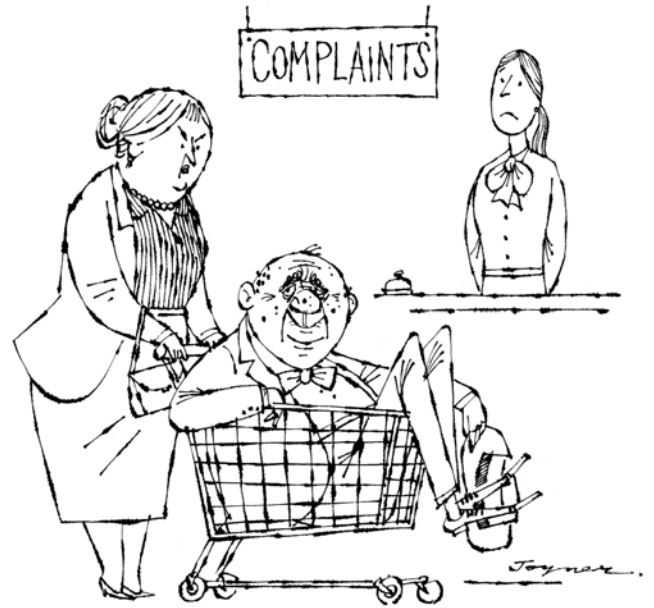


6 YOUR CONSUMER RIGHTS

6.1 Introduction

Governments consider consumer protection to be an important issue requiring legal regulation. There are a number of laws that set minimum standards for the suppliers of goods and services. It is important to note however that, despite laws regulating the actions of the providers, the consumer should always remember the maxim of “buyer beware”.

Consumer protection laws exist to assist in the regulation of contracts. This chapter describes the nature of a legal contract, looks at a number of specific examples of where the law protects consumers and describes how to go about resolving a consumer dispute.



6.2 Contracts

A contract is a legally binding agreement. It can be oral or in writing, or a mixture of the two. Every consumer transaction involves a contract.

A contract has five elements. These are:

- (a) an offer;
- (b) acceptance of the offer;
- (c) the agreement must be intended to create legal obligations (e.g. not a family arrangement, although these can involve contracts);
- (d) “consideration” (paying a price or promising to do or not to do something); and
- (e) “privity” (under the law of contract, you can only sue the person with whom you made the contract, though you may be able to sue other people associated with the contract under other laws).

When you are making purchases, organising finance or requesting services, you should make sure that you are aware of your obligations as well as the obligations of the person you are paying. Read carefully all documents which you are asked to sign and do not sign them if you are concerned about the terms and conditions, or don't understand them.

The *Fair Trading Act 1987 (NSW)* and the *Trade Practices Act 1974 (Cth)* outline certain standards which every consumer transaction must meet.

When entering into a consumer transaction, you should always make sure that you:

- (i) are aware of your obligations;
- (ii) consider carefully your options before making a decision;
- (iii) are aware of your legal rights; and
- (iv) read carefully and keep all documents you receive with the transaction.

6.3 **Buying goods**

When you buy a product, its quality and quantity must comply with certain guidelines set out in law. Amongst other things, the product must:

- (a) be of a reasonable quality;
- (b) be appropriate for the purpose for which it was intended when it was purchased;
- (c) match any sample or description of the product which was given to you prior to the purchase (e.g. a label on a food product).

If the person selling you the product provides you with a product which does not comply with these requirements, you may be entitled to a refund. You should always keep your receipt, as you will probably need to produce it to obtain a refund.

6.4 **Refunds**

A seller does not have to give you a refund just because you decide that you do not like an item after purchasing it. You will only be entitled to a refund if there is something wrong with the product or it does not match the description which you were given of it before you purchased it. Some of the important points to remember about refunds are:

- (a) it is illegal for a shop to display a "No Refunds" sign;
- (b) in some situations, the seller will have a policy of giving people an exchange or in-store credit instead of a cash refund;
- (c) some shops have a "no questions asked" refund policy. In these shops, as long as you have a receipt, credit card statement or some other proof of purchase, they will give you a refund;
- (d) items such as computer and music compact discs can be easily copied, so shops will often not give you a refund for these goods;
- (e) a seller does not have to refund you in cash if you paid for the goods by credit card or in some other way.

6.5 **Sale items**

When you buy a product on sale, the normal requirements of the law may not apply to the sale. Some sale goods are not refundable, so be aware of individual store policies on sale items.

It is an offence for a shop to advertise items as being on sale when they are actually being sold at the normal price.

6.6 **Price tags**

If an item has a price tag or a price displayed on a shelf, you are generally only required to pay that price. It may be an offence for a shopkeeper to charge you a higher price than that on display.

If there are two different prices shown on one item, you are entitled to purchase the goods for the lower price.

6.7 **Warranties**

- (a) **Special Warranties**

Some goods are sold with a warranty which a retailer or manufacturer expressly tells you applies to the product. When purchasing goods you should be aware of such warranties,

and the conditions which can apply. To take advantage of the warranties, you may need to produce your receipt, so keep all documents associated with your purchase.

(b) **General Warranties**

There are some warranties which apply to all new goods sold, even when the retailer or manufacturer does not specifically tell you about them. If goods are bought second hand or at auction, different warranties will apply from those applying to goods bought new.

6.8 **Lay-bys**

When you lay-by goods you agree to pay for the goods over a period of time specified by the retailer, and only receive the goods when you have finished paying for them. Normally, the retailer will charge you a holding cost for holding the lay-bys.

You should always receive a written statement specifying the obligations of the lay-by.

You are allowed to cancel a lay-by at any time but be aware that the retailer may charge a cancellation fee. This cancellation fee will usually be a percentage of the total purchase, and if it is clearly outlined in the lay-by statement, then the retailer is entitled to subtract it from the money you have paid on the goods.

A retailer can only cancel your lay-by if they give you notice, and if they give you seven days in which to rectify the problem. The NSW Office of Fair Trading provides further information about lay-bys at www.fairtrading.nsw.gov.au/shopping/shoppingtips/lay-bys.html.

6.9 **Consumer protection**

The *Fair Trading Act* and the *Trade Practices Act* each provide that a retailer is not allowed to mislead or deceive you into making a purchase. This means that a retailer is not allowed to:

- (a) accept payment for goods or services which they will not provide;
- (b) make false claims about the quality, newness, origin or usefulness of a product;
- (c) use physical force or harassment to induce you to buy a product; or
- (d) sell you goods which are banned for safety reasons.

When a product is advertised as a sale item, the shop or seller must have that item available at the sale price for a reasonable length of time. It can be an offence for a shopkeeper to advertise a bargain which they cannot provide and subsequently sell you a more expensive item.

6.10 **Purchasing services**

You also have a right to a refund or a remedy if services which you purchase do not meet basic levels of quality and performance. All services which you buy must:

- (a) be carried out with skill and care; and
- (b) achieve the purpose for which they were intended.

If the service does not meet the required standards, you have the right to have the service performed again. It is the responsibility of the person providing the service to cover the costs involved in doing this.

6.11 **Specific goods and services**

Below is some more specific information about some types of goods and services that are commonly purchased by consumers.

(a) Travelling

Under the *Travel Agents Act 1986*, travel agents are prohibited from misleading or deceiving you about travel arrangements that you make through them. If a travel agent promises a service or standard of service that is not met during your journey or holiday, you may be entitled to seek compensation from the travel agent.

When planning and booking travel, you should:

- (i) avoid last minute planning;
- (ii) compare prices thoroughly before making any decisions about transport or accommodation;
- (iii) read carefully any statements or conditions issued by the travel agent; and
- (iv) make clear to the travel agent the standard of journey or holiday you expect.

The NSW Office of Fair Trading has produced an information sheet about booking a holiday through a travel agent (see Chapter 14 for details).

For further advice and information on a range of consumer issues and assistance in relation to travel, you can call the Traveller Consumer Helpline (see Chapter 14 for contact details).

(b) New Cars

It is an offence for motor dealers to make any false or misleading statements about a car that you are considering purchasing. Under the *Motor Dealers Act 1974*, when you purchase a new car, you are entitled to a warranty to repair defects and are entitled to have that warranty fulfilled. A new motor vehicle is classified as one that has been driven fewer than 15,000 kms at the time it is sold by the dealer.

The NRMA provides some useful tips on buying new cars, which can be found on their website (www.nrma.com.au).

It is a good idea to get an NRMA inspection of a car that you are thinking of purchasing. There are different types of NRMA inspections, but all inspections will look at a number of aspects of the car. If there are any faults, you should expect the owner or dealer to fix them before you buy the car. You should also look at a service log of work done on the car (especially any repairs which are made as a result of the NRMA inspection). For more information on NRMA vehicle inspections call 13 11 22.

The car market is very competitive. Many car dealers make a profit by offering finance packages to car purchasers. If you are looking for finance to buy a car, you should shop around with banks, credit unions and other lenders, to get the lowest interest rates, BEFORE you buy a car. Remember that the standard way to display an interest rate is per YEAR ("p.a." meaning "per annum"). Some dealers quote *monthly* interest percentage rates, which means you should multiply that figure by 12. Before entering into a loan, you should receive written information about the loan amount, interest rate, and payment period.

(c) Second-hand cars

There are several different forms of warranties for second hand vehicles, so you should make sure you understand the length and terms of the warranty that applies to the car that you are purchasing. These will be based on the price and age of the vehicle. No warranty is available for cars that are more than 10 years old.

If you buy a second-hand car through a dealer, you are entitled to know the correct mileage, make, age and model of the vehicle. Dealers are responsible for ensuring that there is no money owing on the vehicle.

Dealers must also display a vehicle description form on the windscreen of the car stating the dealer's name, price and relevant warranty, and engine and odometer details.

Be careful about the amount you are offered on a trade-in. A dealer may offer you a lot less for trade in than you would receive for selling your current car privately. Of course, when deciding whether to sell privately or through a trade in, you will need to remember that if you sell privately, you will have advertising expenses, waiting time (the time it takes to sell the car) and a risk of having the car stolen on a test drive. However, you should also look very closely at what you will be paying if you decide to trade-in your old car. Make sure you know the full price of the new car and whether any extras such as air conditioning are included and at a reasonable cost.

When you buy a second-hand car privately, the Consumer, Trader & Tenancy Tribunal recommends that you ask the person who is selling you the car for:

- (i) a current certificate of registration;
- (ii) a safety check report which is less than a month old; and
- (iii) some proof that the seller owns the car.

Once you have these details, you should contact REVS (the Register of Encumbered Vehicles), who will check whether the car you are thinking of buying has money owing on it, has been reported stolen, has been written off by an insurer, or has been deregistered due to unpaid fines. Call REVS at the Department of Fair Trading (see Chapter 14 for details). REVS can provide you with a certificate showing that no money is owed on the vehicle. If you do not do a REVS check and you later find that money is owing on the car, the car could be repossessed by the person to whom the money is owed and you won't be entitled to any reimbursement for what you paid for the car.

If you have other questions regarding the registration of a car which you are interested in, you can ring the Roads and Traffic Authority (RTA). See Chapter 14 for contact details.

(d) Repairers and Handymen

You have a right to have any repairs carried out with the appropriate level of skill and care. If you decide to use a repairer or handyman, always check their credentials. Some repairers, such as car mechanics, must have a licence in order to carry out repairs. Always ask for a receipt that fully outlines the details of the cost of a repair. Also, check that the repairer or handyman has an Australian Business Number (ABN) to ensure that the GST they charge you will be forwarded on to the Australian Taxation Office.

If the service which you are purchasing is building work with a labour component of over \$1,000, the builder must give you a written quote and contract. The NSW Office of Fair Trading has a plain English standard contract that you can use. Different contracts are available depending on the total price of the work. You must pay the Goods & Services Tax (GST) of 10%. You can call the NSW Office of Fair Trading to check a builder or repairer's licence details or you can do your own check online. See Chapter 14 for details.

(e) Door-to-Door Salespeople and Telemarketers

From 30 August 2004 new laws have been introduced to ensure you don't get locked into a sale when buying goods and services from uninvited door-to-door sellers or telemarketers. Be aware:

- (i) Sellers must not visit or phone you between 8pm and 9am.

- (ii) You now have a 5-day 'cooling-off' period in which you can choose to cancel a sale over \$100.
- (iii) If you tell a door-to-door seller to leave, they must do so immediately.

The new laws do not apply in all circumstances. If you believe a seller is breaking these laws or to see if a seller is exempt, call the Office of Fair Trading (see Chapter 14 for details).

(f) Funerals

If you are called on to arrange a funeral there are a number of things to consider. Often the person who has passed away has made arrangements for their own funeral. An executor of someone's will usually has the legal authority to make the funeral arrangements. This responsibility can pass to a family member or close friend by mutual agreement. If there is no will, family members will usually take on this responsibility. The will and personal papers may indicate whether the person has made funeral arrangements, belongs to a funeral fund or has other prepayment plans.

Funeral directors usually take care of the following details:

- Registering the death;
- Looking after the body;
- Placing death and funeral notices in the newspapers;
- Looking after transport, including transport for family members to the service;
- Supplying a coffin or casket;
- Paying the fees for the cemetery, crematorium and flowers on your behalf;
- Arranging a death certificate;
- Coordinating between the clergy and cemetery or crematorium.

As the consumer, you should be involved in the selection process for the coffin or casket, flowers and other details for the funeral and you should inquire about the fees that will be paid on your behalf. One of the biggest costs will be for the coffin or casket. There is often a range of selections with the costs rising based on the more elaborate fittings, linings or timbers.

It is always a sensible option when contacting funeral directors to first discuss the best prices and use this as a guide to your choice. The variation in costs, services and options can be significant. It is important to ask for itemised quotes to avoid surprises.

It is important to find out what funds are available before you sign an agreement with the funeral director. The funds for a funeral can come from a number of sources, namely:

- Most commonly, funeral funds will come from the estate (check with the bank if you are able to access moneys in the deceased's bank account for this purpose);
- From a prepaid benefit or investment scheme;
- The Department of Veteran's Affairs, for some returned service people;
- Centrelink, if they were receiving a pension or carer's payment;

- The deceased's health fund, trade union, pensioner's association or another type of club in which they may have been involved.

Even where the person who has passed away has engaged in some form of prepayment scheme, it may not cover the entire costs of the funeral arrangements. Look in detail at any documents setting out the nature of the funeral fund and ask the funeral director about additional costs. The Office of Fair Trading regulates some of the funeral funds, and you can telephone them to check (see Chapter 14 for details).

If there is no money in the estate, friends and relatives may be willing to assist. If not, the NSW Government has some arrangements with funeral directors for the provision of basic services. For more information about this, talk to the public hospital, health facility or aged care facility where the person died.

If you have a dispute with a funeral director, the initial step should be to discuss the problem directly with them. Many funeral directors also belong to an industry association and will usually be required to adhere to a code of ethics. Often this is accompanied by a system for reporting complaints about members. If you have taken these steps and the dispute remains unresolved, you can then contact the Office of Fair Trading (details set out in Chapter 14). See also the general steps set out at the end of this chapter about how to go about resolving consumer disputes.

6.12 Credit

When you apply for credit cards, loans or mortgages, the contract that you sign is regulated (controlled) by the Consumer Credit Code. The Consumer Credit Code says that all credit contracts must be presented to you in a clear and easy to understand format. The company or person from whom you are obtaining credit must give you a signed, written statement, which clearly outlines, among other things:

- the amount of money involved;
- the rate of interest;
- how interest is to be calculated;
- how and when the debt is to be paid back; and
- the default interest rate (when you fail to make payments).

Visit the Consumer Credit Code's website (see Chapter 14 for details).

A credit provider may be prosecuted if he or she misleads or deceives you into signing a credit contract. Such a contract may be void (ie of no effect).

If you sign a credit contract, but later become ill or suffer hardship and cannot continue payments, you have the right to request a change in your contract. You should make this request to the CTTT.

When applying for credit cards, loans, mortgages or other forms of finance, you should:

- compare finance companies for the package most suitable for you;
- always convert the interest rate into a YEARLY percentage;
- read carefully any documents before you sign them;
- understand your obligations; and
- be realistic about your ability to repay debts.

The NSW Office of Fair Trading has issued some helpful information sheets which can be found on the website (details set out in Chapter 14).

If you are experiencing financial difficulties or need information on debt and credit, a financial counsellor may be able to assist. The Financial Counsellors' Association of NSW (contact details in Chapter 14) can provide a list of accredited financial services and some fact sheets. Members of the Association offer a free service.

6.13 More information for consumers

The Office of Fair Trading has published a free booklet called "The Little Black Book of Scams" which is a useful guide to common scams, swindles, schemes, rorts and rip-offs and how to protect yourself. It is available free of charge from your local Fair Trading Centre or on the Office of Fair Trading's website (See Chapter 14 for details).

The Australian Consumers' Association is another great source of buying tips and assistance. It is a not-for-profit organisation which has been researching and campaigning on behalf of consumers since 1959 and publishes *Choice Magazine*. (See Chapter 14 for details).

6.14 How to resolve a consumer dispute

The first step to resolving a consumer problem is always to approach the person or company you are unhappy with. Explain your problem and outline what the company could do to fix it. Remember that the problem may be solved more quickly and easily if you have kept all the documents you received with your purchase, such as receipts or statements.

The next step to consider is to contact your consumer protection agency such as the Office of Fair Trading. In NSW, the Office of Fair Trading has 23 of these Fair Trading Centres (**FTCs**), where you can obtain information and advice. You can contact an FTC (see Chapter 14 for details) between 8.30am-5pm Monday to Friday. They may also be able to give you some help in negotiations.

A range of Fair Trading services are also available via Government Access Centres (**GAC's**) and other agency locations throughout regional NSW. Visit the Office of Fair Trading's website for a full list of GACs and contact details (see Chapter 14 for details).

The Consumer Credit Legal Centre (NSW) can provide assistance with consumer credit, banking and debt recovery (contact details are in Chapter 14). The Banking and Financial Services Ombudsman is a free and independent dispute resolution service which deals with disputes involving less than \$150,000. If your dispute is with a credit union and involves less than \$100,000, you can go to the Credit Union Dispute Resolution Centre (details in Chapter 14).

If after following all the above steps your complaint has not been resolved, you may wish to take your matter to a court or tribunal for formal resolution. Courts and tribunals can make decisions that will be legally binding. You should remember that going to court may require legal representation and can prove costly. However, to provide a convenient forum for quick and effective resolution of disputes, some specialist consumer tribunals have been established. In NSW, this is the Consumer, Trader & Tenancy Tribunal.

6.15 Other places to go to find assistance to resolve consumer disputes

If approaching the FTC has not solved your problem, the next step is to consider going to the CTTT. The CTTT works together with the NSW Office of Fair Trading. It is generally a quick and inexpensive way of resolving consumer problems. Any decision made by the CTTT is binding on both parties.

The CTTT was established as the specialist dispute resolution forum for consumer, trader and tenancy based matters. It has a relatively small application fee. In the majority of matters, legal representation is not allowed. This is because the role of the CTTT is to provide an independent, low cost and accessible dispute resolution forum to the people of NSW who are parties in consumer or tenancy disputes. The CTTT deals with: home building, residential parks, motor vehicle, retirement villages, tenancy, consumer claims, strata and community schemes and commercial. See Chapter 14 for contact details for the CTTT.

Apart from the CTTT, there are other agencies and government departments that may be able to help you, including:

- (i) Department of Health and Aging;
- (ii) Ministerial Council on Consumer Affairs;
- (iii) the Australian Competition and Consumer Commission;
- (iv) the Australian Direct Marketing Association;
- (v) Consumers' Federation of Australia;
- (vi) Consumer Credit Legal Centre (NSW)

If you feel that you have been unfairly discriminated against in a consumer transaction because of your age, sex, nationality or other personal characteristics, you should contact the Anti-Discrimination Board, contact details are set out in Chapter 14. Also see chapter 8 of this book on Age discrimination for further information.

You may wish to bring legal action against the person who has sold or manufactured the goods or services that you have bought. Read Chapter 1 of this book for information on how to find a solicitor and what to consider before suing someone. Remember that legal action can be expensive and time consuming. Remember also that many legal remedies are only available if you take them to a court or tribunal within a specified period of time. Even if you win, your legal costs may not be completely covered by the losing person. And if you lose, you may have to pay most of the other person's legal costs in addition to your own.