

DEALING WITH CUSTOMER COMPLAINTS

Under the ACL, when you sell products or provide services they come with automatic guarantees including that they are fit for purpose and provided with due care and skill

If you sell something or provide a service which fails to meet the guarantees, the customer has a legal right to ask you to fix the problem.

In most cases, this is a straightforward and clear-cut matter. It will be obvious that there has been a fault either in the product itself or in the way the service has been carried out by you or your staff.

In the case of a minor fault where the problem is relatively easy to fix within a reasonable time, you may choose either to provide a refund for return of the goods, replace the goods or repair the goods. Where it is a minor fault, the choice of solution is up to you, not the customer.

But what happens when it's not your fault?

If you have not breached the consumer guarantees, you are not required to provide a remedy. There are various limits and defenses that need to be considered when a customer makes a complaint. You can also contact Industry Legal Group for advice in relation to a specific customer complaint or consumer law matter.

It is important to note that even if you have not breached the consumer guarantees, you should weigh up the consequences of refusing to remedy the issue or helping the customer as a gesture of goodwill. Reviews and ratings left on social media by customers play an increasingly powerful role in influencing consumer decision-making. If the issue is relatively minor, it may make good business sense to reach an agreement to fix the problem.

Limits on customer's ability to obtain remedy

If the customer is not satisfied with your response, they might threaten to recover repair costs from you. That is, the costs of repairs performed by

someone else. Alternatively, they might also claim expenses or allege some form of loss or damage because of the fault.

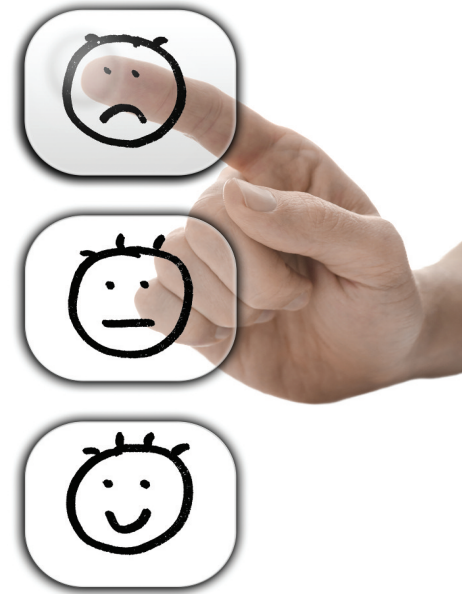
A very important limitation on the customer's ability to recover these costs from you is a legal term called 'causation'. It is up to the customer to prove that there is a 'causal connection' between the fault in the good or services and the loss (the repair costs or any other form of loss or damage). For the customer, this is a two-stage test.

First, the customer must show that the fault was a material factor which contributed to their loss or damage. In other words, the loss or damage was a logical and reasonably expected result of the fault.

The second stage requires the customer to demonstrate you should be held legally responsible for that loss. The meaning of "should" in these circumstances is clarified by section 259(5) of the ACL which is designed to protect suppliers where it would be unfair for the supplier to be blamed for the claimed fault. For instance, the section states that you as the supplier should not be held liable if the fault occurred only because of a cause independent of human control that occurred after the goods left your control, i.e. left your premises.

This means that if the loss or damage claimed is too remote to the actual claimed fault, the customer will not be able to establish causation. For example, if you provided services for the installation of new shock absorbers in a customer's car, you should not be held liable under the ACL in the event of a malfunctioning air-conditioning system sometime later.

Essentially, it is up to the customer to prove that



any expenses or damage was a logical or reasonably expected result of the claimed fault and that the loss or damage was avoidable and within your control.

The ACL provides potential defenses for suppliers when a customer complains that the goods are not of acceptable quality. This is very similar to a fault in goods or services. If the customer treats the goods in a way that causes them to become of unacceptable quality or fails to take reasonable steps to prevent them from becoming of unacceptable quality, you will not be liable for the goods. This is the same as the customer allowing the goods to be damaged by abnormal use or abuse. The rationale for this is that the ACL protects suppliers where it would be unfair to extend liability to suppliers for damage effectively caused by the customer.

Summary

When a customer presents to you claiming a fault with a good or service and that fault is relatively quick and inexpensive to fix, it makes good business sense to resolve the issue as quickly as possible.

However, where the customer's issue is not genuine, the ACL protects suppliers from claims of loss or damages where any loss or damage cannot be logically attributed to a fault in, or the unacceptable quality of the product where it would be unfair to attribute liability to the supplier.



AAAA Member Benefits

Contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au for advice in relation to customer complaint or consumer law matters.