

Motor vehicle sales and repairs

An industry guide to the Australian Consumer Law



This guide was developed by:

- Australian Capital Territory Office of Regulatory Services
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Consumer Affairs and Fair Trading Tasmania
- Consumer Affairs Victoria
- New South Wales Fair Trading
- Northern Territory Consumer Affairs
- Office of Consumer and Business Affairs South Australia
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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 car and motorcycle sales and repair industries.

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:

- > licensed motor vehicle traders (including of cars and motorcycles)
- > mechanics and repair shops
- > motor vehicle manufacturers
- > motor vehicle industry associations.

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

In particular, it provides guidance on the legal rights and obligations created by consumer guarantees provided by the ACL. Remedies are available when motor vehicles do not meet the consumer guarantees in a way that is a:

- > major failure
- > minor failure that cannot be fixed, or
- > minor failure that can be fixed but is not 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 motor car trader licensing laws.

Other ACL guides and information

This guide supplements the ACL guides for business and legal practitioners, available from consumerlaw.gov.au:

- > 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, view:

Australian Consumer Law website
consumerlaw.gov.au

Australian Competition & Consumer Commission (ACCC)
acc.gov.au

State and territory consumer protection agencies

Australian Capital Territory: Office of Regulatory Services
ors.act.gov.au

New South Wales: Fair Trading
fairtrading.nsw.gov.au

Northern Territory: Consumer Affairs
consumeraffairs.nt.gov.au

Queensland: Office of Fair Trading
fairtrading.qld.gov.au

South Australia: Consumer and Business Services
cbs.sa.gov.au

Tasmania: Consumer Affairs and Fair Trading
consumer.tas.gov.au

Victoria: Consumer Affairs Victoria
consumer.vic.gov.au

Western Australia: Department of Commerce
commerce.wa.gov.au

Terminology

For the purposes of this guide:

A **supplier** is anyone – including a trader, a retailer or a service provider – who, in trade or commerce, sells products or services to a consumer.

A **manufacturer** is a person or business that makes or puts products together or has their name on the products. It includes the importer, if the maker does not have an office in Australia.

Trade or commerce means in the course of a supplier's or manufacturer'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) – for example, a small car or vehicle repairs
- > 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 normally used for personal, domestic or household purposes – for example, a large car or caravan.

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, as an ingredient)
 - » repair or otherwise use on other goods or fixtures.

Motor vehicle is used in this guide to refer to both motor cars and motorcycles.

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 motor vehicles

Under the ACL, there are nine consumer guarantees that apply to new and used motor vehicles sold to a consumer:

1. Suppliers and manufacturers guarantee that motor vehicles are of acceptable quality
2. A supplier guarantees that motor vehicles will be reasonably fit for any purpose the consumer or supplier has specified
3. Suppliers and manufacturers guarantee that their description of motor vehicles (for example, in a catalogue or television commercial) is accurate
4. A supplier guarantees that motor vehicles will match any sample or demonstration model
5. Suppliers and manufacturers guarantee that motor vehicles will satisfy any extra promises – or 'express warranties' – made about them
6. A supplier guarantees they have the right to sell the motor vehicle (clear title), unless they alerted the consumer before the sale that they had 'limited title'. Note that licensing laws in some states or territories may require motor car traders to guarantee clear title
7. A supplier guarantees 'undisturbed possession' or that no one will try to repossess or take back motor vehicles, or prevent the consumer using them, except in certain circumstances
8. A supplier guarantees that motor vehicles are free of any hidden securities or charges and will remain so, except in certain circumstances
9. Manufacturers or importers guarantee they will take reasonable steps to make spare parts and repair facilities available for a reasonable time after purchase.

Consumer guarantees cannot be excluded, even by agreement.

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 apply to private sales, unless excluded by the contract.

Vehicles bought at auction

Vehicles bought at auctions 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 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 consumerlaw.gov.au.

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.

Acceptable quality

The test for acceptable quality is whether a reasonable consumer, fully aware of a motor 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 motor vehicle – for example:
 - » a new car would be expected to last longer than a used car
 - » 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 motor 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, and
- > 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 gear box faults, which may not be easily detected
- > the consumer uses the motor car in an abnormal way. 'Abnormal' use has not been defined under the ACL; however, certain uses for certain 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.

Major vs minor failures

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

Major failures

A major failure to comply with the consumer guarantees is when:

- > a reasonable consumer would not have bought the motor vehicle if they had known about the full extent of the problem. For example, no reasonable consumer would buy a new car with so many recurring faults that the car has spent more time off the road than on it because several mechanics have been unable to solve the problem
- > the motor vehicle is significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a car with a diesel engine after test-driving the demonstration model, but the car delivered has a petrol engine
- > the motor vehicle is substantially unfit for its normal purpose and cannot easily be made fit within a reasonable time. For example, the engine of a pick-up vehicle, with a stated towing capacity of 3500 kilograms and normally used for towing, has a design flaw that causes it to overheat when it tows a load of more than 2500 kilograms
- > the motor vehicle is substantially unfit for a purpose that the consumer told the supplier about, and cannot easily be made fit within a reasonable time. For example, a sports utility vehicle does not have enough towing capacity to tow a consumer's boat, despite the consumer telling the supplier the boat's specifications

- > the motor vehicle is unsafe. What is 'unsafe' will depend on the circumstances of each case. For example, a truck has faulty brakes that cause the vehicle to require a significantly greater braking distance than safe for normal use.

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

- > reject the motor vehicle and choose a refund or an identical replacement (or one of similar value if reasonably available), or
- > keep the motor vehicle and ask for compensation for any drop in its value caused by the problem.

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 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 motor vehicle and demand a refund, replacement or compensation for the difference in value.

Example:

A consumer buys a new car, and it soon develops a slight rattling noise that does not interfere with its normal operation. The consumer returns the car 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. 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 7.

Major failure - rejection period

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' below.

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.

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 car is left out in the rain with its roof open, resulting in damage to the interior
- > a four-wheel drive vehicle is used to tow a load that exceeds the vehicle's stated towing capacity.

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.

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.

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 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 car developed an engine fault that caused the car to seize. The supplier initially assessed the repair as taking a day or two but was unable to repair the vehicle after 11 weeks. This indicates that the fault was not one that could be fixed within a reasonable time and the consumer was entitled to reject the vehicle under the consumer guarantees.

Example 2:

A car 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 supplier to repair it, but the warning light did not activate while the car 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 supplier 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. If so, you must abide by this policy.

State or territory laws may have a mandatory cooling-off period for cars purchased from licensed motor car traders.

Suppliers' right to seek reimbursement from a manufacturer

Where a consumer asks you, not the manufacturer, to deal with a problem where a vehicle:

- > is not of acceptable quality
- > 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 supplier

the manufacturer must reimburse you.

You have three years to ask the manufacturer for reimbursement, from the date that:

- > you fixed any problems with the consumer's vehicle, or
- > the consumer took legal action against you.

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 consumerlaw.gov.au.

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

Product recalls

You may need to recall a vehicle if it is found to be hazardous or non-compliant with a mandatory standard or subject to a ban. Recalls are usually initiated voluntarily by a business, but they may also be ordered by the Commonwealth or a state or territory minister responsible for competition and consumer policy.

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

A recalled vehicle is not automatically considered 'unsafe' for the purposes of failing the guarantee of acceptable quality under the consumer guarantees. The two regimes operate independently and the reason for the recall will still need to be considered in relation to the test of 'acceptable quality'.

A recall remedy will normally be consistent with the consumer guarantees obligations. However, the consumer guarantees provide rights that exist despite any remedy offered by a supplier under a recall. For example, where the failure amounts to a major failure, a consumer will still be entitled to reject the vehicle and choose a refund despite the offer of replacement under the supplier's recall.

The Department of Infrastructure and Transport is responsible for monitoring motor vehicle recalls in Australia. You must notify the Department if you are advised (or become aware) that a vehicle, part, accessory or service may have a safety-related defect.

For more information, refer to:

- > the Department of Infrastructure and Transport website at infrastructure.gov.au, for information on vehicle standards and safety
- > *Product safety: a guide for businesses and legal practitioners*, available from consumerlaw.gov.au
- > the Recalls Australia website at recalls.gov.au, 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 car 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 Australian Consumer Law. 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), and
 - > 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 motor 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 at acc.gov.au.

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 kilograms. This is an express warranty about what the vehicle can do. If the tray breaks after a load weighing 500 kilograms is placed on it, the consumer can insist that the express warranty contained in the warranty against defects be honoured. 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 supplier 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 they must purchase an extended warranty 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 motor 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 at accc.gov.au.

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.

Statutory warranties on used cars

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.

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 car; 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 cars not covered by statutory warranties

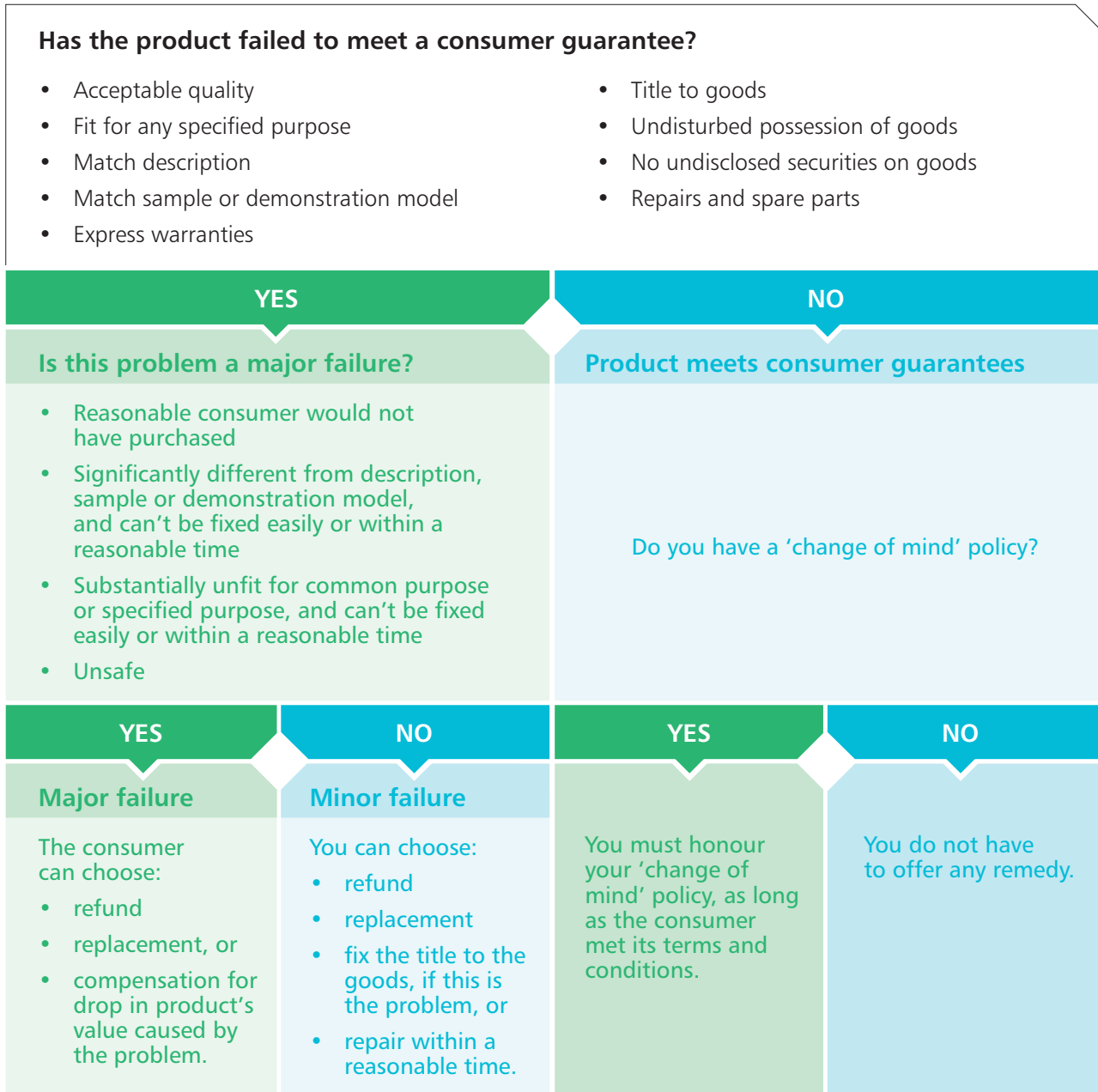
Even if a used car sold by a licensed trader is not covered by a statutory warranty, it will still be covered by the consumer guarantees.

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 motor seizes one month after purchase, this is likely to be a failure to meet the guarantee of acceptable quality under the ACL and the supplier should provide an appropriate remedy.

Summary decision chart – Refunds, replacements and repairs



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 necessary care 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 car
- > cost more than \$40,000, and are normally acquired for personal, domestic or household purposes – for example, restoration of a classic car.

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, installation of farm irrigation systems or factory machinery repairs
- > 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 had known the full nature and extent of the problem. For example, a reasonable consumer would not have their car 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 beater to fix hail damage to their car, but the work is of such poor quality that all the car's panels would have to be removed and replaced
- > the consumer told the supplier 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 their four-wheel-drive (4WD) vehicle serviced and fitted with new tyres suitable for driving on 4WD-only tracks; but the vehicle becomes bogged while driving on one of these tracks, because the new tyres fitted were not suitable for the specified purpose
- > the consumer told the supplier 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 car'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 supplier.

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'.

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, view consumerlaw.gov.au.

For more information on consumer guarantees applying to services, refer to *Consumer guarantees: a guide for business and legal practitioners*, available from consumerlaw.gov.au.

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 when 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 car manufacturers or dealers that motor vehicles need to be serviced at a licensed dealer to maintain the owner's consumer guarantee rights is not correct.

For more information, see 'Warranties against defects' on page 8 and 'Extended warranties' on page 9 of this guide.

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 motor 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 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 car was displayed outdoors.

If you are selling a damaged new car 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 second-hand or damaged car 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
- > fix the title to the vehicle, if this is the problem, or
- > repair the vehicle in a reasonable time.

Example:

A new car 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 5.

If you and a consumer disagree about the seriousness or cause of a problem, the consumer can obtain an independent mechanical inspection and written report from an independent mechanic or an automobile association.

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 17.

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 motor 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 manufacturer 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, this 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 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 supplier 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 consumerlaw.gov.au.

Consumers getting vehicles repaired by another business

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

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 motor car supplier who sells used cars of all makes. The vehicle soon develops a problem that entitles the consumer to have it repaired under the consumer guarantees. However, 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 supplier who failed to comply with one or more of the consumer guarantees. The loss or damage must have been reasonably foreseeable.

Suppliers 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.

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 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 supplier 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 consumerlaw.gov.au.

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 car 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.

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

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 kilos 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 normally 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.

For more information, contact your local consumer protection agency.

Australian Capital Territory

Office of Regulatory Services

GPO Box 158
Canberra ACT 2601
T. (02) 6207 3000
ors.act.gov.au

Northern Territory

Northern Territory Consumer Affairs

PO Box 40946
Casuarina NT 0811
T. 1800 019 319
consumeraffairs.nt.gov.au

South Australia

Consumer and Business Services

GPO Box 1719
Adelaide SA 5001
T. 131 882
cbs.sa.gov.au

Victoria

Consumer Affairs Victoria

GPO Box 123
Melbourne 3001
T. 1300 55 81 81
consumer.vic.gov.au

New South Wales

NSW Fair Trading

PO Box 972
Parramatta NSW 2124
T. 13 32 20
fairtrading.nsw.gov.au

Queensland

Office of Fair Trading

GPO Box 3111
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T. 13 QGOV (13 74 68)
fairtrading.qld.gov.au

Tasmania

Consumer Affairs and Fair Trading

GPO Box 1244
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T. 1300 654 499
consumer.tas.gov.au

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Locked Bag 14
Cloisters Square WA 6850
T. 1300 30 40 54
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GPO Box 3131
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