



## Gifts & Consumer Guarantees

*Most of us have the good fortune to both give and receive gifts. Sometimes those gifts are defective and require repair, replacement or refund. Thankfully Section 266 of the Australian Consumer Law provides that a consumer (gift giver) who acquires goods from a supplier and gives them to another person as a gift, the other person (gift receiver) may exercise the rights and remedies which were available to the gift giver against the supplier. These rights and remedies centre around the consumer guarantees set out in the Australian Consumer Law.*

### What are consumer guarantees?

Consumer guarantees are a set of rules that apply to goods and services ordinarily acquired for domestic, household or personal use or consumption, purchased by consumers and costing less than \$40,000.00. These guarantees automatically apply regardless of any voluntary or extended warranty given by the seller or manufacturer, or if that warranty has expired.

Businesses that sell goods guarantee that those goods:

- are of acceptable quality – the goods must be safe, lasting, have no faults, look acceptable and do all the things someone would normally expect them to do
- are fit for any purpose that the consumer made known to the business before buying (either expressly or by implication), or the purpose for which the business said it would be fit for
- have been accurately described
- match any sample or demonstration model
- satisfy any express warranty
- have a clear title
- come with undisturbed possession, so no one has the right to take the goods away from or to prevent the consumer from using them
- are free from any hidden securities or charges
- have spare parts and repair facilities reasonably available for a reasonable period of time, unless the consumer is advised otherwise.

### Manufacturers and importers guarantee that their goods:

- are of acceptable quality
- have been accurately described



- satisfy any manufacturer's express warranty
- have spare parts and repair facilities reasonably available for a reasonable period of time, unless the consumer is advised otherwise

## Exceptions to the consumer guarantees

The consumer guarantees do not apply to:

- goods bought from one-off sales by private sellers, such as a private garage sale or school fetes
- goods purchased at a traditional auction, physically or on-line
- goods purchased to be resold or transformed into a product that is on-sold
- goods or services costing more than \$40,000 that are normally used for business purposes.

## What happens if these guarantees are not met?

If a product given to you as a gift fails to meet one or more of the consumer guarantees, you are entitled to a remedy – either a repair, replacement or refund and compensation for any consequential loss – depending on the circumstances.

Generally, if the problem is *minor*, the seller can choose whether to remedy the problem with a replacement, repair or refund. If you choose to repair and it takes too long, you can get someone else to fix the problem and ask the seller to pay reasonable costs, or reject the good and get a full refund or replacement.

If the problem is *major* or cannot be fixed, you can choose to:

- reject the goods and obtain a full refund or replacement, or
- keep the goods and seek compensation for the reduction in value of the goods.

A gift has a *major* problem when it:

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

## Important things to remember:

- The seller cannot refuse to provide a remedy if the product is not returned to its original packaging.
- The seller also must not refuse to deal with you about the returned good and tell them to deal with the manufacturer instead.
- The seller cannot rely on signs that state 'No refunds on sale items' or 'exchange or credit not only for the return of sale items' as these are unlawful.
- The seller is not required to provide a remedy if:
  - you decide you don't like the gift or have no use for it



- you discover you can buy the gift more cheaply elsewhere
- you have damaged the goods by using them in a ways that is unreasonable
- If the seller refuses to honour the consumer guarantee or provides a remedy to you, you can report the problem to the ACCC or consumer protection agency.

## Conclusion

*If you would like more information or require assistance or advice regarding your consumer rights or how to deal with a seller, please contact Ken Gray on 4731 5899 or email [litigation@batemanbattersby.com.au](mailto:litigation@batemanbattersby.com.au).*