



Complaints and conciliation a guide for consumers

A major role of the Department of Commerce's Consumer Protection Division is to help consumers get a fair result if they have a dispute with a trader. This is known as conciliation.

What the law says

The legislation that gives the department the authority to conciliate disputes is the *Consumer Affairs Act 1971*, which gives certain legal powers to the Commissioner for Consumer Protection.

The Act says, in part, that we can:

"receive complaints from consumers... and, if the Commissioner considers it warranted...investigate those complaints and...take...action...as seems proper..."

It is the policy of Consumer Protection not to investigate a complaint until you, as a consumer, have made an effort to resolve the complaint yourself. We try to conciliate disputes because it is the most effective and least costly way to handle the many and varied complaints we receive from consumers.

There are good reasons for this:

- Experience shows that many disputes can be sorted out if the consumer and business simply talk it over. Frequently problems are a result of lack of communication.
- Consumer Protection can serve the community most effectively by concentrating its resources on resolving disputes where consumers have already attempted to solve the problem directly with the trader.

Important! Are you a consumer?

We can attempt to conciliate only if you are a consumer. If the goods or service at the centre of your dispute were bought for business purposes, Consumer Protection has no legal jurisdiction to take up your matter. If this is your situation, you will need to seek your own legal advice. Our Advice Line staff may be able to direct you to an agency that may be able to assist.

Generally, we define a consumer as someone who buys, or contracts to buy, goods or services for their own personal use. There are other situations where WA consumer laws may not apply. However, there are exceptions and if you phone us, we can advise you. Notable exceptions are farmers and some not-for-profit organisations, such as school Parents and Citizens' groups.

The conciliation process

Step one

Think about what your grievance is really about, then talk to the business in a calm manner. If it helps, write down your main points first. Make sure you keep any notes, quotes, receipts or other paperwork that support your case.

Keep in mind that most businesses simply want to make a sale and keep their customers satisfied.

This can work to your advantage!

Step two

If, after approaching the trader, you haven't been able to get any satisfaction, you can make a formal complaint to Consumer Protection.

We will investigate the complaint if:

- you have made a reasonable attempt to resolve the dispute;
- a court or tribunal has not already determined the matter, or there is no case pending;
- the issue under dispute is covered by consumer protection laws;
- the trader's conduct seems to breach those laws or your contractual rights;
- you have not breached the contract or contributed to the dispute by inappropriate behaviour;
- the dispute is not overly subjective, for example, as with some quality issues;
- we believe the issue is of wider interest to the rights of consumers and our involvement could make the Western Australian marketplace fairer; or
- your complaint appears reasonably likely to be settled and it is not more appropriate for us to refer it to another agency, such as the medical board for a complaint about a doctor. Phone us on 1300 30 40 54 for details of other agencies, boards, or industry resolution bodies to whom you can, or should, make your complaint.

If you are not sure whether your dispute is covered by any of the above points, please contact our Advice Line on 1300 30 40 54.

What we can do to conciliate a dispute

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

We 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.

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

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

Other action we can take

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 complaining to us, you might be helping us help all consumers.

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

In some cases, the Commissioner may initiate or defend civil proceedings on behalf of a consumer. Such action would

have to be justified on cost grounds and be in the public interest, which 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 we won't or can't do

We do not have an unlimited budget and we recognise our responsibility to spend taxpayers' money wisely.

Therefore, we may decline to attempt conciliation if the matter in dispute is minor and involves only a small amount of financial loss by the consumer. However, even if individual amounts are relatively small, we may get involved if large numbers of consumers are affected, for example by a scam.

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

Please note that we cannot order a trader to follow a particular course of action or put them out of business. These are decisions that only courts and certain regulatory bodies can make.

Information you need to give us

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;
- tenancy agreement, if applicable;
- any independent reports or opinions; or
- 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 Geraldton, Bunbury, Albany, Karratha, Kalgoorlie and Kununurra, in addition to the main office in Perth.

Complaint forms can be downloaded from our website at:

www.commerce.wa.gov.au

Step three

If conciliation fails, or doesn't satisfy your demands 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. Information about this course of action is available on the Department of the Attorney General website at:

www.dotag.wa.gov.au

Building disputes

If your complaint is about home building or building trades you can seek advice from the Building Commission Division of the Department of Commerce. The Building Commission will help you decide the best way to progress your complaint and how to access the most appropriate services, including the Building Disputes Tribunal (the Tribunal).

The Tribunal has broad powers to deal with workmanship complaints and contractual issues that are covered by the *Home Building Contracts Act 1991*.

When seeking a determination by the Tribunal, different rules will apply, depending on whether your dispute relates to the poor workmanship or to the contract with the builder.

Complaints to the Tribunal about workmanship can relate to contracts of any amount, and the Tribunal can issue orders to rectify faulty work.

The Tribunal can only consider contractual matters relating to home building contracts between \$7,500 and \$500,000 in value, and can only award up to \$100,000 in compensation or value of remedial work.

A party to a building contract can also seek rapid adjudication of a payment dispute under the *Construction Contracts Act 2004*. The Building Commission can advise you on the operation of the Act if you wish to make a claim, or are responding to a claim made by a builder. The Building Commission can also help you with issues about plumbing and dividing fences.

You can contact the Building Commission at its offices:

Level 1, 31 Troode St
West Perth WA 6005

Phone: 1300 489 099

Email: info@buildingcommission.wa.gov.au

Further information

Consumer Protection Advice Line:
1300 30 40 54
(for the cost of a local call)

Web: [www.commerce.wa.gov.au/
consumerprotection](http://www.commerce.wa.gov.au/consumerprotection)

Email: consumer@commerce.wa.gov.au

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