

Australian Consumer Law Review Issues Paper (March 2016)

This submission responds to *Para 2.3.3 Giving consumers rights where a product is not of acceptable quality*

Summary

The Australian Consumer Law (ACL) is easily breached by unscrupulous retailers who simply blame customers for problems arising after purchase, instead of being forced to take responsibility for their sub-standard products.

Case

In the attached case, the [REDACTED] [REDACTED] franchise, operated by [REDACTED] (the Retailer) refused to refund a faulty product (a [REDACTED] bed frame) after the Retailer had unsuccessfully attempted to fix it. While the Retailer offered a replacement product, this was three months after our initial complaint and by that stage the Retailer has demonstrated that he was unable to fix a product sold in his store and was using delay tactics to avoid resolving the matter.

To make matters worse, when we submitted this case to the [REDACTED] Civil and Administrative Tribunal ([REDACTED]), we were asked to attend a pre-hearing conference. At the meeting it quickly became apparent that the [REDACTED] member chairing the conference was biased towards the Retailer. We found that the [REDACTED] member was disrespectful towards us and disregarded our evidence, such as photos of the badly manufactured bed frame and a chronological log of events which clearly demonstrated that the Retailer had been delaying a prompt resolution to the matter since our initial complaint. We gathered the evidence as best we could and in accordance with instructions on the ACCC website.

The [REDACTED] member did not acknowledge that we would have a right under ACL to seek a refund due to the fact that there was a major problem with the goods, such that if we had known about this we would not have bought the product, and that it was our decision to choose between a refund, a replacement, or compensation. Surely a badly manufactured bed frame that creaks worse after the Retailer has attempted to repair it would be considered a 'major fault' under the ACL.

This meeting undermined our confidence in the ACL and [REDACTED]. In our opinion, it is too easy for unscrupulous retailers to dodge their responsibility under the ACL by simply blaming the customer for 'faulty assembly' or using other excuses and inaccurate claims to fob off complainants.

Recommendations

1. The ACL should prescribe a timeframe within which a customer can seek either a refund or replacement. There is currently no timeframe in the ACL and customers may mistakenly believe that the warranty period timeframe is applicable under the ACL, but that does not seem to be the case.

Coupled with the prescribed timeframe there needs to be greater clarity and certainty around 'acceptable quality' and what steps a consumer must take to ensure all the appropriate evidence is collected to claim a refund or replacement for major faults.

Once prescribed in the legislation, guidance material on the ACCC website, including template letters, would assist customers seek prompt resolution to their issues, bearing in mind that in some case quality concerns only arise after some use as in our case study. We did not know immediately that the bed frame would start to creak months later so such matters would need to be taken into consideration when redrafting the legislation.

2. There needs to be a government-endorsed 'name & shame' list so that customers can post details of retailers who have breach the ACL.

While Product Review and other such website are useful, it is hard to tell whether these are genuine reviews, or store generated ones i.e. by friends of store owners.

It is also useless if people post reviews within 24 hours of buying goods. There should be a minimum use period for major household appliances, furniture, cars, etc, of at least 6 months.

Reputable retailers

To end on a good note, we would like to give an honourable mention to the following retailers who acknowledged their responsibilities under ACL in the past:

- [REDACTED] – swapped a TV which did not meet our quality expectations as it had too much banding down one side of the screen, and we were able to choose a different TV to better suit our needs;
- [REDACTED] – refunded a poor quality steam iron close to the end of the two-year warranty period;
- [REDACTED] – refunded a doona cover we had bought online which once it had arrived seemed very thin and not suitable for our purposes;
- [REDACTED] – provided store credit for a garment that did not wash well, despite us having followed the care instructions;
- [REDACTED] – replaced sandals that had been worn for some time, but had split between the heel and the sole and were therefore irreparable;
- [REDACTED] – paid out the amount financed on a new [REDACTED] which had developed unfixable interior trim rattles within the first six months;
- [REDACTED] – provided a replacement couch as the initial one had faulty stitching and was creaky; [REDACTED] also provided a \$200 store credit, however, we had to write to the CEO of the company to get an appropriate resolution as the [REDACTED] staff proved unhelpful and seemingly unaware of refund/replacement policy when we initially complained. We had been, and still are, regular customers at this store, including buying two couches which lasted many years without fault.

Date: 26 May 2016