
A GUIDE FOR MANUFACTURERS AND IMPORTERS

This is a guide to the Consumer Guarantees Act for manufacturers and importers supplying consumer goods. Information for retailers is available in Business Note *Consumer Guarantees Act – A Guide for Retailers*. Information on services is available in Business Note *Consumer Guarantees Act – A Guide for Tradespeople and Service Providers*.

The Consumer Guarantees Act 1993 sets out:

- guarantees that goods and services must meet when sold by someone in trade
- remedies that either the seller, manufacturer, importer or service provider is required to provide if a guarantee is not met.

Under the Act, goods must meet the guarantees of:

- acceptable quality
- fitness for a particular purpose
- matching the description
- matching the sample or model
- reasonable price (when the price is not set)
- right to sell the goods.

If a guarantee is not met, the retailer or the manufacturer may be required to provide a remedy to the consumer to put the problem right.

Guarantees affecting manufacturers

Manufacturers may be required to provide a remedy to the consumer when:

- goods fail to meet the guarantee of acceptable quality
- goods fail to meet the guarantee of matching description
- spare parts or repair facilities are not available
- they fail to carry out obligations set out in any express or written warranty provided to the consumer.

Who is a manufacturer?

A manufacturer is defined as anyone who:

- assembles, produces or processes goods
- tells the public that they are the manufacturer of the goods
- attaches their brand or mark to goods
- imports or distributes goods that are manufactured by a foreign manufacturer who does not have a place of business in New Zealand.

Note The responsibility for **parallel imported goods** – eg, *brand name jeans imported by retailer from an overseas source, lies with the importer.*

The local licence holder for the brand, who was not involved in the importation of the goods, is not responsible to the consumer if the goods are faulty. The consumer will have to seek a remedy from the retailer who imported those particular goods. The local licence holder is only responsible for goods that they import or distribute.

Goods covered by the Act

The Consumer Guarantees Act covers all goods sold by a supplier in trade that are ordinarily acquired for domestic, personal or household use. The definition of "supplier" includes a person in trade selling goods on behalf of someone not in trade.

This also includes:

- second-hand goods sold in trade
- goods generally used for personal, domestic or household use that are hired out, rented, leased or bought on hire purchase
- free items that you or the retailer give away when a consumer purchases goods
- goods sold to a business if the goods are the type normally supplied for personal, domestic or household use – *eg, dishwashing liquid and tea towels bought for the office kitchen are covered by the Act.*

Goods not covered by the Act

This includes goods:

- ordinarily acquired for business use – *eg, milking shed equipment, plant machinery*
- used in a manufacturing process
- that will be on-sold – *eg, the Act does not apply to goods bought for stock by a retailer*
- sold by auction
- sold by competitive tender
- sold by a charity where the sale proceeds directly benefit the consumer
- real property – *eg, house or land, although materials bought to build a house will be covered.*

Contracting out of the Act

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 (see page 4).

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. In this case the manufacturer or importer will also not be liable under the Act.

Note The retailer or supplier must contract out in writing.

From 8 July 2003, the Consumer Guarantees Act applies to

- Electricity
- Gas
- Water
- computer software

This means that from 8 July 2003 you must meet the guarantees contained in the Consumer Guarantees Act when you supply these goods to consumers.

WHAT GUARANTEES AFFECT MANUFACTURERS?

Manufacturers must comply with two of the guarantees that also affect retailers, as well as comply with two guarantees specific to manufacturers.

The guarantees are:

- goods must be of acceptable quality
- goods must match their description
- repair facilities and spare parts must be reasonably available for a reasonable time
- you must meet any obligation set out in any express or written warranty you give with the goods about their performance and the availability of spare parts or replacement goods.

1 Acceptable quality

Acceptable quality means that the goods must be:

- fit for the purposes goods of that type are normally used for – *eg, a toaster must be able to toast bread*
- acceptable in finish and appearance – *eg, a new toaster should be free of scratches*
- free from minor defects – *eg, the timer knob on the toaster should not fall off when it is used for the first time*
- safe – *eg, the toaster should not overheat*
- durable – *eg, the toaster must function for a reasonable time after it was bought without breaking down.*

There is a test for deciding whether goods meet acceptable quality. It is called the “reasonable consumer acceptable quality” test.

Test

Would a reasonable consumer find the goods acceptable taking into account:

- the nature of the goods
- the price paid
- any information on the goods or the package
- any statement you made about the goods
- any other relevant circumstances.

Nature of the goods

A reasonable consumer will have different expectations depending on the nature of the goods.

Eg, a consumer will expect a toaster made of higher quality materials and with more features to last longer and be of better quality than a toaster made of less durable materials.

Price paid

Price will be relevant when a consumer has paid a very high or very low price for the goods. A reasonable consumer will expect goods that are expensive to be of higher quality than goods that are cheap.

Eg, within the normal range of prices for a toaster there will be a standard quality that a reasonable consumer can expect; for instance, the toaster will carry out its functions, the knobs will be secure and it will be made of good quality material.

Information on the goods or the package

The goods will carry out the function shown on the package – *eg, the box the toaster came in shows a defroster function.*

Statements made about the goods in advertising or display

You will not be liable for goods that fail the guarantees only because of something said about them by a retailer.

What if the consumer has caused the problem?

Sometimes goods will become faulty as a result of misuse or abuse by the consumer. In this situation, the consumer cannot make a claim under the guarantee of acceptable quality.

You will not be liable if a consumer has:

- used the goods in a way that is different from the way a reasonable consumer would use the goods and this has caused the problem – *eg, Mereana uses her baby stroller to move some concrete blocks because she doesn't have a wheelbarrow and the seat fabric rips*
- used the goods far more often than a reasonable consumer would expect to use the goods and this has caused the problem.

Other relevant circumstances

Eg, the consumer installs a log-burner incorrectly and this causes the fault. You will not be liable in these circumstances.

2 Goods sold by description

Many goods are sold with a description of some sort – eg, *100% cotton, free-range eggs, recycled paper, toughened steel blade*.

Goods must meet any description given with them. This includes the descriptions that you (or someone on your behalf) put on packaging and labels or use in advertising.

Note You will not be liable to the consumer if goods fail this guarantee because of a description provided independently by a retailer.

3 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.

Note This responsibility does not apply to second-hand goods, unless they are being sold in New Zealand for the first time – eg, *a second-hand car imported from Japan by a dealer and sold in New Zealand for the first time will be covered*.

What does reasonably available mean?

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

Eg, high-use goods such as appliances and cars will have parts that often need replacement – toaster elements, fanbelts, brake pads.

Most consumers would expect these parts to be immediately available in major centres. In our view, parts that are less likely to need replacement may be considered reasonably available if they are stored in selected centres only and there is a short delay in getting them to a consumer.

What is a reasonable period of time?

The guarantee says that spare parts and repair facilities must 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.

Eg, 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.

Contracting out

You can contract out of the provisions about spare parts and repairs by telling customers:

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

Note You must make sure that every person buying your goods is told this before they buy. This will mean making sure that the consumer receives the warning from the retailer or supplier of the goods.

4 Manufacturers' warranties

You may offer your own warranty or guarantee with the products you manufacture or import. This is called an express warranty and it is additional to the guarantees given in the Consumer Guarantees Act. The Act requires you to honour any express warranties you give. A consumer can claim compensation from you if you fail to honour an express warranty (see page 5).

Note An express warranty does not replace or override the guarantees given in the Act. If the goods are sold while still under an express warranty the new owner will be able to make a claim under that warranty. This applies to goods sold to a consumer by a trader or in a private sale, but not at auction.

RIGHTS AND REMEDIES AVAILABLE TO CONSUMERS

1 Remedy of compensation

A consumer can seek compensation from you if you breach any of the guarantees specific to manufacturers and importers set out 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.

Eg, Linda buys a new fridge-freezer and discovers that the auto-defrost doesn't work. Linda paid \$1,700 for the fridge-freezer. Other models that don't have auto-defrost cost \$1,500. Linda claims \$200 from the manufacturers.

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

Eg, Linda paid \$1,700 for her fridge-freezer but the average retail price was \$1,600. Linda will only be able to claim the difference between the reduced value and \$1,600.

What if...

...the consumer no longer has the goods?
They cannot ask you for compensation.

...the person making a claim received the goods as a gift?
They have the same right to claim under the Act as the person who bought the goods.

...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 a retailer so are likely to claim from you. If they bought the goods from a retailer, they will have the choice of claiming from you or the retailer.

...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.
Eg, a carpet has a shading problem. The manufacturer pays compensation to the home-owner 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.

...the consumer thinks 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.

Eg, 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 vacuum cleaner normally sold for \$700.

2 Remedy where there is an express warranty

The consumer must give you the chance to repair or replace the goods if your express warranty promises that the goods will be repaired or replaced when a problem arises. But the consumer can claim compensation from you if you refuse to repair or replace the goods or do not do so within a reasonable time.

What if the express warranty has expired?
Your obligation to the consumer will depend on whether the length of the warranty sufficiently covers the period that a reasonable consumer would expect the goods to be of acceptable quality – *eg, you may still have an obligation to a consumer who has a problem with a stove six months after the 12-month warranty expired.* In our view, the reasonable consumer would expect a stove to be durable and free of defect longer than 12 months. In the absence of an express warranty you may be liable to provide compensation.

Exceptions to the right to a remedy
The consumer will have no right to seek a remedy from you if the goods fail to comply with the guarantee of acceptable quality only because of:

- an act, omission or representation made by someone other than you or your agent – *eg, the retailer installs a washing machine and scratches the side panel*
- a cause outside human control occurring after the goods left your control – *eg, a stereo is damaged by flood waters while in a retail store*
- the price charged by the retailer is higher than the recommended retail price or the average retail price.

Nor can the consumer seek compensation under the *guarantee of description* because of:

- an act, omission or representation made by someone other than you or your agent
- a cause outside human control occurring after the goods left your control.

EXTRA LOSS OR DAMAGE (CONSEQUENTIAL LOSS)

Extra loss is the damage to the goods or to other property directly caused by a fault with the goods. This extra loss is called consequential loss. The Act allows the consumer to recover compensation from you for this loss.

Eg, a video with a fault causes damage to a videotape. The damage to the tape is a consequence of the fault. The consumer can ask you to compensate them for the loss of the tape.

Is there a limit to my responsibility?

Yes. Your responsibility is usually limited to loss or damage that you could reasonably foresee (predict) would arise from a fault with the goods. You may not be responsible for losses that could not be reasonably predicted.

Eg, Simon recently bought a new car which is leaking a lot of oil over his driveway. A neighbour's dog runs through the oil into Simon's house, and makes marks all over the new carpet. You may not have to pay for the carpet to be cleaned, as it could not be predicted that a dog would run through the oil and into Simon's house.

BE AWARE

You may not be responsible for a loss that you could reasonably expect the consumer to limit or prevent – *eg, Simon could see that the car was leaking oil over the driveway but didn't move the car into the garage or attempt to clean up the oil stains.*

Amount of compensation for loss

Compensation for damage is based on the value of the goods at the time of loss. To work out a reasonable value, you should consider the age and condition of the goods before the loss.

Eg, laundry vinyl ruined by a faulty washing machine flooding is twenty years old and the consumer was going to replace it in another few months anyway. The compensation will take into account the age and condition of the vinyl.

Can I contract out of the responsibility for consequential loss?

No, unless the retailer exercised a right to contract out of the Consumer Guarantees Act at the time of sale. In any other situation you may be breaching the Fair Trading Act by misleading the consumer about their legal right to be compensated for consequential loss.

FROM THE COURTS

A faulty electric blanket started a fire which caused extensive damage to the consumer's home. The consumer took an action under the Consumer Guarantees Act, and the law of negligence, to be compensated for the damage to the home as well as for the inconvenience and distress. The consumer's action was against both the retailer and the manufacturer. The judge awarded compensation for both the damage to the house and for distress (although the amount sought for distress was reduced) against both the supplier and the manufacturer. However, the court found that the contract of sale between the manufacturer and the supplier allocated liability to the manufacturer.

RETAILERS' OBLIGATIONS AND WHERE YOU FIT IN

Who can the consumer claim from if goods are not of acceptable quality or don't comply with their 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. Consumers may also come to you because the retailer who sold them the goods has gone out of business. See page 5 for more information.

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 to the retailer instead of you. The Fair Trading Act says that you must not mislead a consumer about their rights. If you breach the Fair Trading Act you may be liable for a fine of up to \$60,000 or \$200,000.

What if I sell goods directly to consumers?

If you sell goods directly to consumers – *eg, through a factory shop* – you will be considered to be a supplier, with the same obligations under the Act as a retailer.

Do I have to include the retailer's margin in the compensation I pay?

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.

CHECKLIST

Guarantees affecting manufacturer/importer	Guarantees affecting retailers
<ul style="list-style-type: none"> • Guarantee of acceptable quality • Guarantee that goods match their description • Guarantee that spare parts and repair facilities will be available • Guarantee that manufacturer/importer will meet obligations set out in express or written warranty 	<ul style="list-style-type: none"> • Guarantee of acceptable quality • Guarantee that goods match their description • Guarantee that goods match the sample or model they were sold from • Guarantee that goods are fit for their particular purpose • Guarantee that goods are sold at a reasonable price (where no price is given or agreed) • Guarantee of title
Remedy from manufacturers	Remedy from retailers
<p>Where there is an express/written warranty you are required to provide the consumer with a remedy as set out in the warranty (usually repair or replacement).</p> <p>No written warranty The consumer can claim compensation.</p> <p>In both circumstances the consumer may also claim for consequential loss.</p>	<p>Minor/repairable fault retailer can choose:</p> <ul style="list-style-type: none"> • repair • replacement with identical goods • refund <p>and the consumer can claim for consequential loss.</p> <p>Major/serious fault consumer can choose:</p> <ul style="list-style-type: none"> • to reject goods and get a: <ul style="list-style-type: none"> – refund, or – replacement with goods of similar value and type, or • to keep goods and ask for compensation. <p>The consumer can also claim for consequential loss.</p>

GENERAL QUESTIONS

What if the consumer and I can't agree?

If you can't agree with a consumer about a problem covered by this Act, either you or the consumer can take the case to the Disputes Tribunal or to court. For more information about the operation of the Disputes Tribunal contact your nearest District Court.

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 covered by either the Sale of Goods Act and/or the agreements in the contracts you make with your suppliers. You may want to check your contracts to make sure that you will be able to claim for compensation if they have sold you faulty goods or materials.

How long does the consumer have to complain about the goods?

The consumer has six years from the time the problem appears to take legal action. A long delay in complaining may affect your responsibilities to the consumer, or make it difficult to prove the problem with the goods. We recommend that consumers advise you of a problem as soon as possible after the fault occurs.

Related Ministry Resources:

Consumer Guarantees Act – A Guide for Retailers
Consumer Guarantees Act – A Guide for Tradespeople and Service Providers

For more information you may wish to contact:

A lawyer

Trader organisations

Citizens Advice Bureau

The purpose of this booklet is to provide a general explanation on the law relating to the purchases of motor vehicles. It is not intended as a source of specialist legal advice. You may wish to contact a lawyer for further advice. The Ministry does not accept any responsibility for the manner in which this information is interpreted or for the consequences of relying on it.

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PO BOX 1473 • WELLINGTON • NEW ZEALAND

www.consumeraffairs.govt.nz

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MANATŪ KAIHOKOHOKO