



NSW Fair Trading powered up for the “Sales Season”

The NSW Government has introduced changes to the Fair Trading legislation to help consumers and businesses resolve complaints about products in a more efficient and effective manner and as an alternative to the often costly and lengthy process of seeking a determination of these disputes by Courts or Tribunals. With the post – Christmas and New Year Sales seasons imminent the changes will provide consumers and business owners with a fair, quick and cheap resolution process for their disputes.

To date most consumer product complaints made to NSW Fair Trading have been resolved through mutual agreement between the consumer and the business at the prompting of Fair Trading. However, if the complaint wasn't resolved in this manner the aggrieved party has had to commence legal proceedings in a Court or Tribunal in order to obtain redress.

The new legislative changes, which will apply to all complaints lodged with Fair Trading from 28 December 2018 onwards, now provide the Commissioner for NSW Fair Trading with a new power to issue a “Consumer Guarantee Direction” that will require the business supplying the product to give the consumer a refund, or to replace or repair the product. Most importantly the Consumer Guarantee Direction issued by Fair Trading is equivalent to a Court Order and is enforceable against the business.

Who is eligible to get a Consumer Guarantee Direction?

To be eligible for a Consumer Guarantee Direction a dispute must meet the following criteria;

1. The complaint is lodged with Fair Trading from 28 December 2018 onwards.
2. Is about a product or good (and not a service).
3. The Purchase price of the product or good was between \$25.00 - \$3,000.00 (excluding GST).
4. The product was purchased within six months before the complaint was lodged with Fair Trading.
5. The dispute is about an Australian Consumer Law Guarantee relating to:
 - (i) The acceptable quality of the product
 - (ii) The product being fit for its disclosed purpose; or
 - (iii) The product matching the description, sample or demonstration model
6. The matter must have progressed through the Fair Trading complaint handling process with no agreement being reached between the Consumer and the business.



Matters not eligible to be determined by the issue of a Consumer Guarantee Direction include:

7. False and misleading representations
8. Unsolicited or bait advertising
9. Excluded products (these include motor vehicles, second hand goods, solar batteries and products relating to a home building claim)

What's the Consumer Guarantee Direction Process?

The new process for determining whether a Consumer Guarantee Direction will be issued involves six steps;

1. A Consumer makes a complaint to NSW Fair Trading;
2. NSW Fair Trading contacts both parties to encourage them to resolve the dispute;
3. If no mutual outcome has been reached via the Consumer and the Business the Consumer will be advised of their options including applying for a Consumer Guarantee Direction;
4. NSW Fair Trading will assess an application to see if it meets the eligibility criteria;
5. Fair Trading reviews the application and invites both parties to make written submissions about the complaint which is shared with the other party so that they have a chance to respond.
6. The application for the Consumer Guarantee Direction is then assessed and Fair Trading makes a determination on whether or not to make a Consumer Guarantee Direction or not.

If Fair Trading makes a Consumer Guarantee Direction, it will direct whether the business is to repair, replace or refund the purchase price to the Consumer and will include a monetary value even when there is a Direction made to repair or replace the product.

Once the Direction is made the business must comply with it within 28 days (or within such other period specified in the Direction) and in the event that they do not, the consumer will be able to register the Direction in the Local Court as a Judgement Debt and apply to have it enforced.

The introduction of Consumer Guarantee Directions will mean that NSW Fair Trading can now provide consumers and businesses with a resolution to their dispute outside of Courts or Tribunals and without the costs and time involved in taking proceedings in these arenas.

If you or someone you know wants more information about Consumer Guarantee Directions or has a dispute that falls outside the eligibility criteria, please contact Ken Gray or John Bateman on 02 4731 5899 or email enquiries@batemanbattersby.com.au