

# Guidance on the consumer guarantee as to acceptable quality and 'durability'



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# Contents

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Guidance on the consumer guarantee as to acceptable quality and 'durability'	1
Factors affecting how long a good can reasonably be expected to last after purchase	2
(a) Nature of the good	2
(b) Price of the good	6
(c) Statements made about the good	7
(d) Any other relevant circumstances relating to the supply of the goods	9

# Guidance on the consumer guarantee as to acceptable quality and 'durability'

The Australian Consumer Law (ACL) creates a basic set of guarantees (or rights) for consumers who acquire goods. One of these guarantees is that the goods will be of "acceptable quality". This guarantee includes that goods will be durable as a reasonable consumer would regard as acceptable. A good purchased is expected to be durable enough to perform its intended function(s) for a reasonable amount of time.

Consumer guarantees under the ACL apply for a reasonable time and in addition to any warranties that manufacturers and/or suppliers provide for a good. This means consumer guarantees may continue to apply during the period of those warranties and after those warranties expire.

Retailers sometimes offer to sell an extended warranty or care package to extend the length of time of the manufacturer's warranty. Whether or not a consumer purchases an extended warranty, they still have the protection of the ACL consumer guarantees. If a supplier is offering an extended warranty it is best practice to provide consumers with a list of what rights the extended warranty provides above any automatic consumer guarantee rights under the ACL. This will lower the likelihood of a consumer being misled about the value of the extended warranty.

This document is intended to act as a guide and individual circumstances differ. The examples are intended as a guide only. It is ultimately the role of the court or tribunal to determine whether or not a good is reasonably durable. If a consumer has concerns that a good is not durable, these should initially be raised with the retailer or manufacturer.

How long a reasonable consumer would expect a particular good to last depends on a number of factors including:

- The nature of the good, which can include:<sup>1</sup>
  - The materials used or composition of the components
  - Whether the good is a new good or a factory second.
- The price of the good<sup>2</sup>
- Statements made about the good, either on the packaging or by the supplier or manufacturer<sup>3</sup> and
- Any other relevant circumstances.<sup>4</sup>

It is important to remember that the concept of reasonable durability refers to how long the good can be expected to last in normal circumstances. This means using the good in the way it was intended or the purpose it was designed for, having regard to any representations made at the time of purchase. If abnormal use by the consumer causes a good to be damaged, and therefore less durable, then the good will not fail to be of acceptable quality if the reason for its failure is that abnormal use.<sup>5</sup>

1 ACL reference: section 54(3)(a).

2 ACL reference: section 54(3)(b).

3 ACL reference: section 54(3)(c) and (d).

4 ACL reference: section 54(3)(e).

5 ACL reference section 54(6).

# Factors affecting how long a good can reasonably be expected to last after purchase

## (a) Nature of the good

The nature of the good is relevant to how long a good can be expected to last.<sup>6</sup> The nature of the good includes:

- the materials used or composition of the components (if any)
- the type of good and its use and
- whether the good is a new good or a factory second.

### The materials used or composition of the components

How long a good can be expected to last will depend upon the quality of the materials used in the good's manufacture.

A good made of high quality materials can generally be expected to last longer than an equivalent good made of lower quality materials.

### Example

Samira and John are in the market for a set of shelves. John buys a set of shelves made out of chipboard while Samira opts for shelves made of solid oak. After five years John's shelves have dents and chips in them whereas Samira's shelves do not. John's shelves would probably not fail to meet the consumer guarantee of acceptable quality because they were not durable, even though they did not last as long as Samira's.

Some goods have parts with a limited lifespan that cannot be repaired or replaced, and the good as a whole becomes unusable once the limited lifespan parts fail. It can be expected that the limited lifespan parts, and therefore the good as a whole, will last for a reasonable time after purchase.

On the other hand, some components in goods, such as vacuum cleaner filters, must be regularly replaced for the good as a whole to continue to work. The requirement to regularly replace components of this kind does not stop the good from being reasonably durable.

### The type of good and its use

The type of good and how the good is used can also impact upon a good's durability. For example goods that are more portable or contain complex components would generally be reasonably expected to last for a shorter time period than goods that are stationary and relatively simple. This is because a reasonable consumer would be likely to expect portable goods to be subject to more wear and tear through normal use of the good.

<sup>6</sup> ACL reference section 54(3)(a).

### Example

Billy and Maya each visit an electronics retailer on the same day. Billy buys a new refrigerator while Maya purchases a new mobile phone, each for the same price. After 3 years both products develop faults and stop working.

Billy's fridge is unlikely to be reasonably durable because a reasonable consumer would expect a refrigerator to last longer than 3 years. On the other hand, Maya's phone may be reasonably durable because a reasonable consumer may not expect a mobile phone to last longer than 3 years given the portability of a mobile phone means it is likely to be subject to greater wear than a refrigerator.

However, if a good is used in an abnormal manner then a reasonable consumer would expect that it would be durable for a shorter period of time than if it had not been used in an abnormal way. Abnormal use can include using a good for a different purpose than reasonably expected or significantly over-using a good in a way that would reduce the good's lifespan. However, not every use of a good that deviates from a manufacturer's intention is necessarily 'abnormal'. What amounts to abnormal use is ultimately a question for a court or tribunal considering all of the circumstances of the goods' purchase and use and what a reasonable consumer would expect.

### Example

Jason buys a new mobile phone which is not advertised as being water resistant or water proof. Within two weeks he uses his mobile phone while having a bath and accidentally drops the phone into the bath water. The mobile phone no longer works.

Jason's use of the mobile phone in the bath is likely to constitute abnormal use because such use goes beyond the expected use of the phone and a reasonable person would not expect a phone that is not sold as water resistant or water proof to continue to function normally after being submerged in water.

### Example

Isla bought a mid-range laptop from an electronics store. She used her laptop to complete her university work, which she would sometimes do outside in fine weather or by resting her laptop on her lap. After one year her laptop breaks down and no longer works.

Isla's use of the laptop outside or on her lap is unlikely to be abnormal use. This is because she was still using the laptop for its expected purpose and a reasonable consumer would expect a laptop would be durable enough to be used outside in suitable weather or used by placing on their lap.

Whether the good is a new good, refurbished good, or a factory second

A **factory second** is a good that, due to a fault or imperfection, is sold at a reduced price. Often the fault is minor, such as a cosmetic imperfection.

A **refurbished good** is one that contains some second-hand parts, but has had some parts replaced, and is in good working order at the time of purchase. For example, a refurbished laptop could be a second hand laptop that has had the hard drive and battery replaced with new parts.

A new good can generally be expected to be more durable than a factory second or refurbished good.

If a **factory second** good develops another fault unrelated to the original fault or imperfection responsible for its reduced price, the good may still fail to meet the consumer guarantee of acceptable quality.

Where a factory second good has multiple components, it can be expected that the component with a minor fault or imperfection will not last as long as the same component of an identical good that does not have the minor fault or imperfection.

A business should inform consumers about the fault responsible for the reduced price on a good so the consumer will know how that fault may affect the reasonable durability of the good.

A **refurbished good** that develops a fault can still fail to meet the consumer guarantee of acceptable quality even though it contains second hand parts. The fact that some parts of the good are second-hand affects, but does not determine, its reasonable durability (see **Service statements and second hand goods** below).

Where a refurbished good has multiple components, a reasonable consumer would expect that the second hand components may not last as long as the same component of an identical good that is not second hand.

A business should be clear about what components in a refurbished good have been replaced and what components are second-hand so a consumer can make an assessment about how long the refurbished goods' components are likely to last.

### Example

Julie buys a mid-range fridge at a factory seconds sale. The fridge's white coating has bubbles under the surface that are clearly visible at the time of purchase and noted by the supplier as the reason for the fridge being sold at a lower price. After a year or so, these bubbles start to break apart and expose the surface underneath. The fridge's functionality is not affected.

Despite this fault, the fridge is likely to meet the consumer guarantee of acceptable quality because it still functions as a fridge and the original imperfection in the paint was drawn to Julie's attention. A reasonable consumer would expect that the imperfection in the coating would cause the coating to be less durable.

### Example

Julie buys a dress at a factory seconds sale. The dress is marked down because it has a broken zipper. Julie has a tailor replace the zipper, however, when she washes the dress (in accordance with the instruction on the care label) the stitching comes apart at the seams and the fabric frays, making the dress unwearable.

The dress is unlikely to be of acceptable quality because Julie was not aware of any fault with the stitching or fabric and a reasonable consumer would expect the stitching and fabric of a dress to last more than one wash.

It is also possible to sell goods with major faults as factory seconds or at outlet sales. This is acceptable so long as the fault is drawn to the consumer's attention. The other components of the good should be reasonably durable, and last as long as the same components of identical goods not sold as factory seconds.



## (b) Price of the good

The price of a good can generally, be linked to the quality of the materials and the manufacturing techniques used to produce the good, and therefore, the durability of the good. This means that often goods purchased at a high price can be expected to last longer than goods purchased at a lower price.

### Example

Lara buys a high-end washing machine for \$1250. Jessica buys a washing machine with similar features for \$400. The primary reasons for the price difference between the two machines are the materials and manufacturing processes. Both Lara and Jessica use their washing machine around two times per week with similar load sizes and both have maintained the machines as required.

After five years, both washing machines break down when their motors fail. As Lara's washing machine is a top-of-the-range good, a reasonable consumer is likely to expect it would last for more than five years and that therefore, Lara could claim her washing machine did not meet the acceptable quality consumer guarantee. However, as Jessica's washing machine is a lower quality, budget version, a reasonable consumer would likely expect it to last for a lesser time period and Jessica may not be able to claim her washing machine was not of acceptable quality.

However, a higher price is not the only criteria for determining the reasonable durability of a good. Many other factors affect the price of a good.

A good will generally be more expensive if it is scarce or highly valued. For example, a gold bracelet may cost a lot because gold is a relatively scarce and desirable material, but because gold is a soft metal it may not be as durable as a cheaper steel bracelet.

Some goods, such as smartphones or tablets, are more expensive because they use the latest technology. Despite being more expensive, these goods may or may not be more durable than a cheaper version of the same good. A consumer may be paying a premium for the technology and not for higher quality materials or manufacturing processes.

Therefore, a higher priced good cannot always be expected to be more durable than a cheaper good **only** because of the price paid for it.

Similarly, a cheaper good will not necessarily always be expected to last less time than higher-priced but otherwise equivalent goods.

### Example

Tom buys a watch endorsed by a grand slam winner for \$350. Simon buys a similar watch for \$150. Simon's watch was made in the same factory and out of the same materials as Tom's, but does not have a celebrity endorsement.

Both Tom and Simon wear their watch every day, including during exercise. After five years, both watches are worn out and no longer accurately keep time. Even though Tom's watch was more expensive, it is likely that both watches were reasonably durable and met the consumer guarantee of acceptable quality.

### (c) Statements made about the good

There are often statements about the durability of a good on its packaging or label, in advertising material or made orally by sales staff. These statements, known as **'express warranties'**, affect how long a reasonable consumer would expect a good to last.

For example, if the label states that the good will last a certain amount of time, then a reasonable consumer would expect the good to last **at least** the amount of time stated.

#### Example

Alison buys a fitness watch. The packaging states the watch will last up to five years and can be worn during lap swimming. Alison regularly wears the watch when swimming at her local pool. After two years the watch stops due to water entering the watch. Alison would be able to claim the watch was not of acceptable quality under the ACL because it was not reasonably durable given the statements made on its packaging.

#### Example

Sam purchases a top-of-the-range blender that says 'high quality German engineered design and parts' on the box. In addition, the salesperson says 'they are built to last, my family had ours for years'. These statements would set an expectation of longer durability in the mind of a reasonable consumer. This means Sam could reasonably expect the blender to last longer than other lower-range models.

Some businesses will also provide a warranty against defects, called a **manufacturer's warranty**. Warranties against defects are usually time limited. The length of the manufacturer's warranty may be of some relevance to how long a reasonable consumer would expect a good to last, as they are statements made by the manufacturer in relation to the good's durability.

However, any warranty, whether express or manufacturer, will only ever complement the consumer guarantees under the ACL and cannot modify or remove them. This means a reasonable consumer can expect a good to last longer than the supplier or manufacturer's warranty period, depending on the circumstances.

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### **Example**

Li Wei buys a basic laptop which comes with a one year manufacturers' warranty. The laptop's central processing unit and battery stop working one year and six months after purchase. It is likely Li Wei could claim the laptop is not of acceptable quality under the ACL because it is not reasonably durable. This is because a reasonable consumer would expect a laptop to last for longer than one and a half years, despite the manufacturer's warranty having expired.

Retailers sometimes offer to sell consumers an extended warranty or care package to extend the length of time of the manufacturer's warranty. If consumers choose not to purchase an extended warranty, they still have the protection of the ACL consumer guarantees. Before buying an extended warranty, consumers should always ask the retailer to explain what it gives them over and above their automatic consumer guarantee rights.

### **(d) Any other relevant circumstances relating to the supply of the goods**

#### **Service statements and second hand goods**

Sometimes a consumer will receive a service statement when they purchase a good second-hand. A service statement sets out what condition the good is in at the time of purchase, what kinds of repairs might need to be carried out on the good in the future, and when those repairs are likely to be needed. A service statement may help the consumer determine how long they can expect a good to last.

#### **Example**

Michael buys a second-hand car and receives a service statement at the time of purchase. The service statement says the car is likely to need its brake pads replaced in eight to ten weeks after purchase and that the throttle body is in good working order.

Seven weeks later, the brake pads need replacing. It is unlikely that Michael can claim the car is not of acceptable quality because the brake pads must be replaced. A reasonable consumer would not have expected the brake pads to last longer than eight to ten weeks, given the information in the service statement.

However, if the throttle body failed and needed replacing seven weeks after purchase, Michael could claim the car is not of acceptable quality as, based on the service statement he was provided, he would reasonably expect the throttle body to remain functional for an extended period.

When purchasing second hand goods more generally, the age and condition of the goods should be carefully considered before purchasing, as this will affect the reasonable durability. Some purchases of second hand goods are not in trade or commerce, and this means that the ACL consumer guarantees do not apply. For example, a person who is selling their car because they have bought a new one, but doesn't run a business selling cars, is not engaged in trade and commerce.

#### History of use of the good

As a general principle, the more heavily and frequently a consumer uses a good, the less time a reasonable consumer expects a good to last. Conversely, the less a consumer uses a good, the longer a reasonable consumer expects the good to last.

#### Example

Hamish and Connor purchase identical clothes dryers at the same mid-range price for their homes.

Hamish lives with his partner and two children in a flat with no washing line and uses the dryer six times a week. In addition to his family's washing, Hamish also launders table cloths and napkins for several local restaurants. This means he uses his clothes dryer at least three times per day, five days per week.

Connor lives alone in a house with a washing line and uses his dryer once every two weeks.

After three years, both Connor and Hamish's dryers break down.

Given that Connor rarely used his dryer, he would reasonably expect it to last longer than three years. Therefore, it is likely that Connor could claim that his dryer was not of acceptable quality under the ACL because it was not durable.

However, given how frequently Hamish used his dryer it is likely that the dryer was of acceptable quality under the ACL even though both dryers lasted the same three years.

Sometimes this principle will not apply. Some goods may deteriorate over time regardless of level of usage, for example if they have rubber seals that are exposed to the air. Other products, such as certain types of batteries and motors, may deteriorate faster when not used at all.

A reasonable consumer expects a second-hand good to have been used before even though there may not be a good understanding of its history of usage. This previous use means that a reasonable consumer would expect a second-hand good to last less time than the same good purchased new.

#### **Example**

Tino purchases a second-hand cordless drill from a pawn shop.

After a year of moderate use, Tino notices that the drill battery quickly loses its charge.

Given that Tino purchased his drill second-hand and does not know how old it is or how often its previous owner used it, it may be reasonable for the battery to require replacement after 12 months.

In these circumstances, Tino's drill may still be sufficiently durable despite its poorer battery life.

#### **The length of a bundled goods/services contract**

If a good is leased or sold as part of a bundled goods and services contract, then a reasonable consumer can expect the good will last for **at least** the length of the service contract.

#### **Example**

Kim signs up to a 24-month post-paid mobile phone service contract which includes leasing a smart phone. Fourteen months into the contract, the phone becomes unresponsive.

It is likely that Kim's phone is not of acceptable quality because it is not reasonably durable. This is because a reasonable consumer would expect the mobile phone to last at least 24 months given the length of the post-paid service contract.

