supplier’ would also refer to a manufacturer if it sells or otherwise supplies vehicles directly to consumers, including via online platforms; this would be in addition to their inherent classification under the ACL as ‘manufacturers’.

# CONSUMER GUARANTEES ON SERVICES

Under the ACL, you must meet the consumer guarantees of providing services:

- **with due care and skill**

You guarantee to use an acceptable level of skill or technical knowledge when providing the services, and take all reasonable steps to avoid loss or damage

- **which are fit for any specified purpose**

You guarantee that services will be reasonably fit for any purpose specified by the consumer; and any products resulting from the services are also fit for that purpose. You also guarantee that services, and any resulting products, are of a standard expected to achieve any desired results that the consumer told you about

- **within a reasonable time (when no time is set)**

You guarantee to supply the service within a reasonable time. What is 'reasonable' will depend on the nature of the services.

The consumer guarantees apply to services sold in trade or commerce, that:

- were purchased on or after 1 January 2011
- cost up to \$40 000 (or any other amount set by the ACL in future), regardless of purpose or use, for example, servicing a business vehicle
- cost more than \$40 000, and are normally acquired for personal, domestic or household purposes, for example, restoration of a classic vehicle.

Services **not** covered by consumer guarantees include:

- services bought before 1 January 2011. These are covered by statutory implied conditions and warranties under the *Trade Practices Act 1974* and state and territory legislation in force before 1 January 2011
- services costing more than \$40 000, which are for commercial use, for example, repairs to a heavy commercial vehicle
- transportation or storage of products for the consumer's business, trade, profession or occupation.

## Major vs minor failures

When a service fails to meet a consumer guarantee, your obligations depend on whether the failure is major or minor.

A major failure with services is when:

- a reasonable consumer would not have acquired the services if they were fully acquainted with the nature and extent of the problem. For example, a reasonable consumer would not have their vehicle serviced if they had known a major engine fault would not be identified
- the services are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time. For example, a consumer asks a panel repairer to fix hail damage to their vehicle, but the work is of such poor quality that all the vehicle's panels would have to be removed and replaced

- the consumer told the dealer or independent repairer they wanted the service for a specific purpose but the services, and any resulting product, do not achieve that purpose and cannot easily or within a reasonable time be made to achieve it. For example, a consumer specifies they want a tray to be fitted to their ute that would carry 1000 kgs. On using this tray with less than 1000 kgs, the tray failed to hold the load, because the tray fitted was not suitable for the specified purpose
- the consumer told the dealer or independent repairer they wanted a specific result but the services, and any resulting product, were not of a standard that would reasonably be expected to achieve that result. For example, a consumer asks a repairer to perform a power upgrade to reduce their vehicle's acceleration time by a specified amount; but the repairer uses parts that would not be expected to achieve this result
- the supply of the services has created an unsafe situation. For example, a mechanic incorrectly installs a part, causing a brake failure.

When there is a major failure, the consumer can:

- cancel the services and get a refund for any unconsumed services, or
- get compensation for the difference in value between the service delivered and what they paid for.

The consumer gets to choose, not the dealer or independent repairer.

When the problem is minor, the consumer cannot cancel the service and demand a refund immediately. They must give you an opportunity to fix the problem:

- free of charge, and
- within a reasonable time.

If you refuse or take too long to fix the problem, the consumer can get someone else to fix the problem and ask you to pay reasonable costs, or cancel the service and get a refund, as above.

## Repair notices

If you use refurbished parts to fix defective products (rather than new parts), or replace defective products with a refurbished version, you must always give the consumer a 'repair notice' before accepting products for repair.

This notice must include the following specific wording required by the ACL:

- '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'.



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You must provide this repair notice whether or not you know, before inspecting the products, that you will use refurbished parts or supply refurbished products instead of repairing the products.

You can include a repair notice in another document (for example, terms and conditions for the repair) as long as:

- the document states the repair notice is given under the ACL, and clearly distinguishes it from other information
- the repair notice is easy to see (for example, not hidden in fine print)
- you provide the document before accepting the products for repair.

For more information on repair notices, visit the [Australian Consumer Law website](#).

For more information on consumer guarantees applying to services, refer to *Consumer guarantees: a guide for business and legal practitioners*, available from the [Australian Consumer Law website](#).

# COMMON ISSUES

## Choice of repairer under the consumer guarantees

Consumers are sometimes confused about the differences between the consumer guarantees, warranties against defects and extended warranties. This is especially the case if dealers and manufacturers make broad statements that consumers will 'void their warranties' or similar if they go to an independent repairer (for example, a repairer who is not affiliated with the manufacturer or part of the manufacturer's network).

Any suggestion by manufacturers or dealers that vehicles need to be serviced at a licensed dealer to maintain the owner's consumer guarantee rights is not correct. Note, if an independent repairer causes a defect, then that defect is unlikely to be covered by the manufacturer's warranty, and the consumer will need to seek a remedy from the independent repairer.

For more information, see 'Warranties against defects' on page 20, 'Extended warranties' on page 21 and 'Consumer guarantees on services', on page 25 of this guide.

## Logbook and service manual claims

Consumer guarantee rights cannot be excluded by contract. The consumer guarantees apply regardless of any other warranty offered by a manufacturer and there is no requirement under the ACL for a vehicle to be serviced by a dealer for the consumer guarantees to apply. Accordingly, an independent repairer can service a vehicle without affecting the consumer guarantees.

You should also be careful to avoid misleading statements that consumers are required to service their vehicles at a dealer or they will void their rights. A false impression that this is the case may be created by information contained in materials supplied by manufacturers, such as in logbooks and service manuals, and in some cases, verbal representations made by dealers. Logbook and service manual claims that may be misleading include:

1. Explicit statements that dealers must carry out services and repairs.
2. References to dealers (instead of repairers generally) in the context of information about servicing or repairs.

Note also, if the manufacturer's warranty requires a vehicle to be serviced by a dealer, this may constitute anti-competitive conduct under the *Competition and Consumer Act 2010*. Separately, if an independent repairer causes a defect, the consumer must seek a remedy against the independent repairer.

## Non-disclosure agreements

Consumers are legally entitled to rely on consumer guarantees irrespective of whether they sign confidentiality agreements. If you insist consumers sign a confidentiality agreement before providing a remedy you may be at risk under the ACL provisions that prohibit misrepresentations.

## Component pricing

You must not promote or state a price that is only part of the cost, unless also prominently advertising the single (total) price.

The single price must include any charge payable, along with the amount of any tax, duty, fee, levy or other additional charge (for example, GST, import tax, dealer fees or stamp duty).

The single price must be displayed at least as prominently as any component price.

A prominent single price is one that:

- stands out so that it is easily seen by a consumer
- is clear, eye-catching and very noticeable.

What is 'prominent' may vary on a case-by-case basis and you should consider factors such as the size, placement, colour and font of the price, as well as the background of the advertisement. For example, if a single price is smaller or in a font colour that is harder to read than any component price, then this is likely to mean that it is not as prominent.

This applies equally to all forms of advertising that include price representations, regardless of whether the advertisements are placed by a dealer, manufacturer or cooperatively.

Components you do not need to include in a single price are:

- optional extras: additional charges that a consumer may choose to pay. However, if an optional extra is depicted in the advertisement, you must include the price for that optional extra

- sending charges: while mandatory charges for sending products need to be specified in the advertisement, they do not have to be included in the total price. You could, however, choose to do so. It is important to note that in the regulators' view, 'dealer delivery' as currently imposed within the vehicle industry would be considered as a component of the single price
- any components which are not quantifiable at the time the representation is made
- amounts your business pays to a third party that are not passed on to the consumer
- amounts a consumer is required to pay directly to a relevant authority (such as in used vehicle sales).

## Determining whether a component is quantifiable

An amount is quantifiable if, at the time you are making the representation, you are able to readily convert it into a dollar amount.

If a total price is comprised of a number of components, you must quantify and add up each component to the extent to which you are able.

Where a total price involves:

- a combination of quantifiable and non-quantifiable components, or
- a component amount that fluctuates or varies (e.g. changes in foreign currency)

you must calculate the total price using those components that are quantifiable at the time.

You also need to clearly advise consumers of the basis on which the amounts were calculated and that they may change as not all components were able to be included in the single price. This will allow you to provide consumers with the minimum total cost they need to pay to obtain the vehicle.

### **Vehicles with pre-existing damage**

You have specific obligations when selling new vehicles with pre-existing damage, for example, hail damage that occurred while a vehicle was displayed outdoors.

If you are selling a damaged new vehicle at a discounted price and you have informed a consumer of the reason for the discounted price, they cannot then claim that the identified damage is a failure to comply with a consumer guarantee. However, if you do not disclose the damage at the point of sale, there is a risk that the vehicle may later be found to be of unacceptable quality, especially if the damage is not evident or cannot be discovered through a reasonable examination of the vehicle before purchase.

If you are selling a secondhand or damaged vehicle that is still within an original warranty period, you should provide the consumer with information about the status of the manufacturer's warranty, so they can be aware of any limits to the warranty before buying.

### **Consumers seeking refunds for minor problems**

If a failure to comply with a consumer guarantee is not major and can be fixed within a reasonable time, the consumer cannot reject the vehicle and demand a refund.

You can choose to:

- provide a refund
- replace the vehicle
- cure any defect in legal title of the vehicle (if the failure relates to title), or
- repair the vehicle in a reasonable time.

#### **Example:**

A new vehicle had a problem with a small part in its front-end. The consumer believed this was a major failure to comply with the consumer guarantee of acceptable quality, and requested a refund.

However, when the dealer assessed the problem, they found it was a minor problem and could be repaired within a reasonable time simply by replacing the part.

In this case, the consumer was not entitled to demand a refund, as the problem could be fixed quickly.

However, if the dealer had been unable to fix the problem within a reasonable time, then the consumer would have been entitled to the same remedies as if it were a major failure.

For more information about major and minor failures, see page 12.

If you and a consumer disagree about the seriousness or cause of a problem, the consumer might choose to obtain an independent mechanical inspection and written report from an independent mechanic or an automobile association (e.g. the NRMA, RACV, RACQ, etc.).

The consumer will have to pay for this report, but can claim its cost as a consequential loss if the report confirms the fault's existence. However, the consumer cannot make such a claim if the report finds there was only a minor failure to comply with a consumer guarantee. See 'Consequential loss' on page 33.

If you disagree with an independent mechanical inspection report, and believe there has not been a failure to comply with a consumer guarantee or that the failure is not a major one, the consumer can lodge an application with a tribunal or court for a determination under the ACL.

### **Availability of spare parts**

Manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities (a place that can fix the consumer's vehicle), for a reasonable time after purchase.

#### **How much time is 'reasonable'?**

This will depend on the type of vehicle. However, for a new vehicle, it would be reasonable to expect that spare parts will be available for many years after its purchase.

### **Example:**

A consumer has an accident while driving his motor scooter, which he bought new a year ago for \$2000. He contacts the importer and asks where he can get it repaired. The importer advises they no longer supply parts for that model of scooter. A reasonable consumer would expect a one-year-old scooter to be repairable. The importer has not taken reasonable steps to provide spare parts or facilities, so the importer must provide a remedy.

### **When the guarantee on repairs and spare parts does not apply**

A manufacturer or importer does not have to meet the guarantee on repairs and spare parts if they advised the consumer in writing, at the time of purchase, that repair facilities and spare parts would not be available after a specified time.

### **Unauthorised repairs**

If you supply products or services (such as repairs) to someone who has not agreed to buy or receive them, they may be considered 'unsolicited supplies'. It is unlawful to request payment for unsolicited products or services. You must refund any payments that you may have accepted for such products or services.

**Example:**

A consumer booked a vehicle service, which the mechanic advised him would cost between \$350 and \$450.

When the consumer returned to collect his vehicle, he was stunned after being charged \$4500 for a reconditioned transmission.

The dealer or independent repairer did not advise the consumer about the need for this work and the associated costs before the repairs were carried out.

As the extra work was unsolicited, the consumer does not have to pay for any work other than what he initially agreed to. This would not be the case if the mechanic had asked his permission before replacing the transmission, and he had agreed.

If there is a dispute over unauthorised repairs, the onus will be on you (as the business demanding payment) to prove you have a legitimate right to payment.

For more information on unsolicited supplies, refer to *Sales practices: a guide for businesses and legal practitioners*, available from the [Australian Consumer Law website](#).

**Consumers getting vehicles repaired by another business**

Disputes often arise when a consumer has a vehicle repaired by someone other than the original dealer, then makes a claim on that dealer for the repair costs.

If you sell a vehicle and a fault develops, the consumer must give you a reasonable opportunity to meet any obligations under the consumer guarantees or a statutory warranty, before asking someone else to repair the fault.

However, if you refuse or fail to repair the vehicle within a reasonable time, the consumer can have the repairs done elsewhere and seek to recover 'reasonable costs' from you. The consumer does not have to get your agreement or provide quotes.

'Reasonable costs' for a repair would be within the normal range charged by repairers of that type of vehicle, and include:

- the cost of the repair
- any other associated costs incurred by having the vehicle fixed elsewhere, such as transport costs.

**Example:**

A consumer buys a used European vehicle from a licensed dealer who sells used vehicles of all makes. The vehicle soon develops a problem that entitles the consumer to have it repaired under the consumer guarantees. However, despite the consumer asking the dealer to repair the fault, the dealer is unable to repair it because they only have expertise to repair Japanese makes. The consumer is therefore entitled to take the vehicle to another repairer and claim reasonable costs from the dealer.



## Consequential loss

Consequential loss is the reasonably foreseeable associated cost to a consumer of a problem with products or services. It is usually financial but can include other costs, such as lost time or productivity.

A consumer can claim compensation for consequential loss from a dealer or independent repairer who failed to comply with one or more of the consumer guarantees. The loss or damage must have been reasonably foreseeable as a result of the failure to comply with the relevant consumer guarantee.

Dealers and independent repairers do not have to pay for losses or damages:

- that are not caused by their conduct or the products they supplied, and
- that are caused by something completely independent of their business, after the products left their control.

Compensation should put the consumer in the position they would have been in if the products or services had complied with the consumer guarantees.

### Example:

A consumer was driving her new four-wheel-drive vehicle when the engine started smoking, then burst into flames. The cause of the fire was investigated and determined to be the result of a manufacturing defect.

Although the driver escaped without injury, the vehicle and its interior were severely damaged. The fire also destroyed the consumer's wedding dress, which she had placed on the back seat.

As the cause of the fire was a manufacturing defect and this occurrence amounted to a major failure to meet the consumer guarantees, the consumer was entitled to choose a refund or replacement for her vehicle. She was also entitled to claim compensation for consequential loss from the vehicle's dealer for the cost of her wedding dress as it was reasonably foreseeable that any personal belongings that were in the vehicle would also be damaged.

For more information on consequential loss, see *Consumer guarantees: a guide for businesses and legal practitioners*, available from the [Australian Consumer Law website](#).

## Novated leases

A novated lease is a three way agreement between an employer, employee and leasing company. The employee leases a vehicle from the leasing company, and the employer agrees to take on the employee's obligations under the lease. Either the leasing company buys the vehicle from the dealer or the consumer buys the vehicle, transfers it to the leasing company and then leases it back through the novated leasing agreement.

Any rights or remedies under the consumer guarantees belong to the person acquiring the vehicle, even though they may not have the direct benefit of any remedy (such as a refund, replacement or repair).

However, where the person acquires the vehicle for the purpose of re-supplying it, the person would not have any rights under the consumer guarantees and would have to pursue alternative remedies, if any, under the contract or the state or territory sale of goods legislation.

Resupply includes a sale, exchange, lease, hire or hire-purchase of the vehicle.

Resupply may not occur where a consumer acquires a vehicle and subsequently transfers title to the leasing company without consideration. In that case, the consumer may still be able to seek a remedy against the dealer for a breach of the consumer guarantees.

## Vehicles purchased on credit

A consumer (whether an individual or a company) who buys a vehicle on credit has the same rights under the consumer guarantees as someone who has paid cash.

If the consumer purchased the vehicle from a dealer, with the credit supplied by a finance company, the rights are against the dealer.

If the consumer purchased the vehicle from the finance company, the rights are against the finance company.

In both cases, if the consumer is entitled to reject the vehicle and receive a refund because of a major failure, the consumer is also entitled to cancel the finance contract.

The consumer should notify both the dealer and finance company (as the case may be) that they are rejecting the vehicle.

The dealer or the finance company (depending on who supplied the vehicle to the consumer) will have to refund the deposit, the value of any trade-in, as well as any repayments on the loan. The consumer may also be entitled to a refund of any interest paid on the loan for the period they were unable to use the vehicle.

The terms and conditions of the finance contract may require the consumer to pay certain fees and charges upon termination of the contract.

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If finance has been arranged through a linked provider, both the dealer and finance company may be jointly responsible for returning the amount of any such fees or charges to the consumer.

A linked credit arrangement is where the dealer supplies the vehicle to the consumer either directly or by requiring the consumer to collect it from a finance company with which the dealer has a contract or arrangement.

If the finance company is not a linked credit provider for the dealer, the consumer may be able to recover any termination fees or charges as consequential loss only from the dealer.

#### **Minor failures with a vehicle purchased on credit**

For minor failures with a vehicle purchased on credit, the dealer will ultimately be responsible for fixing the problem. Consumers should not stop making payments on their credit contract while the vehicle is being fixed. This could result in penalty interest or late payment fees, or the finance company taking steps to repossess.

# BUSINESSES AS CONSUMERS

Under the ACL, a business has certain consumer rights when it purchases products or services. You cannot refuse a remedy to a customer simply because their purchase was made for or on behalf of a business.

A business is protected by consumer guarantees if it buys:

- products or services that cost up to \$40 000
- products or services that cost more than \$40 000 and are of a kind ordinarily acquired for domestic, household or personal use or consumption
- a vehicle or trailer primarily used to transport goods on public roads.

However, the consumer guarantees will not apply if a business buys products to resell or transform into a product to sell.

## **Example:**

A small business owner buys a motor scooter costing \$3000 to make deliveries for her business. She tells the dealer she wants it to be able to carry up to 40 kgs on its carry rack, and he tells her it can.

However, when she takes delivery of the scooter and reads the owner's manual, she discovers it is not fit for the purpose she had specified to the dealer. She takes it back and seeks a refund so she can buy another, more suitable vehicle.

The small business owner can rely on the consumer guarantees for a remedy to this problem. However, if she had bought the scooter to resell to a consumer, she would not be able to rely on the consumer guarantees.

Where a product is not ordinarily acquired for personal, domestic or household purposes, liability for failure to comply with a consumer guarantee can be limited by contract to one or more of the following:

- replacement of the product or the supply of an equivalent product
- repair of the product
- payment of the cost of replacing the product or acquiring an equivalent product
- payment of the cost of having the product repaired.

# CONSUMER PROTECTION AGENCIES

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## State consumer protection agencies

Your local consumer protection agency can help you with your consumer rights. They may also be able to assist you with any other issues you have with goods or services generally.

### Australian Capital Territory

Access Canberra  
GPO Box 158  
Canberra ACT 2601

Telephone: 02 6207 3000

[Australian Capital Territory: Access Canberra website](#)

### New South Wales

NSW Fair Trading  
PO Box 972  
Parramatta NSW 2124

Telephone: 13 3220

[New South Wales: Fair Trading website](#)

### Northern Territory

Northern Territory Consumer Affairs  
PO Box 40946  
Casuarina NT 0811

Telephone: 1800 019 319

[Northern Territory: Consumer Affairs website](#)

### Queensland

Office of Fair Trading  
GPO Box 3111  
Brisbane QLD 4001  
Telephone: 13 QGOV (13 74 68)

[Queensland: Office of Fair Trading website](#)

### South Australia

Consumer and Business Services  
GPO Box 1719  
Adelaide SA 5001

Telephone: 13 1882

[South Australia: Consumer and Business Services website](#)

### Tasmania

Consumer, Building and Occupational Services  
PO Box 56  
Rosny Park TAS 7018

Telephone: 1300 654 499

[Tasmania: Consumer, Building and Occupational Services](#)

### Victoria

Consumer Affairs Victoria  
GPO Box 123  
Melbourne 3001

Telephone: 1300 55 81 81

[Victoria: Consumer Affairs Victoria website](#)

### Western Australia

Department of Mines, Industry Regulation and Safety  
Consumer Protection Division  
Locked Bag 14  
Cloisters Square WA 6850

Telephone: 1300 30 40 54

[Western Australia: Department of Mines, Industry Regulation and Safety \(Consumer Protection\) website.](#)

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## **ACCC and ASIC**

You can find more information and other resources about the Australian Consumer Law on the ACCC and ASIC websites. To report a problem use their online forms.

The ACCC and ASIC do not provide dispute or complaint resolution services.

### **Australian Competition and Consumer Commission**

GPO Box 3131  
Canberra ACT 2601

Telephone: 1300 302 502

[Australian Competition and Consumer Commission website](http://www.accc.gov.au)

### **Australian Securities and Investments Commission**

PO Box 9827  
(in your capital city)

Telephone: 1300 300 630

[Australian Securities and Investments Commission website](http://www.asic.gov.au)

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