

South Australia

## Manufacturers Warranties Act 1974

An Act to make provision for manufacturers warranties; and for other purposes.

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### Legislative history

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### The Parliament of South Australia enacts as follows:

#### 1—Short title

This Act may be cited as the *Manufacturers Warranties Act 1974*.

#### 3—Interpretation

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

**consumer**, in relation to manufactured goods, means any person (including a body corporate) who purchases the goods when offered for sale by retail and includes any person who derives title to the goods through or under any such person;

**express warranty** means any assertion or statement in relation to the quality, utility, capacity, performance or durability of manufactured goods (including an 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 behalf, the natural tendency of which is to induce a reasonable purchaser to purchase the goods;

**manufactured goods** or **goods** means goods manufactured for sale or disposal by retail but does not include goods that are normally offered for sale at a genuine retail price in excess of ten thousand dollars;

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

- (a) any person by whom, or on whose behalf, the goods are manufactured or assembled; or

- (b) any person who holds himself out to the public as the manufacturer of the goods; or
- (c) any person who causes or permits his name, the name in which he carries on business, or his brand, to be attached to or endorsed upon the goods or any package or other material accompanying the goods in a manner or form that leads reasonably to the inference that he 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;

*statutory warranty* means any warranty (except an express warranty) that arises by virtue of this Act;

*to sell* includes to let out on hire and *to purchase* has a correlative meaning;

*vendor* in relation to manufactured goods means any person who sells the goods by retail;

*written warranty* in relation to manufactured goods means any document that accompanies the goods at the time they are first sold by retail, or is received by the consumer at or about the time the goods are first sold by retail, containing, or purporting to contain, a warranty, guarantee or undertaking on the part of the manufacturer in relation to the goods.

- (2) This Act—
  - (a) applies to goods manufactured either within or outside this State; but
  - (b) does not apply in relation to goods manufactured before the commencement of this Act.

#### 4—Statutory warrantees

- (1) Where any manufactured goods—
  - (a) are sold by retail in this State; or
  - (b) are delivered, upon being sold by retail, to a purchaser in this State,  
the manufacturer warrants—
    - (c) that the goods are of merchantable quality; and
    - (d) where the goods are of a kind that are likely to require repair or maintenance, that spare parts will be available for a reasonable period after the date of manufacture.
- (2) Subject to subsection (3) of this section, goods are of merchantable quality if they are as fit for the purpose, or purposes, for which goods of the kind are ordinarily purchased as it is reasonable to expect having regard to—
  - (a) any description applied to the goods by the manufacturer; and
  - (b) the price received by the manufacturer for the goods; and
  - (c) any other relevant factors.

- (3) A manufacturer of goods is not liable upon his statutory warranty as to the merchantable quality of the goods if the goods are not of merchantable quality by reason of—
  - (a) any act or default of the consumer or some other person (not being the manufacturer, or his servant or agent); or
  - (b) a cause independent of human control,  
occurring after the goods have left the control of the manufacturer.
- (4) A manufacturer of goods is not liable upon his statutory warranty as to the availability of spare parts if the unavailability of spare parts arose from circumstances that the manufacturer could not reasonably be expected to have foreseen.

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

- (1) Where—
  - (a) an express warranty; or
  - (b) a statutory warranty,is not complied with in relation to manufactured goods, a consumer who has lawful possession of goods 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) This section does not derogate from any other right of action that may be available to the consumer.

### **6—Exclusion of liability**

- (1) Subject to subsection (2) of this section, it shall not be competent for a manufacturer to exclude or limit his liability, or for a consumer to waive his rights, arising by virtue of an express or statutory warranty.
- (2) Where a manufacturer takes reasonable steps to ensure that a person purchasing manufactured goods by retail will receive notice at or about the time the goods are purchased that the manufacturer does not undertake that spare parts will be available for the repair of the goods, then no liability shall attach to the manufacturer on the ground that spare parts are not so available.
- (3) If a manufacturer purports to exclude or limit a liability under an express or statutory warranty that he is not competent to exclude or limit by reason of this section he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

### **7—Right of vendor to recover against manufacturer**

Where a vendor of manufactured goods incurs liability to a consumer for breach of any condition or warranty implied by law as to the quality of those goods (other than a condition or warranty implied by reason of conduct or representations of the vendor) the vendor may, by action against the manufacturer, recover an amount sufficient to indemnify him for that liability if the consumer could, by virtue of a statutory warranty, have recovered against the manufacturer damages in respect of the defect in the quality of the goods.

## **8—Evidentiary provision**

- (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 behalf, constitute an express warranty in respect of manufactured goods, it shall be presumed, in proceedings under this Act, that the assertion was made by the manufacturer or a person acting on his behalf unless the manufacturer proves that he did not cause, or permit, the publication of the advertisement or other publication.
- (2) Where any question arises in proceedings under this Act as to whether goods were manufactured before or after the commencement of this Act, it shall be presumed, in the absence of proof to the contrary, that the goods were manufactured after the commencement of this Act.
- (3) Where the name, business name, or brand of a person is attached to, or endorsed upon goods, or a package or other material in or with which they are sold by retail, and a court before which proceedings under this Act are brought considers that 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 the absence of proof to the contrary, that he has caused or permitted his name, business name or brand to be attached to, or endorsed upon, the goods, package or material in that manner or form.

## **9—Regulations**

The Governor may make such regulations as he thinks necessary or expedient to prevent any misleading practice in the use of written warranties, and, without limiting the generality of the foregoing, those regulations may—

- (a) regulate the form of any such warranties; and
- (b) prescribe, or regulate, the manner in which they are to be written, typed or printed; and
- (c) prescribe penalties (recoverable summarily) not exceeding five hundred dollars for breach of any regulation.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Manufacturers Warranties Act 1974* was repealed by s 35 of the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010* on 1.1.2011.

### Principal Act

Year	No	Title	Assent	Commencement
1975	47	<i>Manufacturers Warranties Act 1974</i>	10.4.1975	10.4.1975 ( <i>Gazette 10.4.1975 p1442</i> )

### Provisions amended since 3 February 1976

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	