



# Complaints and conciliation

## A guide for consumers

***The Department of Mines, Industry Regulation and Safety's Consumer Protection Division is here to help consumers get a fair result if they have a dispute with a trader. One of the processes used by Consumer Protection is called conciliation. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to court.***

### What the law says

Consumer laws in Western Australia give certain legal powers to the Commissioner for Consumer Protection and the authority to conciliate disputes to the department. The department can receive and investigate complaints and take action as seems proper.

The Consumer Protection Advice Line can provide you with information if you have an issue with a product or service, need help understanding your consumer rights, or want to know about the responsibilities of traders.

If you have not been able to resolve a matter with a trader you can lodge a formal complaint with Consumer Protection. Consumer Protection may then attempt to conciliate the matter for you. This means that we will talk to the trader on your behalf to find an outcome that is acceptable to all parties. This is a free service.

Conciliation is often the most efficient and effective way to handle complaints and most complaints received by the department are resolved in this way.

### Are you a consumer?

Consumer Protection will attempt to conciliate if you are a consumer. Generally, we define a consumer as someone who buys, or contracts to buy, goods or services for their own personal use. However, there are exceptions including farmers and some not-for-profit organisations, such as school Parents and Citizens' groups. Consumer Protection can advise you if conciliation is an option.

Under the Australian Consumer Law, businesses have the same rights to remedies if issues arise when they purchase services and goods valued at under \$100,000. However, Consumer Protection does not take complaints or conciliate in issues relating to business-to-business transactions. By calling the Advice Line businesses can get information about any legislation that Consumer Protection administers.

### The conciliation process

#### Step one

Think about what your complaint is about, and then call the Consumer Protection Advice Line for information about the laws that protect you. Then, if possible, discuss your issue with the trader. If it helps, write down your main points first. Make sure you keep any notes, quotes, receipts or other paperwork that support your case.

If it is not possible to speak to the trader concerned, or your conversation with them did not resolve the matter, you may need to put your complaint in writing to the trader. To assist you there are sample letters on the Consumer Protection website. While it may seem difficult to put your issues into a letter, doing this can help you resolve the matter more quickly as most traders will want to make a sale and keep their customers satisfied.

#### Step two

If, after approaching the trader, you have not been able to gain any satisfaction, you can make a formal complaint to Consumer Protection.

Consumer Protection will investigate your complaint if:

- a court or tribunal has not already determined the matter and there is no case pending;
- the issue in dispute is covered by consumer protection laws;
- the trader's conduct seems to breach those laws or your contractual rights; or
- the dispute does not centre on a matter of personal opinion, for example, as with some quality issues.

If more appropriate, Consumer Protection may refer your complaint to another agency, such as the Medical Board for a complaint about a doctor.

Phone the Consumer Protection Advice Line on 1300 304 054 for details of other agencies, boards, or industry resolution bodies to whom you can, or should, make your complaint, or if you are not sure whether your dispute is covered by any of the above points.

### **What Consumer Protection can do to conciliate a dispute**

Consumer Protection will tell you if it can deal with your dispute or may suggest your best option is to seek a civil remedy in the courts or through a relevant tribunal or industry complaint body, such as the Telecommunications Industry Ombudsman.

Consumer Protection can attempt conciliation by contacting you and the trader separately. There is usually no personal contact between you and the trader once you have lodged a complaint, unless you both agree to it.

Consumer Protection will try to guide you and the trader to an agreed position determined by both your rights and responsibilities.

When trying to settle disputes, Consumer Protection will negotiate for what you are entitled to receive by law. Consumer Protection will also aim to stop any unfair or illegal conduct. Such redress or 'compensation' may include the trader fixing the problem, exchanging the product or refunding the contract price.

### **Other action**

Consumer Protection can, and does, prosecute traders who break the law. However, the decision to prosecute will always result from the consideration of a number of factors. By making a complaint you might be able to help many other consumers.

The Commissioner may decide to prosecute traders when there are breaches of consumer laws. If they are found guilty, they may be ordered to pay a fine and under some consumer protection laws they may have to pay compensation to the consumer.

In some cases, the Commissioner may initiate or defend civil proceedings on behalf of a consumer. Such action must be in the public interest, and any decision to do this would include factors such as:

- the possibility of immediate financial loss by the consumer;
- the conduct of a trader being unreasonable on a number of occasions; or
- a market trend, affecting a number of consumers.

### **What can and can't be done**

Consumer Protection recognises its responsibility to spend taxpayers' money wisely.

Therefore, Consumer Protection may decline to attempt conciliation if the matter in dispute is minor and involves only a small amount of financial loss by the consumer. On occasion, even if individual amounts are relatively small, Consumer Protection may get involved

if large numbers of consumers are affected, for example by a scam.

Consumer Protection will not attempt further conciliation if, in its view, a trader has made a reasonable offer of redress, which you have rejected.

Please note that a trader cannot be ordered to follow a particular course of action or be put out of business through conciliation. These are decisions that only courts and certain regulatory agencies can make.

### **Information you need to provide**

Make sure you provide Consumer Protection with copies of any documents or notes that support your complaint. We recommend you keep the originals in a file of your own. Such documents might include:

- quotes;
- contracts;
- invoices;
- receipts;
- warranties;
- vehicle inspection reports, if applicable;
- a tenancy agreement, if applicable;
- any independent reports or opinions; and
- any other notes or correspondence that might be relevant.

Your complaint should be sent to the Consumer Protection office closest to the trader's premises. Consumer Protection has six regional offices, in Albany, Broome, Bunbury, Geraldton, Kalgoorlie and Karratha, in addition to the main office in Perth.

Complaint forms and template letters to the trader can be downloaded from [www.dmirs.wa.gov.au/consumer-protection](http://www.dmirs.wa.gov.au/consumer-protection)

### **Step three**

If conciliation fails, or you are not satisfied, you can choose to take the matter to a court, such as the Magistrates Court. Taking your matter to court is not necessarily expensive or time consuming. Further information about going to court is available on the Department of the Attorney General's website at [www.dotag.wa.gov.au](http://www.dotag.wa.gov.au). You may even be eligible to get assistance from Legal Aid: call 1300 650 579 or visit [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

### **Building disputes**

If your complaint is about a building service, including plumbing and painting, you can seek advice from the Building and Energy Division of the Department of Mines, Industry Regulation and Safety. The Building and Energy Division assists consumers to resolve building disputes and will help you decide the best way to progress your complaint.

The Building Commissioner has broad powers to deal with complaints about services carried out by a

registered building service provider, an owner-builder or under a home building contract valued at any amount.

The Building Commissioner can also deal with complaints about some matters covered by the *Home Building Contracts Act 1991*. The Act applies to lump sum home building contracts valued between \$7,500 and \$500,000.

The Building Commissioner can issue orders to rectify faulty work or orders to pay up to \$100,000 in value. In complex disputes the Building Commissioner may refer the complaint to the State Administrative Tribunal (the Tribunal). The value which the Tribunal can order a registered building service provider to pay is unlimited, and up to \$500,000 for an unregistered person.

'Rapid adjudication' is available to resolve payment disputes for construction contracts. The Building and Energy Division can advise you about the process if you wish to make a claim, or are responding to a claim under the *Construction Contracts Act 2004*.

The Building and Energy Division also provides information to resolve dividing fence disputes and investigates complaints about the conduct of registered building service providers.

Contact Building and Energy at:

Level 1  
Mason Bird Building  
303 Sevenoaks Street (entrance Grose Avenue)  
Cannington WA 6107  
Phone: 1300 489 099  
Email: [info@buildingcommission.wa.gov.au](mailto:info@buildingcommission.wa.gov.au)  
Website: [www.dmirs.wa.gov.au](http://www.dmirs.wa.gov.au)

### Further information

Consumer Protection Advice Line:

1300 304 054  
(for the cost of a local call)  
Web: [www.dmirs.wa.gov.au/consumer-protection](http://www.dmirs.wa.gov.au/consumer-protection)  
Email: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

**Disclaimer** – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

## Consumer Protection | Department of Mines, Industry Regulation and Safety

### 1300 304 054

8.30 am – 4.30 pm Mon, Tue, Wed and Fri  
9.00 am – 4.30 pm Thurs  
Gordon Stephenson House  
Level 2, 140 William Street  
Western Australia 6000  
M: Locked Bag 100, East Perth WA 6892  
W: [www.consumerprotection.wa.gov.au](http://www.consumerprotection.wa.gov.au)  
E: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

### Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888



National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

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