

Your rights when shopping



Some of the most common queries that Consumer Protection receives from the public are about everyday shopping experiences



Department of Consumer
and Employment Protection
Government of Western Australia

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Essential tips for shoppers

There are a few things you can do to reduce the chances of having problems whilst shopping.

Consider these:

- Think first about what you are buying and how you are going to use it. It might save you hassles later on.
- Shop around and get at least three quotes or prices. Not only do you get to compare value, but you also learn about different products, quality, after-sales service and what suits you.
- Ask for advice if you're unsure.
- Inspect goods carefully before buying them.
- Take advertising claims with a grain of salt - sellers frequently engage in "puffery" about how their goods or services are "the best".
- Don't be pressured into buying. That "today only" offer will probably still be there tomorrow!
- Generally, limit deposits on significant purchases to 10%. Remember that deposits are negotiable and you don't have to pay the percentage asked.
- Keep all invoices, warranties, credit card receipts and cheque stubs. You may need them later on!



Some of the most common queries that Consumer Protection receives from the public are about everyday shopping experiences.

The information in this booklet should answer most questions people have, relating to their rights and responsibilities when shopping. That includes things like refund rights, warranties, lay-by, buying online, even door-to-door sales.

Your rights when shopping is packed with easy-to-read tips, but don't forget you can always ring the Consumer Protection Advice Line on 1300 30 40 54 (cost of a local call statewide) for free advice on your particular situation.

Alternatively, there is a comprehensive information service available 24 hours a day at the department's website **www.docep.wa.gov.au**

Taking things back

Sometimes you buy things, then want to take them back. Whether you have a legal right to do so depends on the circumstances.

You have a legal right to a “remedy” when:

- the item has a fault you didn't detect when you bought it;
- the item isn't the same as described by the sales staff or in advertising; or
- the item is not suitable for the purpose for which it was bought (for example you are sold software that is not compatible with your own computer).

What settlement you receive when you take the goods back depends on what is fair and reasonable. That means you might have to negotiate whether your particular “remedy” is a refund, replacement, credit note or - in the case of broken items - repair work done.

If you are not satisfied with what a trader offers, you can contact the department for assistance or go straight to the Magistrate's Court, which will make a decision binding on both parties. A remedy by the court could include compensation for any transport, travel or freight charges, legal costs, loss of the use of the product and even loss of time.



When you can't take things back

Businesses don't have to give refunds if you:

- have changed your mind about the goods or don't like them any more;
- have since found you can buy them cheaper elsewhere; or
- saw the goods before purchasing them and should have spotted any obvious faults.

“No refunds” signs are illegal and cannot be displayed by shops.

It is an offence to imply that a consumer has no right to a refund under any circumstances. Even if such signs are on display, you still have the legal rights outlined above.

The good news for consumers is that many retailers have adopted liberal refund policies. Put simply, they want your business and are prepared to exchange goods or offer credit notes as long as they make a sale. Shops with such policies are worth considering when you are buying items.

“No refunds” signs

For those shopkeepers who want to display them, free “Our refund policy” signs are available from the Department of Consumer and Employment Protection -Consumer Protection Division.

What if I break something in a shop?



Generally, you are responsible if something breaks in a shop due to your negligence or carelessness.

However, if the goods were displayed in a precarious manner (for example on a shelf alongside a busy shop walkway) the shopkeeper is responsible.

Warranties

There are two types of warranties, Statutory warranties and Manufacturers' warranties.

Statutory (implied) warranties are the inherent protection offered by law, such as under Western Australia's *Fair Trading Act*.

The Act implies into all contracts that:

- the goods are free of any encumbrance other than those disclosed;
- the goods correspond with any description given; and
- the goods are of merchantable quality and reasonably fit for the purpose for which they are sold.

In relation to services supplied, these must be provided with due care and skill, and any materials used in the job must be reasonably fit for the purpose.

It's not possible to prevent these conditions and warranties from becoming part of a consumer contract or to limit them in any way. It's also an offence for a businessperson to make a false or misleading representation about the existence or effect of any warranty, condition, right or remedy relating to supply of goods and services.

Goods bought at auction

Statutory warranties don't apply to goods bought at auction. The seller is only obliged to provide clear title on such goods.

These are warranties you pay for where no voluntary warranty exists, or where you want to buy an extension to an existing voluntary warranty.

Warranties continued

Manufacturers' (express) warranties are those which the manufacturer voluntarily chooses to offer. However, as a general rule, once these promises are offered, they must be met.

Any problems that arise under a statutory warranty must be dealt with by the seller. Problems that arise under a manufacturer's warranty might be dealt with by the retail outlet, or more likely an agency of the manufacturer.

Extended warranties

Consumers should carefully weigh up the value of extended warranties and, in particular, check to see they are not simply doubling up on the implied warranty they already have under law.

After-sales service and support

With some types of goods in particular, after-sales service and support are important.

For example, more than half of all Australians who buy home computers seek after-sales support in the first year. Cars are another major purchase where you should consider more than just price!

Ask yourself these questions:

- How likely is it that I'll need after-sales support or service?
- Does the manufacturer have a local service centre or agency?
- Is the brand I prefer the most reliable one? Check its reputation with other users or in specialist magazines or consumer publications such as *Choice*.

Lay-bys

Lay-by is still a good way to buy goods, while paying them off in instalments, because it's virtually free credit. You don't pay any interest.

You should ask for a lay-by agreement in writing, including:

- the total price of the item;
- the deposit paid;
- how much payments will be and the dates you have to make them;
- the date of the final payment;
- a description of the goods; and
- the signatures of both you and the trader.

Deposits on lay-bys are generally 10 to 20 per cent of the total price, but can be negotiated.

Laybys continued

The price of the goods cannot change while they are on lay-by. On occasion, the trader may add a storage charge, but this must be stated in your original written agreement.

A lay-by is a legally binding contract, so if you change your mind about the purchase or don't make the payments, the trader has a right to "fair damages". This doesn't mean you'll lose all the money you've paid, but the trader can claim enough money to cover storage costs or the cost of re-selling the item. The trader must be able to prove these losses of profit.

A lay-by is legally binding for the trader as well, so if he or she breaches the contract, you may be entitled to "fair damages" of your own, such as the additional cost of buying the same goods elsewhere. Similarly though, you would be required to back up your claim with proof. You would also be entitled to a refund of the money paid prior to the termination of the contract.

Shopping bag checks



There is no specific law about bag checks when you come in or out of a shop, however the Retail Traders' Association of WA has developed an advisory code of practice on the matter.

The code states that a retailer must display signage indicating that they intend doing bag checks. By entering a store that has a bag check sign, you are agreeing to those terms of entry.

A retailer cannot forcibly search your bag but they may detain you until police arrive if they suspect you have stolen something. They must be quite certain an offence has occurred because if you are wrongfully detained you can consider legal action against the shop owners.

Supermarket check-out scanners



It's important to most people that prices for goods are rung up correctly at the cash register. That's become harder for consumers to monitor since the introduction of fast price-scanning machines.

For this reason, many grocery supermarkets have agreed to follow a voluntary code of practice on check out scanners. The code is designed to re-assure customers and encourage efficient use of the new technology.

Under the code of practice:

- Prices are changed on the shelf first, then entered into the store's computer.
- If you are charged more than the shelf price, the code says you should get the item free.
- If you buy several identical items and are charged more than the shelf price, you can expect to get only one of them free.

Supermarkets complying with the code should display a sign saying so, and may distribute brochures explaining the code of practice.

For more information about the code of practice, contact the Retail Traders' Association (RTA) of Western Australia on (08) 9365 7695.

Distance selling and telemarketing continued

These days, going to the shops is just one way to buy things. Increasingly, you can purchase items by other means.

“Distance selling” describes methods of buying goods or services over the phone or through the mail, based on what you have seen on a television show, newspaper ad or a catalogue.

In addition, telemarketers frequently try to sell us goods or services over the phone.

When buying from places other than shops, think about these things:

- Do you really want or need the product? If not, don't buy.
- Keep in mind that WA laws may not apply to a seller based in another state or country. Even if laws do apply, distance might make resolving any problems difficult.
- Can you get the same goods locally, perhaps at the same price or better?
- Does the business have a full street address with contact details?
- Will you incur postage and packaging costs? Have you factored these into the total cost?
- Is it possible to inspect the goods before buying them?
- Do the goods come with a warranty?
- If you don't want the goods upon arrival, can you return them for a full refund?

Distance selling and telemarketing continued

Take your time making decisions and don't be forced into a quick purchase.

If you think it necessary, do some research into the product's reputation and the seller first. It's worth asking if the company belongs to the Australian Direct Marketing Association (ADMA). ADMA members agree to a voluntary code of conduct that, in part, protects the interests of customers. You can contact ADMA on (02) 9368 0366 or 1800 646 664.

Beware of prize offers in which winning is conditional upon making a purchase. Finally, don't ever send cash in the mail. Use either a cheque or credit card. That way, if things turn bad, you may be able to stop the payment going through.

What if the goods are damaged or never arrive?

If the goods never arrive, it is the seller's responsibility to trace them, replace them or give you a refund. By law, you are entitled to your money back because the contract was never completed. This can become a case of their word against yours if the trader can prove that they sent the goods.

If the goods are damaged in transit, the trader may be responsible. For a small fee, Australia Post offers insurance against damage to goods in transit.

Buying online



Buying goods and services online is not as risky as some people would have you believe, but it's still advisable for consumers to take sensible precautions when purchasing over the internet.

The benefits of buying online include:

- access to a worldwide market of suppliers, offering a huge choice of products and services, possibly not available in Western Australia;
- access to goods and services that are possibly cheaper; and
- the capacity to buy from home or work, 24 hours a day seven days a week.

The concerns are:

- You may not always know who you're dealing with.
- Just because a website looks professional and legitimate doesn't mean the trader is.
- There may be concerns about the security of online payments and providing credit card details.
- It's possible your privacy may not be respected and your confidential details misused or sold to marketers.
- There may be problems accessing after-sales service, support and warranty offers.
- It's always difficult to check the quality of goods without being physically able to touch and inspect them.

Consumer Protection recommends you follow these rules when buying online:

- Don't judge a website by how it looks. Good-looking sites are easy and cheap to build and don't necessarily reflect the trader's status or professionalism.

- Check that the trader has a physical address so you can contact the business later if necessary.
- Don't deal with traders who are evasive about giving such details.
- When dealing with sellers for the first time, ring or email them direct to ask about the goods or services they provide.
- Use the internet (for example newsgroups) or speak with other regular online buyers to find out which sites are reputable and reliable. You can also check adverse reports about various sites, at resources like the National Fraud Information Center (USA) at www.fraud.org
- Don't buy on impulse or in a hurry. It's likely there will be other sites that offer similar goods and services, perhaps at a better price.
- Check the actual cost of getting the goods to you. This means factoring in currency exchange rates, freight costs and perhaps sales tax or import duty.

Buying online continued

- If you are buying goods likely to require after-sales service, think about how easy this will be to manage. If it all seems too difficult, you might be better off buying locally.
- Always find out when the goods will be delivered.

Payment

Don't use your credit card for online payment, unless the site offers a secure payment system. If it doesn't, contact the company direct and supply your credit card details over the phone or by mail. If you have a disputed charge, contact your credit card company immediately.

Don't give out your bank account details to anyone. Even with partial details, unauthorised withdrawals can be made.

Keep a record of all purchase details and always print a copy of purchase orders.

Buying from door to door salespeople



There are special laws to protect consumers who buy from door-to-door salespeople who arrive uninvited.

The major benefit of the *Door to Door Trading Act 1987* is that you have a 10-day cooling off period on goods or services worth more than \$50, meaning you can cancel the contract during this time with no penalty.

The laws exist because it has been proven consumers are more vulnerable to sales offers when in their own home.

The Act also applies in other circumstances where salespeople make unsolicited approaches to potential customers, such as in car parks or shopping centre malls.

You will not get this extra protection if:

- you don't meet the seller face to face at any stage;
- you've answered a general advertisement (say in a newspaper or the Yellow Pages);
- you've invited the salesperson to your home (unless the salesperson sought your invitation); or
- you are in business and buy goods and services for your own company.

When can they call on me?

Unless they have an appointment, door to door sellers may only call during these times:

Monday to Friday 9am to 8pm
Saturday 9am to 5pm

They are prohibited from visiting you on Sundays or public holidays.

Buying from door to door salespeople continued

Your rights when a salesperson knocks at your door:

- you don't have to let them in to your home;
- they must tell you the reason for their call;
- they must show you ID, with their name, address and employer (if they have one);
- you can ask them to leave at any time;
- you are under no obligation to buy; and
- they must not coerce you to enter a contract or not to cancel one if you have signed.

What happens if I buy?

You must be given a copy of the contract immediately after signing it.

The salesperson must also give you two notices in these situations:

- when you sign a contract for goods or services worth more than \$50; and/or

- if the total amount of the contract is unknown at the time of entering the contract (for example you sign up for a course of lessons and at that time don't know how many lessons you may take).

One notice explains your right to cancel the contract if you wish, the other notice is the one you can use to actually cancel the contract.

The contract must include:

- the full name and address of the salesperson if they are the supplier, otherwise the name and address of the supplier of the goods or services;
- the signature of the salesperson or supplier;
- details of how the total cost will be calculated;
- the details of any goods to be sold or service performed;
- all the terms of the contract; and
- a statement immediately above your signature which says: "THIS CONTRACT IS SUBJECT TO A COOLING OFF PERIOD OF TEN DAYS."

Buying from door to door salespeople continued

Note: A cooling off period and written contract are not required for goods or services valued at less than \$50. However, a supplier must not split the contract to make part of it under \$50 to evade the Act. There is also no cooling off period for insurance contracts or contracts which deal solely with credit, nor contracts with charitable organisations.

How the cooling off period works

Don't sign a contract unless you really want the goods or services. But if you feel pressured into signing, remember you can cancel the contract during the 10-day cooling off period.

The salesperson cannot accept any money or provide services during this period. It is allowable for the goods to be left with you during this 10-day period. This does not remove your right to cancel the contract during the cooling-off period.

To cancel your agreement, you must deliver the notice of cancellation to the supplier either by post or in person (not by fax or email). Add your name, address and reference number to your notice to help the supplier process the cancellation quickly. You must also return any goods or let the supplier know where to collect them. If the supplier does not collect them within 28 days they become your property.

If you have lost the notice, or didn't receive one, you can still cancel the contract. Simply write to the supplier informing them that you are cancelling the contract. Keep a copy of this letter and make a note of when you posted it. You don't need to give a reason for cancelling the contract.

Buying from door to door salespeople continued

Cancelling a contract after the 10 day period has expired

Generally you can't cancel a contract after the cooling-off period, but there are some instances when this is possible, up to six months after signing the contract.

For example, if the salesperson has acted improperly by calling outside the permitted hours, or by harassing you into signing the contract, or by accepting money or providing the service before the cooling-off period has expired.

In these cases, you must give reasons for cancelling and you may need to pay for services rendered after the 10-day cooling off period and for any goods damaged beyond normal wear and tear. Also, if the goods can't be returned, you pay the value of the goods. (There are some extra limited exceptions).

Things to remember before buying door-to-door

- Ask yourself if you really need it.
- Buying door to door doesn't give you a chance to shop around.
- Be wary of claims of low prices due to no overheads (for example no rent or advertising).
- Be cautious about claims regarding your existing property (such as "Your vacuum cleaner clearly isn't working properly" or "Your tile roof needs painting"). Get independent advice about these assertions - it could be just the salesman's pitch.
- Ask for identification from people who say they are doing a survey or market research. This is a common ploy by salespeople who then try to make an appointment to call.



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Consumer Protection Advice Line - Telephone **1300 30 40 54**
(For the cost of a local call statewide)
8.30 am - 5.00 pm weekdays

Forrest Centre
219 St Georges Terrace, Perth
Western Australia 6000
Administration: 08 9282 0777 Facsimile: 08 9282 0850
National Relay Service: 13 36 77

Locked Bag 14, Cloisters Square WA 6850
National Relay Service: 13 36 77
Website: www.docep.wa.gov.au

Great Southern	9842 8366
South-West	9722 2888
Mid-West	9964 5644
Goldfields/Esperance	9021 5966
North-West	9185 0900
Kimberley	9169 2811

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