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Transcript
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MARY COLLIER: We're going to talk dodgy Christmas gifts now and more importantly, what you can do if you need to return a dodgy Christmas gift.

The Federal Government has just introduced some new laws which will guarantee that consumers have a right to have replacements of faulty or unsuitable gifts that are unsuitable for what they were manufactured for...

CHRIS ADAMS: Yep.

MARY COLLIER: ...and to tell us all about it, we're going to be joined now by Federal Consumer Affairs Minister, Craig Emerson.
Good morning, Minister.

CRAIG EMERSON: Hello Mary.

CHRIS ADAMS: Hey g'day Craig, just an interesting aspect to this, that the law is going to change as of 1 January, what's - in a nutshell - is the difference between the law as it stands now and what it will be in relation to returning products?

CRAIG EMERSON: There's no fundamental difference Chris, but the problem at the moment is that people are not aware of their rights. There are only one in five Australians aware of his or her rights as a consumer to demand a refund if a product isn't fit for the purpose for which they bought it.

CHRIS ADAMS: Right.

CRAIG EMERSON: Compare that with New Zealand with more than half of New Zealanders are aware of their rights. The reason it's so fuzzy is

that these rights are contained in no fewer than 13 different pieces of Commonwealth, state and territory legislation...

CHRIS ADAMS: Hmm.

CRAIG EMERSON: ...and what we're going to do is create a single national consumer law, an Australian consumer law because after all we're one country...

CHRIS ADAMS: Hmm.

CRAIG EMERSON: ...and we should have one law for consumers to protect our rights.

MARY COLLIER: Look Craig, I think this is a great initiative, because coming from a legal background as well, a lot of the implied warranties that cover this area, are also founded in the common law and you know, they've got a lot of case law behind them and people just don't know that there are common law rights that also exist in relation to, you know, expressing implied warranties of fitness for purpose.

And I think statutory legislation and amendment makes it a little bit more accessible to people?

CRAIG EMERSON: It does Mary. You obviously know a hell of a lot about this because you've summarised the problem very, very well. You can't expect Australian consumers to go into a store with a bunch of case law and legislation under their arms and say, well you know, these are my rights.

I think it's good advice to say to consumers, particularly during the sales period, talk to the shop owners or the shop assistants about the rights that are available to you and establish their policy particularly on refunds. But I can say this: that if the product that they've purchased is not fit for that purpose for which they purchased it, they can demand a refund or at least a replacement product.

It's a bit different when it comes to sales and they say 'I took it home and Bobby didn't like the colour'. They're not automatically entitled to a cash refund, but you certainly would expect the store to either provide a cash refund or a credit so that the customer can then buy something else in that store.

CHRIS ADAMS: Hey, Craig I had a case in point of this - before Christmas I went into - one of the larger - well, one of the large department stores and wanted to buy something and had it all out on the counter ready to go and as a sort of afterthought said to the bloke behind the counter, look, this is a gift so, you know, if it's

not suitable, can I return it? He said, sure, you can return it, as long as you haven't opened it.

CRAIG EMERSON: [Laughs].

CHRIS ADAMS: I mean, I thought - should they have grounds on that to say that, Craig?

CRAIG EMERSON: No, they don't. So that's another very, very good question. The law is such that if the product is opened and the packaging is damaged, that does not negate the obligation on the retailer to provide a refund or a replacement product.

CHRIS ADAMS: [Interrupts] Righto, so there's...

CRAIG EMERSON: So if there's damage to the packaging, it's not an excuse for a retailer to say we're not going to do the right thing by you.

CHRIS ADAMS: Okay, but is that only on the grounds of it not being suitable or you know, what other - what needs to be stipulated there?

CRAIG EMERSON: If it's either defective - in some way - it's broken or it's not performing or just as importantly, let's say you go into a department or a hardware store and you say I want to buy a saw - a chainsaw for example I've got to cut down lots of branches in my yard, and they sell you something that doesn't really do that...

CHRIS ADAMS: Yep.

CRAIG EMERSON: ...because it's too weak, then they have not sold you a good that is fit for the purpose that you described...

CHRIS ADAMS: Hmm.

CRAIG EMERSON: ...and you can therefore demand a cash refund or a replacement, a chainsaw in that particular example. So it doesn't cover just a case where something is defective, if it's not fit for the purpose that you described to the retailer...

CHRIS ADAMS: Yeah.

CRAIG EMERSON: ...then you can demand a refund. And I'll just add a couple of other points if I could?

MARY COLLIER: Mmm.

CRAIG EMERSON: Just because a retailer sticks up a sign and says 'no cash refunds', that again has no effect in the law. They can't say 'but we told you'. They have those obligations, Mary, as you

described the implied warranty and they still are bound by the law. It's just that the Australian public doesn't know that.

And the other thing that some retailers might try on is, 'you'd better take that up with the manufacturer'...

CHRIS ADAMS: Yeah.

CRAIG EMERSON: ...they cannot do that. It is an obligation on the part of the retailer to sell a product that is described as being of merchantable quality, which is another way of describing fit for purpose, I guess. But they can't pass the buck back to the manufacturer.

MARY COLLIER: I guess it's also important for people to know that these laws just don't apply to every shopfront but for any retailer who has an online presence in Australia, registered in Australia, it would apply to them as well?

CRAIG EMERSON: That's right. Except in relation to auctions. Now...

MARY COLLIER: So, your eBay scenario?

CRAIG EMERSON: They don't apply in relation to eBay auctions, they don't apply, or even a general auction which are less common these days because mostly things aren't... you know when you're selling products it usually is online auctioning. They don't apply in those situations.

CHRIS ADAMS: I'll tell you one, Craig, that's an interesting one that I've often thought about. You walk in to, say, a, you know, a NightOwl or one of those sort of places that's got an ATM machine in it.

CRAIG EMERSON: Yep.

CHRIS ADAMS: And the ATM machine doesn't work, the person - I mean, I don't know whether they can do this, but the joint that has the ATM in it says, 'no, not our responsibility, talk to the people who own the ATM'. Can they do that?

CRAIG EMERSON: I can't really answer that question. I know - I've had the same experience as you. I don't think they would be violating the law in those circumstances. They're not really selling a product, they're just providing a service and interestingly, these laws tend to apply more to products than to services.

CHRIS ADAMS: Righto.

And I've just got a quick, if you don't mind, Craig, call - question from a listener. Kim at Deagon.
G'day, Kim.

CALLER KIM: Good morning. How are you?

CHRIS ADAMS: Yeah, well. Good.

CALLER KIM: Lovely day, isn't it?

Hey, I bought a fridge from a seconds man... a seconds place and when I got it home I realised it was second-hand. It only gave me three months warranty. The thing's broken down twice. I've had to pay a technician once...

CHRIS ADAMS: Yep.

CALLER KIM: ...to have it fixed. It doesn't even make water cold now.

CHRIS ADAMS: Righto. So, your - guess you want to know what your rights are?

CALLER KIM: Yeah. I've had it for 18 months, I paid five, six hundred dollars for it and it's not even worth the plastic it's in.

CHRIS ADAMS: Righto.

MARY COLLIER: Yeah, Craig. Do those warranties apply to the sale of second-hand goods?

CRAIG EMERSON: Indeed they do, and this is where it is a little bit fuzzy though. The word reasonable comes into it, and that is whether the product is of reasonable quality, if you like. Now, on the face of it, while I'm not a lawyer particularly in this area, Mary, it sounds like you are.

MARY COLLIER: No, not in this area, but all those years of law school lent some knowledge.

CRAIG EMERSON: But they can't just say, oh, it's second-hand, therefore we are giving a three month warranty. That warranty has no legal effect. The implied warranty under the Trade Practices Act does and - was it Kim from Deagon...

CHRIS ADAMS: Yep.

CRAIG EMERSON: ...could take that up with the Australian Competition and Consumer Commission, because on the face of it, and I won't go any further than that, it sounds like that product was not fit for purpose. Notwithstanding the fact that it's a second-hand product.

CHRIS ADAMS: Yeah.

CRAIG EMERSON: Just because it's second-hand does not mean that you've negated the obligation to provide a product of reasonable quality.

CHRIS ADAMS: Righto. So, in Kim's case, she should what? Go see Fair Trading? Something like that?

CRAIG EMERSON: Yeah, the state Fair Trading people would be, definitely, worth a chat. Ring them on the telephone when they're back in - you know, back in the saddle.

CHRIS ADAMS: Yeah.

CRAIG EMERSON: But, it does sound like, if it never really did work, the fact that it was a factory second and might've had scratches on it, or something like that, that does not negate a warranty and it's a really classic case.
The fact that a store might say we will give you a three month warranty does not absolve them of a responsibility to sell goods that are of reasonable quality; that is, of merchantable quality.

MARY COLLIER: Craig, before we let you go this morning, quick question. What's on your agenda as Minister for Consumer Affairs in 2010?

CRAIG EMERSON: Well I - very importantly, we're looking at an area of the competition law that hasn't been developed in Australia which relates to what's called price signalling. And that is, whether the petrol, oil majors are engaging in a form of anti-competitive behaviour though price signalling.
You know, this weekly price cycle?

CHRIS ADAMS: Yeah.

CRAIG EMERSON: There's evidence from the competition watchdog that a couple of the oil majors lead the price cycle up, during the price hiking stage, and they know what each other's going to do through the Informed Sources subscription service, because as soon as someone uses a fuel card, that goes onto the computer and everyone else knows that the subscriber, which is the other oil majors, exactly when the price hike is starting and then they - according to the ACCC there's evidence that they then get in on the act.

Whereas the independents, who are not subscribers, tend to be the ones, with, by the way Woolworths, who tend to lead the price cycle down.

So, that's - this is an area that is relevant in petrol pricing, but maybe also in other parts of retailing in Australia.

MARY COLLIER: Craig, I'm sorry to do it to you again, but we have another caller, Sandra from Morningside, if you've just got a moment.

CRAIG EMERSON: No problem.

MARY COLLIER: Sandra, what would you like to ask the Minister?
CALLER SANDRA: Quite often you can buy something at the stores and they say if you bring it back within 30 days you can get a refund. It's just that my elderly mother has trouble getting to shops. She has to rely on a charitable organisation to take her there - places like Kmart, Target, whatever, and she can't always get back in that applied time.

CHRIS ADAMS: Righto. So can - have you still got rights after 30 days, the question, Sandra.

CRAIG EMERSON: Well, to this extent: if the product is defective, or not fit for purpose, then those rights remain. However, if the customer has changed his or her mind then it would be up to the store to decide, you know, what policy would apply.

CHRIS ADAMS: Righto, Craig...

CRAIG EMERSON: But we go back to this fit for purpose criterion, which is really important.

CHRIS ADAMS: Okay, mate. Thanks for that little bit of impromptu, sort of, call taking.

MARY COLLIER: Q and A.

CRAIG EMERSON: No worries. My pleasure.

MARY COLLIER: You have a great holiday period.

CRAIG EMERSON: That was the...
Okay.

CHRIS ADAMS: See you, mate.

MARY COLLIER: ...Federal Consumer Affairs Minister, Craig Emerson.

CHRIS ADAMS: Yeah, and good of him to give us some time this morning and take a few calls as well.