

This article discusses NSW Fair Trading and the aim of the agency. NSW Fair Trading is a state-wide organisation that prioritises fairness for consumers and traders in the commercial world by emphasising compliance with the appropriate regulations and rules put in place.¹



A. INTRODUCTION

NSW Fair Trading protects consumer rights and serves as a vessel of information for both consumers and businesses regarding their rights and responsibilities.² This fair trading agency primarily aims to ensure compliance by both parties (consumers and businesses) with the established requirements imposed on them.

B. WHAT DO THEY DO?

B.1. Education Initiatives

This body implements educational schemes to allow for a greater understanding by consumers and businesses alike of their rights and available protections.³ By enlightening individuals on their rights under the law, illegal and unfair trades are prevented and ultimately minimised, allowing for a healthy, competitive marketplace which meets consumer needs and wants.

These initiatives include:

- *The Community Voice Program*: addresses specific challenges that people face due to cultural differences, language barriers, disabilities, etc.⁴
- *Consumer and Business Education Campaigns*: aims to reduce potential risk of harm to the community by raising awareness of consumer rights.⁵
- *Social Media*: active social media accounts that aim to engage customers of NSW Fair Trading and contain a wide variety of information to increase consumer knowledge of rights and guidance on smart purchases.

¹ NSW Government Fair Trading, *Our compliance role* (03 December 2020).

² Ibid.

³ Ibid.

⁴ NSW Government Fair Trading, *Educating consumers and businesses* (28 October 2021).

⁵ Ibid.



B.2. Proactive Inspection Programs

NSW Fair Trading implements proactive inspection programs which are frequent inspections of businesses and sole traders in specific industries to ensure their obedience of the law.⁶ This check additionally serves to review the validity of any necessary licences that are required to carry out the work of each organisation being observed.

B.3. Product Safety Inspections

The agency undertakes product safety inspections to guarantee consumer safety and ensure that the product safety laws are followed by each organisation. NSW Fair Trading predominantly focuses on children's products such as toys and nursery furniture, as well as gas appliances, blinds and other goods that have the potential to harm consumers.⁷

C. FAIR TRADING LAWS

NSW Fair Trading was established by the *Fair Trading Act 1987 (NSW)*⁸ and functions to mandate the regulations and requirements within the state legislation. The Australian Consumer Law additionally serves to protect consumers when purchasing products and services, correlating with NSW Fair Trading's ultimate purpose.

C.1. Fair Trading Act (1987)

This act is fundamental for NSW Fair Trading as it establishes the foundational principles the agency aims to promote.

It overlooks the supply, advertising and description of goods and services put in place by businesses to ensure fair practice within each organisation.

It is the primary law governing business behaviour in NSW⁹ and establishes consumer rights and guarantees, to protect any consumer against unconscionable conduct by businesses, mandating fairness and integrity in all workplaces.

C.2. Australian Consumer Law (ACL)

Australian Consumer Law (ACL) is embedded within schedule 2 of the *Competition and Consumer Act 2010*¹⁰ and includes set definitions of legal concepts such as 'consumer' and 'domestic or household use or consumption'.¹¹

This legislation further creates regulations in Parts 6 and 7 of the *Competition and Consumer Act 2010* which address various issues such as:

- Requirements for a right to payment
- Agreements that are not unsolicited by consumers
- Requirements for warranties against defective products/products that require repairs
- Requirements for consumers reporting products/goods associated with death or serious injury

⁶ Ibid.

⁷ Ibid.

⁸ *Fair Trading Act 1987* (NSW).

⁹ Ibid.

¹⁰ *Australian Competition and Consumer Act 2010* (Cth).

¹¹ Ibid.



D. CONSUMER GUARANTEE DIRECTIONS

NSW Fair Trading outlines six steps that consumers can take if alternative dispute resolutions have failed to create a solution.

The following six steps highlight the process of being granted a consumer guarantee direction. This direction essentially requires businesses to repair, replace or refund the good/product they purchased. In accordance with NSW Fair Trading guidelines.

How to obtain a Consumer Guarantee Direction:

1. A complaint is made to NSW Fair Trading by the consumer who purchased the product in question.
2. NSW Fair Trading proceeds to contact both parties in the dispute in a final attempt to encourage them to reach a resolution on their own terms.
3. If this attempt fails, the consumer is then informed that they have a right to make an application for a consumer guarantee direction within 30 days.
4. If an application is made within the allocated time frame, NSW Fair Trading reviews the -

¹² Ibid.

¹³ Ibid.

- application to ensure it meets the eligibility criteria.

5. Both parties are then contacted to make written statements about the complaint; the information contained in each is to be shared amongst the parties and parties are allowed to respond to the other's submission.
6. The application is assessed by NSW Fair Trading to decide whether to make a direction or not. Even if the application is unsuccessful, both the consumer and the business are informed of the outcome. If a direction is made, the business is required to comply with it (e.g. to refund the price of the product). Either party can apply to the NSW Civil and Administrative Tribunal (NCAT) to re-determine the dispute if they do not agree with the outcome.¹²

The application for a consumer guarantee direction must be regarding a product with a purchase price between \$25.00 and \$3,000.00 (excluding GST) which was purchased within six months of making a complaint to NSW Fair Trading.¹³

Comasters can advise you on legal issues and assist in making a complaint or application to the NSW Fair Trading.

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