

Consumer guarantee directions

The NSW Government has introduced changes to help consumers and businesses resolve complaints in an efficient and effective way and as an alternative to the often costly (and lengthy) process of courts or tribunals. From 28 December 2018, if a dispute has been through Fair Trading's dispute resolution process and a resolution has not been reached between the consumer and business, the Commissioner for Fair Trading can consider issuing a consumer guarantee direction that requires the business to repair, replace or refund the good, under certain circumstances.

The consumer guarantee direction process

The new process includes 6 steps:

1. A consumer makes a complaint to NSW Fair Trading.
2. NSW Fair Trading will contact both parties to encourage them to resolve the dispute.
3. If no mutual outcome has been reached by the business and consumer, the consumer will be advised of their options, including applying for a direction.
4. NSW Fair Trading will assess an application to see if it meets the eligibility criteria.
5. NSW Fair Trading reviews the application and contacts both parties to invite them to make written submissions about the complaint. Information received by Fair Trading from the consumer and business will be shared with the other party so that they have a chance to respond.
6. The application is assessed and NSW Fair Trading decides whether to make a direction. The consumer and business are told the outcome of the application.

At any time, the business and consumer can work together to reach a resolution between themselves without a direction being made.

Eligibility criteria

To be eligible for a consumer guarantee direction, a dispute must meet certain criteria:

- the matter was lodged with Fair Trading from 28 December 2018, has progressed through the complaint handling process and no agreement was reached between the business and consumer
- is about a product (not service)
- the product has a purchase price between \$25 – \$3,000 (excluding GST)
- the product was purchased within the 6 months before the consumer makes a complaint to Fair Trading
- both the consumer and business are based in NSW (note that corporations only need to have a presence in Australia and are not required to be based in the state)
- it is a dispute about an Australian Consumer Law (ACL) consumer guarantee relating to:
 - the acceptable quality of the product
 - the product being fit for its disclosed purpose, or
 - the product matching the description, sample or demonstration model.

Matters not eligible include disputes about:

- false and misleading representations
- unsolicited sales or bait advertising
- excluded products, such as a motor vehicle, second-hand good, solar battery, a product relating to a home building claim, or a product that is subject of a review by the court or Tribunal.

Did you know:

In the 2016 Australian Consumer Survey, 84% of consumer disputes were resolved directly between a consumer and a business.

It is always preferable that consumers and businesses work together to resolve their disputes between themselves.

Techniques for dealing with customers and putting good complaint handling processes into place [is available on our website](#).

Process for assessing whether to issue a direction

As part of the assessment process, NSW Fair Trading will give the business and consumer an opportunity to provide written information about the dispute and respond to any information given by the other party.

In deciding whether to issue a direction or not, NSW Fair Trading will:

- identify which of the consumer guarantees is relevant to the dispute (download a copy of the [Australian Consumer Law - Consumer guarantees for businesses guide](#) for more information)
- assess whether there has been a failure to comply with the identified guarantees, and
- assess whether the failure is a major or minor failure, and identify the appropriate remedy (a refund, replacement or repair).

NSW Fair Trading will then decide whether to make a direction or not. If a direction is made, it will direct whether the business is to repair, replace or refund the purchase price to the consumer and will include a monetary value, even where there is a direction made to repair or replace a product

NSW Fair Trading will advise both parties in writing of any decision that it makes.

Options after a direction has been issued

If a direction is made, the business must comply with the direction, or the business or consumer may apply to the NSW Civil and Administrative Tribunal to have the dispute re-determined.

If a direction is not complied with within 28 days, or another period, as specified in the direction, the consumer will be able to register the direction in the Local Court as a judgement debt and apply to have it enforced.

The NSW Fair Trading Commissioner may also publish the direction where it has not been complied with.

When will the change start

Consumer guarantee directions will start on 28 December 2018 and will apply to new complaints lodged with NSW Fair Trading from that date. Complaints already lodged with NSW Fair Trading before 28 December 2018 will not be eligible for a direction.

More information about [consumer guarantee directions](#) is available on our website.