



Australian Capital Territory

# **Law Reform (Manufacturers Warranties) Act 1977 (repealed) No 12**

## **Republication No 4**

Republication date: 2 April 2002

Amendments incorporated to 14 March 2002

As repealed by Act 2001 No 77

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Law Reform (Manufacturers Warranties) Act 1977* (repealed). It includes any commencement, amendment, repeal or expiry affecting the republished law to 14 March 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
14 March 2002



Australian Capital Territory

# Law Reform (Manufacturers Warranties) Act 1977 (repealed)

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Amendments incorporated to  
14 March 2002



Australian Capital Territory

# Law Reform (Manufacturers Warranties) Act 1977 (repealed)

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An Act relating to manufacturers warranties

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## 1 Short title

This Act may be cited as the *Law Reform (Manufacturers Warranties) Act 1977*.

## 3 Interpretation

(1) In this Act, unless the contrary intention appears—

***express warranty*** means an undertaking, assertion or statement in relation to manufactured goods (including an undertaking, assertion or statement in an advertisement or in a brochure or other literature designed to promote sale or use of the goods) by the manufacturer or a person acting on his or her behalf, the natural tendency of which is to induce a reasonable purchaser to purchase the goods.

***goods*** includes all chattels personal, other than things in action and money.

***manufactured goods*** means goods manufactured for sale or disposal to consumers.

***manufacturer***, in relation to manufactured goods, means—

- (a) a person by whom, or on whose behalf, the goods are manufactured or assembled;
- (b) a person who holds himself or herself out to the public as the manufacturer of the goods;
- (c) a person, who causes or permits his or her name, the name in which he or she carries on business, or his or her brand, to be attached to or endorsed on the goods or on any package or other material accompanying the goods in a manner or form that leads reasonably to the inference that he or she is the manufacturer of the goods; or
- (d) where the goods are imported into Australia and the manufacturer does not have a place of business in Australia—the importer of the goods.

**person** includes a body corporate.

**purchase** includes take on hire, other than for a period not exceeding 6 months, whether or not the hiring is accompanied by an option to purchase, and hire-purchase.

**sell** includes let out on hire, other than for a period not exceeding 6 months, whether or not the hiring is accompanied by an option to purchase, and hire-purchase.

**seller**, in relation to manufactured goods, means any person who sells the goods to a consumer.

**statutory warranty** means a warranty that arises by virtue of this Act.

(2) This Act—

- (a) applies to goods that are manufactured either within or outside the Territory;
- (b) does not apply to or in relation to goods that are manufactured before the date fixed under section 2; and
- (c) subject to section 6, does not apply to or in relation to manufactured goods that are sold directly by the manufacturer to the consumer.

(3) For the purposes of this Act—

- (a) a person who purchases goods shall be taken to be a consumer of the goods if the goods are of a kind ordinarily purchased for private use or consumption and the person does not purchase the goods, or hold himself or herself out as purchasing the goods, for the purposes of resale; and
- (b) a reference to a consumer, in relation to manufactured goods, includes a reference to any person who derives title to the goods through or under the consumer.

(4) A reference in the definition of “express warranty” to manufactured goods is a reference to manufactured goods that—

- (a) are sold in the Territory to a consumer; or
  - (b) are delivered, after being sold to a consumer, to that consumer in the Territory.
- (5) For the purposes of this Act, goods shall be taken to be sold to a consumer notwithstanding that, at the time of sale, they are affixed to land or premises.

#### **4 Statutory warranties**

- (1) Subject to this section, where manufactured goods—
- (a) are sold in the Territory to a consumer; or
  - (b) are delivered, after being sold to a consumer, to that consumer in the Territory;
- the manufacturer warrants—
- (c) that the goods are of merchantable quality;
  - (d) where the consumer expressly makes known to the manufacturer, directly or through the seller, the particular purpose for which the goods are being purchased—that the goods are reasonably fit for that purpose, whether or not that is a purpose for which the goods are commonly sold, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the skill or judgment of the manufacturer;
  - (e) where there is a term in the contract, expressed or implied, between the seller and the consumer to the effect that the goods are sold by reference to a sample—
    - (i) that the bulk will correspond with the sample in quality; and
    - (ii) that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample;



- (f) where the goods are sold by description—that the goods will correspond with the description and, if the sale is by reference to a sample as well as by description, that the bulk of the goods will correspond with the sample and that the goods will correspond with the description; and
  - (g) where the goods are of a kind that is likely to require repair or maintenance—that spare parts and service facilities will be available for a reasonable period after the date of manufacture.
- (2) Subject to subsection (3), goods are of merchantable quality if they are as fit for the purpose or purposes for which goods of that kind are ordinarily purchased as it is reasonable to expect, having regard to—
  - (a) any description applied to the goods by the manufacturer;
  - (b) the price received by the manufacturer for the goods (if relevant); and
  - (c) all the other relevant circumstances.
- (3) A manufacturer of goods is not liable upon his or her statutory warranty as to the merchantable quality of the goods—
  - (a) if the goods are not of merchantable quality by reason of—
    - (i) an act or default of the consumer or some other person (not being the manufacturer or his or her servant or agent); or
    - (ii) a cause independent of human control;  
occurring after the goods have left the control of the manufacturer;
  - (b) as regards defects specifically drawn to the consumer's attention before the contract for the sale of the goods is made;  
or

- (c) where the consumer examines the goods before the contract for the sale of the goods is made—as regards defects which that examination ought to reveal.
- (4) A manufacturer of goods is not liable upon his or her statutory warranty as to the availability of spare parts if the unavailability arose from circumstances that the manufacturer could not reasonably be expected to have foreseen.
- (5) Without limiting the generality of subsection (4), an industrial stoppage may, for the purposes of that subsection, constitute a circumstance that a manufacturer could not reasonably be expected to have foreseen.
- (6) A manufacturer of goods is not liable upon his or her statutory warranty relating to the sale of goods by description in respect of a description applied to the goods by a person other than the manufacturer.
- (7) A manufacturer of goods is not liable upon his or her statutory warranty relating to the sale of goods by sample where—
  - (a) the sample was not supplied by the manufacturer;
  - (b) the sale by sample is made without the express or implied concurrence of the manufacturer; or
  - (c) the failure to comply with the warranty is due to circumstances that were beyond the control of the manufacturer and that he or she could not reasonably be expected to have foreseen.

## **5 Right of consumer to sue manufacturer**

- (1) Where an express warranty or a statutory warranty is not complied with in relation to manufactured goods, a consumer may, by action, recover against the manufacturer damages for breach of warranty in all respects as if the action were for breach of warranty under a contract between the manufacturer and the consumer.

- (2) The right conferred by this section is in addition to, and not in derogation of, any other right of action that may be available to the consumer, whether against the manufacturer or otherwise.

## **6 Application to sales by manufacturer**

The provisions of this Act with respect to—

- (a) express warranties; and
- (b) the warranties relating to the availability of spare parts and service facilities;

apply to and in relation to manufactured goods that are sold directly by the manufacturer to the consumer.

## **7 No contracting out**

- (1) Subject to subsection (2), it is not competent for a manufacturer to exclude or limit his or her liability to a consumer, or to limit the consumer's right of action, or for a consumer to waive his or her rights, arising by virtue of an express or statutory warranty.
- (2) Where a manufacturer takes reasonable steps to ensure that a consumer purchasing manufactured goods will effectively receive notice at the time the goods are purchased that the manufacturer does not undertake—
  - (a) that spare parts, or spare parts of the kind specified in the notice; or
  - (b) that service facilities, or service facilities of the kind specified in the notice;

will be available for the repair of the goods, either at all or after the expiration of the period specified in the notice, the manufacturer is not subject to any liability by reason only that—

- (c) the spare parts, or spare parts of the kind specified in the notice; or

- (d) the service facilities, or service facilities of the kind specified in the notice.

as the case requires, are not available.

(3) Where—

- (a) a manufacturer manufactures goods for a person in accordance with specifications determined by that person; and
- (b) the manufacturer incurs liability to a consumer by virtue of having manufactured the goods in accordance with those specifications;

the manufacturer is entitled to recover from that person compensation in respect of so much of his or her liability as arises by reason only of his or her having manufactured the goods in accordance with those specifications.

(4) A manufacturer who purports to exclude or limit a liability, or a right, under an express or statutory warranty that he or she is not competent to exclude or limit by reason of this section is guilty of an offence against this Act and punishable, on conviction, by a fine—

- (a) if the offender is a natural person—not exceeding 200 penalty units; or
- (b) if the offender is a body corporate—not exceeding 1,000 penalty units.

## **8 Rights of seller to recover against manufacturer**

Where a seller of manufactured goods incurs liability to a consumer for breach of a condition or warranty implied by law, the seller may, by action against the manufacturer, recover an amount sufficient to indemnify him or her for that liability if the consumer could, by virtue of a statutory warranty, have recovered against the manufacturer damages in respect of that breach.

## **9 Evidentiary provisions**

- (1) Where an advertisement or other publication is published containing an assertion that would, if made by a manufacturer or a person acting on his or her behalf, constitute an express warranty in respect of manufactured goods, it shall be presumed, in proceedings under this Act other than proceedings under subsection 7 (4), that the assertion was made by the manufacturer or a person acting on his or her behalf unless the manufacturer proves that he or she did not cause or permit the publication of the advertisement or other publication.
- (2) Where, in proceedings under this Act, other than proceedings under subsection 7 (4), a question arises whether goods were manufactured before or after the date fixed under section 2, it shall be presumed, unless the contrary is established, that the goods were manufactured after that date.
- (3) Where the name, business name or brand of a person is attached to or endorsed on goods, or a package or other material in or with which the goods are sold, and the name or brand appears in a manner or form that leads reasonably to the inference that that person is the manufacturer of the goods, it shall be presumed, in proceedings under this Act, other than proceedings under subsection 7 (4), unless the contrary is established, that the person has caused or permitted the name, business name or brand to be attached to or endorsed on the goods, package or material in that manner or form.

## **10 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.

### **Example**

A form of written warranty to be given by a manufacturer, including how the warranty is to be printed.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) If the Minister approves a form of written warranty to be given by a manufacturer, a manufacturer must not give a written warranty otherwise than in accordance with the approved form.

Maximum penalty (subsection (4)): 10 penalty units.

## **11 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Law Reform (Manufacturers Warranties) Act 1977* (repealed) was originally the *Law Reform (Manufacturers Warranties) Ordinance 1977*. It became an ACT Act on self-government (11 May 1989).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before self-government

##### **Law Reform (Manufacturers Warranties) Act 1977 No 12**

notified 30 May 1977

commenced 6 June 1977 (Cwlth Gaz 1977 No S95)

as amended by

##### **Ordinances Revision Ordinance 1978 No 46 sch 2**

notified 28 December 1978

commenced 28 December 1978

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

#### Legislation after self-government

##### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)

s 1, s 2 commenced 29 November 1994 (s 2 (1))

sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

##### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)



**Legislation (Consequential Amendments) Act 2001 No 44 pt 215**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 215 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

as repealed by

**Fair Trading Legislation Amendment Act 2001 No 77 pt 6**

notified LR 14 September 2001

s 1, s 2 commenced 14 September 2001 (LA s 75)

pt 6 commenced 14 March 2002 (s 2 and LA s 79)

**4 Amendment history****Commencement**

s 2 om 2001 No 44 amdt 1.2609

**No contracting out**

s 7 am 1978 No 46 sch 2; 1994 No 81 sch

**Approved forms**

s 10 am 1989 No 38 sch 1; 1998 No 54 sch

sub 2001 No 44 amdt 1.2610

**Regulation-making power**

s 11 ins 2001 No 44 amdt 1.2610

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 July 1991
2	Act 1998 No 54	31 March 1999
3	Act 2001 No 44	2 April 2002

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