



MEDIA RELEASE

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DELL BACKS DOWN ON CONTRACT TERMS THAT FAILED TO COMPUTE

Consumer Action Law Centre has withdrawn proceedings against Dell Computer Pty Ltd in the Victorian Civil and Administrative Tribunal on behalf of its co- CEO, Carolyn Bond after the company amended its contracts to remove the terms Ms Bond had alleged were unfair.

Ms Bond issued proceedings against Dell after she purchased a laptop computer and 'Fail Safe' software from them early in 2010, only to experience great difficulty obtaining a refund when the software didn't work.

"Unfortunately, when I contacted Dell's customer service department they refused to provide a refund for the software, despite the fact it didn't work, because it was more than three months since I'd purchased it. I explained to them that the software had never worked and that they were breaching the *Trade Practices Act* by refusing to refund my money because the software was not fit for purpose. However, they insisted that, under the terms of their contract, they did not have to refund the purchase price."

After issuing the VCAT proceedings, Ms Bond eventually received a refund from Dell for the software. However, she also sought a declaration from the Tribunal that Dell's contract terms were unfair and only withdrew her proceedings when Dell amended its contract terms on 1 January this year.

"It was a real concern that a company of Dell's size and reputation was including terms in its contracts that seemed to imply they excluded or even replaced the customer's mandatory statutory rights in relation to faulty products. We were pleased that Dell was finally able to recognise that these terms were inappropriate and amend them accordingly."

"All retailers, whether they operate online or not, have to understand that it is them – rather than the manufacturer – who are ultimately responsible for providing a refund on purchases that are faulty or not fit for purpose and they can't simply contract out of those rights at will."

"In fact the new Australian Consumer Law makes it an offence for retailers to tell customers that they are not responsible for meeting statutory guarantees that products will be of an acceptable quality and fit for their purpose."

"Unfortunately, Dell turned out to be far from the only online retailer using a contract with these sorts of terms. We have identified around 20 other companies whose details we have forwarded to the ACCC and we hope the regulator will see this as an opportunity to test the new Unfair Contract Terms legislation."

"Who knows how many consumers have had a similar experience – either with faulty software or problems with other products – only to be told by these companies that they had no right to a refund and, not knowing any better, have just accepted it and given up," Ms Bond said.

Note to Editors: New national consumer guarantee laws now better clarify those rights, and consumers can download the [MyShopRights](#) app from Consumer Affairs Victoria which spells out what they can do if they buy faulty goods or services.

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