

Guidance on ‘reasonable durability’

Consumer guarantee as to acceptable quality

The Australian Consumer Law (ACL) creates a basic set of guarantees (or rights) that apply to the goods and services that you buy. One of these guarantees is that the goods will be of “acceptable quality”. This guarantee includes that goods will be as durable as a reasonable consumer would regard as acceptable.

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

You can expect a good you purchase to be durable enough to perform its intended function(s) for a reasonable amount of time.

How long you can expect a particular good to last depends on a number of factors, including:

- The nature of the good, which can include:¹
 - The materials used or composition of the components and
 - Whether the good is a new good or a factory second.
- The price of the good²
- Statements made about the good, either on the packaging or by the supplier or manufacturer³ and
- Any other relevant circumstances.⁴

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.

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

Nature of the good

The nature of the good is an important factor in determining how long you can expect the good to last. The nature of the good includes:

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

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).

The materials used or composition of the components

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

You can expect a good made of high quality materials 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 that have a limited lifespan that cannot be repaired or replaced and the good as a whole becomes unusable once the limited lifespan part fails. You can expect the limited lifespan part, and therefore the good as a whole, to last for a reasonable time after you purchase.

On the other hand, some goods may have parts or components that have a limited lifespan and cannot be repaired or replaced, but the good can still function without those parts.

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 a good 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.

In some circumstances, you can expect a new good to be more durable than a factory second or refurbished good.

Factory seconds

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, you can expect the component with a minor fault not to last as long as the same component of an identical good that does not have the minor fault or imperfection.

Businesses should be clear to consumers about what fault is responsible for the reduced price on a good so the consumer will know how that fault may affect the reasonable durability of the good.

Refurbished goods

Where a refurbished good develops a fault it still may fail to meet the consumer guarantee of acceptable quality, but the fact that some parts of the good are second-hand may still affect its reasonable durability (see ***Service statements and second hand goods*** below).

Where a refurbished good has multiple components, you can expect the components that are second hand not to last as long as the same component of an identical good that is not second hand.

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

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.

It is also possible to buy goods as factory seconds or outlet sales that have major faults. This is acceptable so long as the fault is drawn to your 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.

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.

Price of the good

Generally, it is reasonable to link to the quality of the materials and the manufacturing techniques used to produce the good to the price you pay for the good. This means that typically, you can expect goods you purchase at a high price to last longer than goods that you purchase 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.

After eight years, both washing machines break down. 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 eight 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 may only expect it to last eight years and Jessica would be unable 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. There are many factors that 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. .

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

Similarly, just because you bought a good cheaply does not necessarily mean that you should expect it to last less time than higher-priced but otherwise equivalent goods.

Example

Tom buys a pair of tennis shoes endorsed by a grand slam winner for \$210. Simon buys an equivalent pair of tennis shoes for \$95. Simon's shoes are made in the same factory and out of the same materials as Tom's, but do not have a celebrity endorsement.

Both Tom and Simon play competitive tennis every weekend and train twice per week. After one year, both pairs of shoes are worn out and have lost their grip. Even though Tom's shoes were more expensive, it is likely that both pairs of shoes were reasonably durable and met the consumer guarantee of acceptable quality.

Statements made about the good, either on the packaging or label of the good or by the supplier or manufacturer of the goods

There are often statements about the durability of a good on its packaging or label. These statements, known as 'express warranties', can affect how long you can expect a good to last.

For example, if the label states that the good will last a certain amount of time, then you can expect the good to last *at least* the amount of time stated. The statements could also be verbal.

Example

Alison buys a fitness watch the packaging of which 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 package.

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 has 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, also 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 you can expect a good to last.

However, such warranties are not the only criteria for determining the reasonable durability of a good. Statements made by a salesperson or contained in a warranty cannot override the

consumer guarantees contained in the ACL. A warranty can only complement these guarantees, not modify or remove them. This means that you can often expect a good to last longer than the supplier or manufacturer's warranty period.

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 you an extended warranty or care package to extend the length of time of the manufacturer's warranty. If you choose not to purchase an extended warranty, you still have the protection of the consumer guarantees. Before buying an extended warranty, always ask the retailer to list what it gives you over and above your automatic consumer guarantee rights.

Any other relevant circumstances relating to the supply of the goods

Service statements and second hand goods

Sometimes you will receive a service statement when you 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 you determine how long you 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, you should carefully consider the age and condition of the goods before purchasing as this will affect the reasonable durability. You should also remember that some purchases of second hand goods are not in trade or commerce, and this means that the 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

The more heavily and frequently you use a good, the less time you can expect the good to last. Conversely, the less you use a good, the longer you can expect it 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 five 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 five 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 five years.

When you purchase a good second-hand, you should expect it to have been used before even when you do not have a good understanding of the history of usage. This history of usage means that you can 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. Mick purchased the same cordless drill brand new.

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, the poorer battery life of Tino's drill is unlikely to mean that the drill fails to meet the consumer guarantee of acceptable quality.

The length of a bundled goods/services contract

If a good is leased as part of a bundled goods and services contract, then you can expect the good to 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.