

Office of Fair Trading

Selling new or used caravans

If you are a business selling new or used caravans, you must abide by the Australian Consumer Law (ACL), which exists to create a fair and safe marketplace.

If you are a business acquiring or selling used caravans in Queensland, you must also be licensed as a motor dealer and you must meet your obligations under the *Motor Dealers and Chattel Auctioneers Act 2014 (MDCAA)*, *Motor Dealers and Chattel Auctioneers Regulation (MDCAR)* and in certain circumstances, the *Agents Financial Administrations Act 2014 (AFAA)*.

The OFT is responsible for receiving consumer complaints under these laws and for enforcing their provisions in Queensland.

This factsheet has been designed to help you understand and comply with your obligations under the ACL. Note this factsheet does not include all of your obligations. More information can be found at www.qld.gov.au/fairtrading.

Consumer guarantees

The ACL provides consumers with rights, called consumer guarantees, when purchasing goods or services from a business.

Under the law you automatically guarantee that any goods or services you sell, including caravans will:

- be of acceptable quality (including being durable and safe)
- match any description, sample or demonstration model provided
- be fit for any specified purpose
- have clear title
- have any spare parts and repairs available for a reasonable period
- not have undisclosed securities
- have any express warranties honoured.

If a caravan sold by a business does not meet these guarantees, the business has an obligation to fix the problem. This includes parts or components of caravans. For example, if an item like a fridge is installed in a caravan, it must also meet the consumer guarantees. You have an obligation to remedy the problem if it doesn't meet these guarantees.

The type of remedy you must provide will depend on whether the problem is major or minor. If it is major it is the consumer's choice as to whether to receive a refund, replacement or repairs. If it is minor, it is your choice whether to provide a refund, replacement or repairs.

False and misleading representations

Under the ACL, it is illegal for a business to make a claim or statement that is false or misleading. Anything you represent about the products and services you sell must be true, and you must be able to prove it.

These representations can be made in many ways and include words, images and gestures.

Fact sheet

They also include information on advertisements, websites, signage, brochures and given verbally by a salesperson or staff member.

Remaining silent or omitting relevant facts or information about goods or services can amount to making a false or misleading representation. It does not matter whether the omission was intentional or not.

Contract terms and conditions

The contract of sale is an important document setting out exactly what you will deliver, and what the potential buyer can expect from you. Ensure every buyer is provided sufficient time to read and understand the contract before they sign it.

There are certain terms you can't put in a contract. Any contract term that limits the statutory rights of a consumer is illegal and would have no legal effect if you tried to rely on it. Such terms might include:

- a 'no refunds' statement. It is illegal to state 'no refunds' or similar statements such as 'no refunds on specials', as these terms imply it's not possible to get a refund under any circumstances, including for faulty items.
- limiting consumer rights to a specific time. You can limit the time an extended warranty or manufacturer's warranty applies for, but remember, these types of warranties are in addition to the consumer guarantees which apply for a 'reasonable time'.
- limiting legal jurisdiction. If a consumer purchases an item in Queensland from a seller, Queensland courts and tribunals have jurisdiction regardless of any contract term.
- limiting your liability for items installed in the caravan that have been manufactured by third parties
- requiring the consumer to sign a non-disclosure agreement to access their right to a refund, replacement or repair for a fault.

Unfair terms in standard-form contracts which unfairly advantage you are not lawful. If you present a standard contract to every consumer, and they don't have a chance to negotiate the terms, it is a standard-form contract.

Lay-by agreements

Under the ACL an agreement is classed as a lay-by if:

- the consumer pays in three or more instalments
- the business calls the agreement a lay-by, even if the consumer pays in only two instalments.

Where an agreement is classed as a lay-by it must be in writing and it needs to contain certain things:

- a clear description of the goods
- the cost of the goods
- the amount of deposit paid
- the maximum period the lay-by will last
- what cancellation fees and refund policies apply.

Fact sheet

A consumer has the right to cancel a lay-by agreement at any time before the delivery of the goods. If they do cancel you must refund the money paid. You can retain a termination fee but only if it was in the agreement. There is no specific amount or percentage set as a termination fee, but it must not be more than your “reasonable costs” in relation to that lay-by.

What is reasonable will depend on the circumstances and you should be able to show how you calculated the amount.

Failure to supply

It is illegal for a business to take money from a consumer and not supply the goods or services paid for by the date promised, or if no date was set, within a reasonable time. You should ensure your staff are aware of this rule to reduce the risk of your business being found to have breached the law.

Resolving consumer complaints

The most common complaints the OFT receives against caravan sellers relate to:

- caravans not being of acceptable quality
- warranty conditions
- misrepresentations made to buyers about caravans, caravan products and related services
- non-supply or delayed supply.

To help resolve consumer complaints it is important to develop and implement an effective consumer complaints handling policy if you haven't already done so.

Promptly and effectively responding to complaints, and demonstrating a willingness to fix issues will help you to resolve the majority of complaints.

Queensland Civil and Administrative Tribunal (QCAT)

From 1 September 2019, the level for claims that can be handled by the Queensland Civil and Administrative Tribunal (QCAT) increased from \$25,000 to \$100,000 for motor vehicles and caravans.

This means that if a buyer purchases a caravan from a business and their consumer guarantees have not been met for an amount up to \$100,000, the matter can be heard by the tribunal. If the buyer has purchased a caravan privately the tribunal does not have jurisdiction.

Additional information

- Website: www.qld.gov.au/fairtrading
- Phone: 13 QGOV (13 74 68)
- Email: Oft.compliance@justice.qld.gov.au