

# THE CONSUMER GUARANTEES ACT

The Consumer Guarantees Act says that you must give the following guarantees for the goods you manufacturer or import:

1. Goods are of acceptable quality.
2. Repair facilities and spare parts are reasonably available for a reasonable time.
3. Goods are the same as any description you gave to the consumer.
4. Goods comply with any express guarantee you gave with the goods about their performance and the availability of spare parts or replacement goods.

The Act says goods are of acceptable quality when:

1. the goods do what they were made to do and fit for the purposes that the goods are normally used for.
2. the goods do not have any small faults.
3. the goods are acceptable in appearance and finish.
4. the goods are safe to use.
5. the goods are durable.

In deciding if goods are of acceptable quality, the reasonable consumer must consider:

1. the nature of the goods.
2. the price.
3. any statements on labels or packaging.
4. anything said about the goods by the seller or the manufacturer.
5. any other relevant circumstances.

A reasonable consumer would not consider these goods to be of acceptable quality.

- ◆ a motor in a new washing machine bums out after two years normal use. a reasonable consumer would consider this was not acceptable durability for a new appliance.
- ◆ a shirt has a mark on the back. It is unacceptable in appearance.

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1. the nature of the goods.

### **Example**

A consumer will expect a T-shirt made of a heavier weight polycotton material to last longer than a T-shirt made from a very lightweight material.

A consumer will expect goods that are expensive, to be of higher quality than goods that are very cheap.

A consumer will have a claim if they are told the wallpaper they are buying is washable, but the surface rubs off when it is wiped.

2. the price.
3. any statements on labels or packaging.
4. anything said about the goods by the seller or the manufacturer.
5. any other relevant circumstances.

It is important to note that you will not be liable for goods that fail the guarantees only because of something said about them by a retailer.

You will not be liable if a consumer has:

1. used the goods in a way that is different to the way a reasonable consumer would use the goods, and this has caused the problem.
2. used the goods far more often than a reasonable consumer would expect to use the goods, and this has caused the problem.

## **Repair Facilities and Spare Parts**

The Act makes you responsible for ensuring repair facilities and spare parts are available for the goods that you manufacture or import. Repair facilities and spare parts must be reasonably available for a reasonable period after the goods are sold. This means you must provide spare parts or repair facilities unless you know they are easily available through other outlets.

This does not apply to second-hand goods, unless they are being sold in New Zealand for the first time.

The Act does not define 'reasonable available'. What is reasonable will vary for different types of goods and parts.

### **Example**

Goods such as appliances and cars are frequently used and will have parts that are commonly needed for repairs – fanbelts, brake pads, toaster elements.

Most consumers would expect these parts to be available immediately in all major towns.

Parts that do not commonly need replacing may be reasonably available if they are stored in selected centres only and there is a short delay in getting them to a consumer.

The guarantee says that spare parts and repair facilities will be available for a reasonable period of time after the goods are sold. You will need to consider the normal useful life of the product when deciding what is a reasonable time.

### **Example**

A washing machine, car or television may be expected to last more than five years. It is reasonable that spare parts and repair facilities will be available during this time.

You can contract out of the provision about spare parts and repairs by telling consumers:

1. that you do not guarantee the availability of spare parts and repair facilities; and/or
2. that spare parts and repair facilities will not be available after a certain date.

You must make sure that every person buying your goods is told this before they buy.

Goods must meet any description given with them. This includes the description that you put on packaging and labels or use in advertising.

## **Manufacturers' Warranties**

You may offer your own warranty or guarantee with the products you manufacture or import. This is called an "express guarantee" and it is additional to the guarantees given in the Consumer Guarantees Act. It does not replace or override the guarantees given in the Act. You must honour any express guarantees you give. A consumer can turn down compensation from you if you fail to honour an express guarantee. If the goods are sold while still under an express guarantee, the new owner will be able to claim. This applies to goods sold by a trader or in a private sale.

## **Compensation**

A consumer can get compensation from you if you breach any of the guarantees in the Consumer Guarantees Act.

The consumer can ask you to pay the amount that the goods have dropped in value because of the problem.

Loss in value is worked out using either the average retail price or the price the customer paid, whichever is the lower.

## **General Questions**

### **Can I contract out of this Act?**

There are only two occasions when manufacturers, importers, retailers and suppliers of goods can contract out of this Act.

#### **1. When goods are bought for a business**

A retailer or supplier can choose to contract out of the Act when they sell goods to a business. When they contract out the manufacturer or importer will also not be liable under the Act.

#### **Note**

The retailer or supplier must contract out in writing.

#### **2. Spare parts and repair facilities**

You can contract out of the spare parts and repair facilities guarantee as long as the consumer is told this before they buy the goods.

### **What responsibilities does the retailer have?**

The Act says that retailers must ensure that goods meet the following guarantees:

- Goods will be of acceptable quality.
- Goods must be the same as any description given to the consumer.
- Goods will be fit for any particular purpose named by the consumer.
- Goods will be fit for any particular purpose that the retailer has told the consumer they are fit for.
- Goods must be the same as any sample or demonstration model shown to the consumer.
- Goods can be legally sold. (The seller has the right to sell the goods and there are no undisclosed securities).
- Goods will cost the consumer a reasonable price if no agreement has been made about the price.

Retailers will be liable if goods they sell do not meet one of these guarantees.

**Can the consumer claim from me or from the retailer if goods are not of acceptable quality or don't comply with the description?**

Consumers can claim from either the retailer or the manufacturer/importer. They are most likely to claim from retailers because retailers are usually more accessible. A consumer might choose to claim against you if you are running a recall and offer repairs or refunds directly to the consumer. Consumers may also come to you because the retailer who sold them the goods has gone out of business.

**Note**

It is the consumer's choice who they claim against. You will breach the Fair Trading Act if you suggest to a consumer that they have to go the retailer instead of to you. The Fair Trading Act says you cannot mislead a consumer about their rights. You may be liable for a fine of up to \$100000 if you breach the Fair Trading Act.

**Do I have to pay compensation including the retailer's margin?**

Yes. Compensation is based on the drop in value below what the consumer paid for the goods or the average retail price, whichever is the lower. It is not based on the wholesale price that you sold the goods for.

**Can the consumer come back after several months or years to complain about the goods?**

The consumer has six years from the time the problem appears to make a complaint.

**What if the consumer has just changed their mind?**

The Act only applies when the goods do not meet one of the guarantees. It is your choice whether you offer a refund or any other remedy if a consumer has simply changed their mind or decided they can't afford the goods.

**What if someone else has caused the problem?**

The consumer cannot ask for money compensation if the goods are not of acceptable quality or do not meet their description because of:

- Something someone else has done to them.
- e.g The retailer installs a washing machine and scratches the side panel. The retailer will be liable not you.
- A natural disaster or other cause, independent of human control occurs after the goods have left your control.

e.g A stereo is damaged by flood waters while in a retail store.

### **What if the consumer no longer has the goods?**

If the consumer no longer has the goods, they cannot ask you for compensation.

### **What if the person making a claim received the goods as a gift?**

A person who receives goods as a gift has the same right to claim under the Act as the person who bought the goods.

### **What if the person making a claim bought the goods second hand?**

A person who buys second hand goods that you have manufactured or imported has the same rights to claim under the Act as any other consumer.

If they have bought the goods in a private sale they will not be able to claim from the seller so are likely to make a claim to you.

If they bought the goods from a retailer they will have the choice of claiming from you or the retailer.

If they bought the goods in an auction they will not be able to claim from you as goods sold at auction are not covered by the Act.

### **What if I have compensated the previous owner of the goods?**

You will not have to pay compensation to a new owner of the goods if you have compensated the previous owner.

e.g a carpet has a shading problem. The manufacturer pays compensation to the homeowner who bought the carpet. A year later the house is sold and the new owner makes a claim to the carpet manufacturer. The manufacturer does not have to compensate the new owner.

### **What if the consumer thinks that they have paid too much?**

A consumer cannot claim under the acceptable quality guarantee simply because they have paid a high price for the goods.

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### **What if the consumer thinks that they have paid too much?**

A consumer cannot claim under the acceptable quality guarantee simply because they have paid a high price for the goods.

e.g. Johanna buys a vacuum cleaner from an exclusive department store and pays \$700 for it. The manufacturer's recommended retail price and the average retail price are around \$400. Johanna cannot claim that the cleaner is not of acceptable quality because it doesn't perform like a \$700 vacuum cleaner.

### **What rights do I have to get my money back from my suppliers?**

You are not covered by the Consumer Guarantees Act when you buy materials for use in your manufacturing business or import goods to sell. Your rights against your suppliers are still covered by the Sale of Goods Act and the agreements in the contracts you make with your suppliers. You may want to check your contracts with suppliers to make sure that you will be able to get a refund if they have sold you faulty goods or materials.

### **Are all manufacturers liable under the Consumer Guarantees Act?**

All manufacturers of goods normally bought for personal or household use are liable under the Act. A manufacturer is defined as anyone who:

- Assembles, produces or processes goods
- Tells the public that they are the manufacturer of the goods or
- Attaches their brand or mark to goods.

e.g. A New Zealand company labels imported tomatoes with their own company name.

### **Are all importers liable under the Consumer Guarantees Act?**

Importers will be liable under the Act when they import or distribute goods normally bought for personal or household use that are manufactured by a foreign manufacturer who does not have a place of business in New Zealand.

### **What if the consumer and I can't agree?**

If you can't agree with a consumer over something that is covered by this Act, you or the consumer can take the case to the Disputes Tribunal or to court.

The Disputes Tribunal can hear cases where the amount in dispute is up to \$3000. If both of you agree the Tribunal can hear claims up to \$5000.

The Tribunal will consider the Consumer Guarantees Act and the merits and justice of the case. There are no lawyers in the Tribunal. You put your own

case. The referee will encourage a negotiated settlement. If this is not possible the referee will make a decision that is binding.

It costs you \$10 for claims of under \$1000 and \$20 for claims of \$1000 or more.