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## The Australian Consumer Law and Car Purchases

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### Warranty coverage

A new car warranty is a voluntary undertaking by a car manufacturer (or its agent) and is generally limited to the repair, replacement or adjustment of parts which are defective in materials or workmanship. As such, the warranty may exclude cover 'general maintenance' or serviceable items, and have a range of other exclusions.

### The Australian Consumer Law

The [Australian Consumer Law Act 2010](#) (hereafter 'Australian Consumer Law') is contained in Schedule 2 of the [Competition and Consumer Act 2010 \(Cth\)](#). In contrast to a warranty, the Australian Consumer Law provides consumer guarantees and rights to repair, replacement or refund. **As such, your rights under the Australian Consumer Law may exceed those provided in the new car warranty for breadth and duration.**

The Australian Consumer Law is applied as a law of the Commonwealth and of each State and Territory.

## Application of the Australian Consumer Law

The Australian Consumer Law applies to

- new cars and vehicles ('ships, aircraft and other vehicles') and
- second-hand cars and vehicles

**first sold in Australia after 1 January 2011** that were acquired:

- for an amount under \$40,000 (s 3(1)(a)(i)); or,
- for personal use (s 3(1)(b)); or,
- for use principally in the transport of goods on public roads (s (3)(1)(c)).

However, guarantees under the Australian Consumer Law do not apply to a vehicle that is bought from a private seller where the vehicle is not sold in the course of that seller's business – the vehicle must be supplied in 'trade or commerce' (see, for example, s 54(1)(a)). While remedies for a failure to satisfy consumer guarantees are available against the supplier and manufacturer, the latter is understood to be severed where a vehicle is sold privately.

## Guarantee of acceptable quality: free from defects and durable

Section 54(2) of the Australian Consumer Law requires goods to be of acceptable quality, which is defined as being

- a) fit for all the purposes for which goods of that kind are commonly supplied;
- b) acceptable in appearance and finish;
- c) free from defects;**
- d) safe; and,
- e) durable**

**as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable.**

Section 54(3) provides a list of matters to consider in assessing 'acceptable quality':

- a) the nature of the goods – this could include age and condition;
- b) the price of the goods (if relevant);
- d) any representation made about the goods by the supplier or manufacturer. This can include statements made by a vehicle dealer and their employees; and,
- e) any other relevant circumstances relating to the supply of the goods.

**If a component on a motor vehicle fails prematurely, i.e. had a defect or was not as durable as a reasonable consumer would regard as acceptable, then the vehicle has not met the standard of acceptable quality.**

For a motor vehicle, the standard for 'acceptable quality' will change over time according to its use, age and maintenance. In the case of a used vehicle purchased from a vehicle dealer, its history may not be fully known to the buyer and seller, thereby creating uncertainty as to what may constitute 'acceptable quality'. In such cases,

- the service history of the vehicle is relevant in assessing the maintenance of the vehicle;
- the mileage of the vehicle is relevant in assessing the extent of use, if not the nature of such as use; and,
- statements made by a vehicle dealer (or their employees) prior to sale may be significant.

## Exceptions to the guarantee of acceptable quality

The guarantee of acceptable quality is subject to the following exceptions -

- **Prior notice:** if the vehicle is not of acceptable quality for a reason or reasons that were brought to the buyer's attention prior to sale, then the vehicle is taken to be of acceptable quality (s 54 (4));
- **Mis-use by consumer:** if the consumer
  - causes the vehicle to become of unacceptable quality;
  - fails to take reasonable steps to prevent the vehicle from becoming of unacceptable quality; or
  - the vehicle is damaged by abnormal use,then the vehicle will not be considered to have failed the guarantee of acceptable quality (s 54(6)); and,
- **Effect of inspection/examination:** if the consumer examines the vehicle prior to purchase and that examination ought reasonably to have revealed that the vehicle was not of acceptable quality, then the vehicle will not be considered to have failed the guarantee of acceptable quality (s 54(7)).

## Who to claim a remedy from

Where a vehicle fails to meet the consumer guarantees, the consumer can make a claim against the dealer; they can also make a claim against the manufacturer/importer for damages.

## Remedies: repair, replacement, rejection, compensation and damages

Under section 259(1), a consumer is entitled to a remedy if their vehicle does not comply with the consumer guarantees. The owner may require the supplier to **remedy the failure** within a reasonable time (s 259(2)(a)). This may be achieved by **repairing the vehicle** (s 261(b)), **replacing the vehicle** with another vehicle of an identical type (s261(c)), or refunding any money paid by the consumer for the goods and an amount equal to the value of any other consideration provided by the consumer (s 262 (d)).

Under s 259(2)(b), if the supplier refuses or to comply with the requirement to remedy the failure – or fails to comply within a reasonable time – the consumer may

- a) **Have the failure remedied** and recover reasonable costs from the supplier; **or**,
- b) Notify the supplier that they **reject the vehicle** and their grounds for doing so (subject to s 262).

Under s 259 (3), if the failure to comply with the guarantee cannot be remedied, the consumer may

- a) Notify the supplier that they **reject** the vehicle and their grounds for doing so (subject to s 262); **or**,
- b) **Recover compensation** from the supplier for any reduction in the value of the vehicle below the price paid or payable.

The consumer may **recover damages** for any loss or damage suffered because of the failure to comply with the guarantee if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of the failure (s 259(4)). However, the consumer cannot recover damages if the failure to comply with the guarantee occurred because of a cause independent of human control that occurred *after the goods left the control of the supplier*.

## Major failures

Under section 260, a supply of goods is a **major failure** if:

- a) the vehicle would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- b) the vehicle departs in one or more significant respects:
  - i) if the vehicle was supplied by description--from that description; or
  - ii) if the vehicle was supplied by reference to a sample or demonstration model--from that sample or demonstration model; or
- c) the vehicle is substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make it fit for such a purpose; or
- d) the vehicle is unfit for a disclosed purpose that was made known to:
  - (i) the supplier of the vehicle; or
  - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the vehicle was conducted or made;and the vehicle cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- e) the vehicle is not of acceptable quality because it is unsafe.

For a major failure, the consumer may

- a) Notify the supplier that they **reject** the goods and their grounds for doing so (subject to s 262); **or**,
- b) **Recover compensation** from the supplier for any reduction in the value of the vehicle below the price paid or payable.

## Restrictions on rejection

Notwithstanding the above, a consumer is not entitled to reject a vehicle if:

- The rejection period has ended (s 262(1)(a)). The rejection period is the time of supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with the guarantee (s 262(2)(b)); or,
- The vehicle has been damaged for reasons not related to their state or condition at the time of supply (s 262(1)(c))

## Consequences of rejection

If a consumer has rejected their vehicle, the consumer must return the vehicle to the supplier unless:

- The vehicle has already been returned to the supplier (s 263(2)(a)); or,
- The vehicle cannot be returned without significant cost to the consumer (s 263(2)(b)). In such cases, the supplier must – within a reasonable time – collect the vehicle at the supplier's expense (s 263(3)).

Where the consumer has rejected the vehicle, they may elect to have the supplier:

- Refund any money paid by the consumer for the vehicle and an amount equal to the value of any other consideration provided by the consumer (s 263(4)(a)). The supplier cannot satisfy this requirement by permitting the consumer to acquire goods from the supplier (s 263(5)); or,
- Replace the rejected vehicle with a vehicle of the same type, and of similar value, if such a vehicle is reasonably available to the supplier (s 263(4)(b)).

### Action for damages against manufacturer

A consumer or 'affected person' – which includes persons that acquire the vehicle from the consumer – can recover damages from a manufacturer if the vehicle does not comply with the guarantee of acceptable quality (s 271(1)).

If, however, the failure to comply with the guarantee of acceptable quality only occurs because of:

- An act, default or omission of, or any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer (s 271)(2)(a));
- A cause independent of human control that occurred after the goods left the control of the manufacturer (s 271)(2)(b)); or,
- The fact that the price charged by the supplier was higher than the manufacturer's recommended retail price for the vehicle (s 271)(2)(c));

then there is no right to recover damages.

Under section 272, the damages which can be recovered against a manufacturer are for:

- Any reduction in the value of the goods (s 272(1)(a)); and,
- Any loss or damage suffered because of the failure to comply with the guarantee if it was reasonably foreseeable that the affected person would suffer such loss or damage (s 292)(1)(b).

Any action for damages against a manufacturer must be made within 3 years after the day on which the affected person first becomes aware, or ought reasonably to have become aware, that the guarantee to which the action relates had not been complied with (s 273).

### The manufacturer is liable to the car dealer

Under section 274, a manufacturer is liable to indemnify a supplier who supplies vehicles to a consumer if:

- The supplier is liable to pay damages under section 259(4); and,
- The manufacturer is or would be liable under section 271 to pay damages to the consumer for the same loss or damage.

A manufacturer is also liable to indemnify a supplier who supplies a vehicle to a consumer if:

- The supplier incurs costs because the supplier is liable for a failure to comply with the guarantee of acceptable quality (s 274(2)(b)(i)).

### Resolving disputes

In attempting to resolve any dispute, it is recommended that you contact the supplier of the vehicle, explain the problem and your preferred outcome; writing a letter of complaint may assist in making the supplier aware of the problem and provide you with a record of the communication.

If your attempts to resolve the dispute are unsuccessful, you can lodge a complaint with the 'Fair Trading' or 'Consumer Affairs' agency for your State or Territory. These agencies can provide you with advice and may provide a conciliation service or act as an 'informal negotiator'. These agencies, however, cannot order or direct either party to resolve the complaint.

State/Territory	Assistance
ACT (Fair Trading)	Members of the Advice and Complaints team can provide advice – but not legal advice – to consumers. For further information, see <a href="#">Make a complaint against a business or trader</a> . Do not appear to act as an informal negotiator or provide conciliation services.
NSW (Fair Trading)	Upon receiving a complaint, Fair Trading can act as an 'informal negotiator' and aims to resolve most complaints within 30 days. For further

	information, see <a href="#">Lodge a Complaint</a> and <a href="#">Complaint Handling</a> .
NT (Consumer Affairs)	Can provide conciliation services 'if you have made every effort to resolve the problem with the trader, and the trader has refused to provide redress'. For further information, see <a href="#">Consumer Conciliation Request</a> .
QLD (Fair Trading)	Can investigate complaints (see <a href="#">Lodge Your Complaint</a> ) and can attempt to conciliate the dispute (see <a href="#">Understand the Complaint Process</a> ).
SA (Consumer and Business Services)	Provides a template for <a href="#">making a complaint</a> to the supplier, advice and can 'get involved with your negotiations'.
TAS (Consumer Affairs and Fair Trading)	Provide <a href="#">information and assistance</a> , but not legal advice. Do not appear to act as an informal negotiator or provide conciliation services.
Victoria (Consumer Affairs)	In response to complaints, Consumer Affairs Victoria provides a <a href="#">conciliation process</a> to resolve disputes.
WA (Department of Commerce)	Upon receiving a complaint, the Department of Commerce can act as an <a href="#">informal negotiator</a> and aims to resolve most complaints within 30 days.

## Legal options

It is recommended that you obtain independent legal advice before commencing legal action against the supplier of your vehicle.



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