

The Consumer Guarantees Act - Services -



A Guide for Consumers



MINISTRY OF CONSUMER AFFAIRS
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Watch your language

Definitions and terms used in this booklet:

Consumer: a person who buys goods or services generally for personal, domestic or household use.

Guarantee: a promise.

Remedy: an action taken by someone to fix a problem – *eg, a trader fixing a poor quality job is your remedy if the service was not provided with reasonable care and skill.*

Services: things that are done for you – *eg, dental work, plumbing, electrical repairs, lawyer's services.*

Trader: term used for someone in trade who provides services to you, the consumer – *eg, plumber, hairdresser.*



From the courts

This sign lets you know that a case about the Act has been taken to a court. We tell you what the judge said about different words or phrases in the Act. If **you** have a problem with services you don't have to take it to court to fix it. See page 18 of this booklet to find out where to go next when you and a trader can't agree.

The Ministry of Consumer Affairs has produced this booklet as a general guide for consumers about the Consumer Guarantees Act.

The booklet sets out the Ministry's interpretation of the Act. The booklet should not be used as a substitute for specialist legal advice.

What is the Consumer Guarantees Act?

The Consumer Guarantees Act sets out:

- **guarantees** that goods and services must meet when sold by **someone in trade** and
- **remedies** if a guarantee is not met.

This booklet covers services. Goods are covered in our booklet *The Consumer Guarantees Act – Goods*.

Services must be:

- provided with reasonable care and skill
- fit for their particular purpose
- completed within a reasonable time (when no time is set)
- provided at a reasonable price (when no price is set).

If a guarantee is not met you may have rights against the trader for a **remedy** to put the problem right.

Services covered by the Act



- Services which are ordinarily done for personal or household use – *eg, car repairs, haircuts, dry cleaning, painting or building a house, lawyer's services.*
- A service where a consumer contracts a trader to sell an item on their behalf – *eg, a boat dealer, recycled clothing trader.*

From 8 July 2003, the Consumer Guarantees Act applies to services relating to the supply of electricity, telecommunications, gas, water, and the removal of wastewater.

This means that from 8 July 2003, any services supplied by your electricity, gas, telephone, water company or internet service provider must meet the guarantees under the Act. You can seek a remedy where these services fail to meet any of the guarantees.

Eg, your electricity, gas, telecommunications or water company must supply their services using reasonable skill and care.

Suppliers must use reasonable care and skill when reading meters and sending bills.



Be aware

This applies not just to the company you have a contract with, but also to any trader who supplies you with services - *eg, they are sub-contracted by another company to supply these services to consumers.*



Be aware

The Act applies to line services supplied to you even when you don't have a contract with the lines company – *eg, an electricity lines company is responsible for maintaining the lines and the power poles. They must use reasonable skill and care in carrying out these services.*

Services not covered by the Act

- Services ordinarily bought for **commercial** use – *eg, installation of farm irrigation system, repairing machinery.*
- Services that are gifted.
- Services that are provided for by paying a statutory fee – *eg, rates.*
- Services bought **before** 1 April 1994.
- Where the service has not been supplied at all.





Be aware

The trader can opt out of the Act when you buy personal or domestic services for a **business use**. This is called “contracting out”.



If the trader wishes to contract out of the Act, this must be done in writing at the time you make the agreement to buy the services – *eg, you contract with a trader to replace a small window in your*

office. The trader contracts out of the Act by advising you in the written quote.

What are my rights if the Act does not apply?

If the Act does not cover you and a service goes wrong, your rights may exist either in the terms of your contract or the **common law** rules for contracts. The common law (also called case law) is the rules and remedies made by judges when deciding disputes. There are common law rules in New Zealand which are similar to the guarantees in the Consumer Guarantees Act – *eg, work must be done with due care and work must be done in a reasonable time if a time has not been agreed.*

For more information about your remedies when there is a problem with a commercial service see our factsheet *When Can I Cancel a Contract?* If the trader has made a false or misleading statement about the service they provided, you may have a remedy under the Contractual Remedies Act or the Fair Trading Act.

See our factsheets *Fair Trading Act* and *When Can I Cancel a Contract?*

Guarantees for services

Reasonable care and skill

This generally means that any work done for you must be at least as good as the work of a competent person with average skills and experience in that type of work.

Eg, you hire someone to paint your house. Before starting the job, the painter does not remove all of the old flaking paint and six months later the new paint starts to flake. You talk to other house painters. They all say that, in their view, the painter did not use reasonable skill when painting your house.



Be aware

Reasonable skill is about the trader applying their technical knowledge to do the job you have asked of them. This is different from taking **reasonable care** – *eg, if the painter you hired to paint your house knocks over a can of paint which spills over your newly paved driveway. The painter has not taken reasonable care.*



From the courts

In a recent case the courts decided that a trader cannot avoid their responsibility to take reasonable care and skill simply by having all-risks insurance.

Fit for particular purpose

After you have told the service provider what service you want from them, and they accept the job, they must make sure you get what you want.

Eg, if you let the hairdresser know that you want your hair dyed a particular colour and they agree to do it, they must give you hair of that colour.

However, there may be situations where it would not be appropriate to rely on discussions with a trader – *eg, it may not be reasonable to expect a receptionist in a large service company to know enough about the services to be able to say the service will do what you want.*



Be aware

You may not be able to rely on this guarantee or the guarantee of reasonable care and skill if you insist on a service



which the service provider informs you will not be fit for your purpose.

Eg, you ask the dry-cleaner to try to remove an old stain from a jacket. The cleaner tells you that the stain cannot come out without taking colour out of the jacket. You insist on the work being carried out. The dry-cleaner must still take reasonable care and skill but may not be responsible if the jacket colour is changed, as you had been told this could happen. If the dry-cleaner causes another problem such as the buttons melting, the cleaner may be held responsible for that problem.

The trader warned me about the job, will that limit their responsibility under the Act?

The extent of the trader's responsibility will depend on the type of warning given and whether a trader using a reasonable level of skill could do the job.

Eg, you decide to go to a dry-cleaner that has just opened in town to get your shirt dry-cleaned. The dry-cleaner tells you that they are not sure if the shirt will come out exactly the

same colour. You understand that the job should be straightforward because you've taken it to be dry-cleaned before. Later on you find out that the trader does not have much experience.

The trader cannot contract out of their responsibilities under the Act by giving you this type of warning. The trader appears to be trying to avoid their responsibility for taking reasonable care and skill because they are inexperienced in that trade.

What if I wasn't clear about what I wanted?

The trader may not be responsible under the guarantee of fitness for purpose if you did not say exactly what you wanted. Be aware that the trader must still provide the service with reasonable care and skill.

Eg, you take your car to a mechanic because it's not running properly. You tell the mechanic to go ahead and fix it. If you are not specific with your instructions to the mechanic, you will need to pay for all the work the mechanic does to your car.

What if I have chosen the cheapest option for the service?

Eg, you ask the painter to put only one top coat on your house because you are planning to sell it. The end result may be less fit for its normal purpose than if you had been prepared to pay to have the job completed properly.

The trader must still do the work to a reasonable standard of skill and care but there will be a lower expectation of the result of the work.

Completed within a reasonable time



Be aware

This guarantee **only** applies if you have not agreed on a completion time or date.

Where you and the service provider have not agreed on a time when the job must be finished, the service provider must complete the job within a reasonable time. “Reasonable” time will be judged on the time it takes a competent person who works in that type of job to complete the task.

Reasonable price



Be aware

This guarantee **only** applies when a price has not been agreed.

If a price for the work has not been discussed with the service provider you do not have to pay a price which is unreasonable in the circumstances.

Eg, you hire a plumber to repair a leaking tap. The price was not discussed because you were in a hurry. You have had plumbing work done before so you were expecting the bill to be approximately \$45. You are very surprised when a bill arrives for \$120. You find out that plumbers normally charge \$55 for this type of job so you only have to pay \$55.

We suggest you ask a trader for a written quote for work you want done, particularly for difficult or expensive jobs.

Your rights and remedies

If you receive a service that fails to meet one of the guarantees for services you have the following rights.

Remedies if the problem is serious or cannot be fixed

Eg, your hairdresser cuts your hair too short without your approval.



You can cancel the contract for the service and refuse to pay for the work done. If you have already paid the service provider you may be able to get some or all of your money back. The amount you can ask for will depend on whether some of the service provided was satisfactory.

Eg, your hairdresser has permed and cut your hair. The cut is good but the perm has 'fallen out' after a day. In this situation you should pay for the cut but not for the perm as another hairdresser will not need to recut your hair to fix the problem.

What other problems can be serious?

A serious fault with a service can also be one where:

- the product from a service is unsafe – *eg, the electrician who has wired your new kitchen has made the electrical outlets unsafe to use*



- the product of the service is substantially unfit for the purpose that type of service is ordinarily provided for – *eg, your car engine has been reconditioned. You collect the car and head out of town on your summer holidays. Two kilometres down the road, the car breaks down with engine failure*
- a service which would not have been bought by a reasonable consumer if that consumer had been aware that such a fault would happen.

What if I am unhappy with the work done so far? Do I have to let the trader finish the job?

If the trader's work fails to meet a guarantee under the Act and the problem with the service is serious, you do not have to let the trader finish the job. In this situation **you** can choose to cancel the contract.

What are my rights if the trader walks off the job half way through?

This is a breach of contract by the trader but is not covered by guarantees under the Consumer Guarantees Act. You may have the right to cancel the contract. For more information about your remedies in this situation see our factsheet *When Can I Cancel a Contract?*

Is the trader responsible if a guarantee has been breached due to an event outside their control?

No.

Eg, it takes a reasonable painter three weeks to complete a house-painting job but your painter has now taken four weeks. The sole reason for the delay has been the weather which is outside the painter's control.

Remedies if the problem can be fixed and is not serious



Eg, your shoe repairer has not put enough glue on shoes that you have had resoled.

You **must** give the trader who did the job for you an opportunity to fix the problem.

This should be done at no cost to you. If they refuse or take more than a reasonable time to fix it **or** the problem is not fixed, you have two choices:

- get someone else to fix it and claim the cost from the first trader, **or**

- cancel the contract for service and refuse to pay for the work done, or pay less than the agreed price. If you have already paid, you may be able to get some or all of your money back.

How many opportunities do I need to give the trader to fix the problem?

You need to give the trader only **one** opportunity to fix the problem if it is a minor problem.

What if the problem needs to be fixed urgently?

Eg, you hire an electrician to travel to your holiday home to install a new stove. On your next visit you find that the stove is not working because the wiring job was not done properly. You desperately need the stove and can't wait for the electrician to come back to fix the job.

If the problem with the service is minor, you must give the trader an opportunity to fix it within a reasonable time. If you can't wait, we suggest you contact the trader straight away and explain what has happened. The trader could arrange for a local trader to repair the work.



Be aware

If you do not give the trader who originally did the job an opportunity to fix the problem first, they may not have to compensate you for the cost of the repair work.

We suggest you ask the trader who fixes the problem to provide information in writing about it and what was done to fix the problem. Keep the receipt and work record to take to the original trader.

If I do have to get someone else to fix the problem, who pays the second trader's bill?

We suggest you pay the second trader first. If you send the second trader's bill directly to the first trader it may be returned unpaid or ignored. When a repair to goods is involved, if the second trader is not paid for the work, they may keep the goods they have repaired until you pay the bill. This is called a **lien** (for more information about liens see our factsheet *Repair Problems*).

How do I claim the cost from the first trader?

If you have not yet paid the first trader's bill you can deduct the cost of the second repairer's work from the amount that you have to pay the first trader. You should write to the first trader to explain why the amount you are paying is different from their charge.

If you have paid the first trader in full and the trader will not refund the second repairer's cost, you may make a claim in the Disputes Tribunal to recover the cost of the repair work.

What if the materials or fittings the trader supplied are faulty?

If the trader has supplied materials as part of the job and you have been charged for them, the trader will be responsible for any faults in those materials. See our booklet *The Consumer Guarantees Act – Goods* for information about remedies for faulty goods.

Extra loss or damage (consequential loss)

Consequential loss is a loss (normally one that costs you money) that you suffer as a result (consequence) of something going wrong with the goods you bought or a service received.

The Consumer Guarantees Act allows you to claim compensation for consequential loss from a trader.



Eg, as a result of a faulty bathroom pipes repair, a plumber floods your home damaging hallway carpet. A service provider will be responsible for the cost of cleaning the carpet or meeting the replacement cost, if the damage is more severe.

You do have a duty to take reasonable steps to prevent further loss. So, if your household goods could have been saved from the flood by moving them to another room or outside, you may not be able to claim for the damage or loss.

Trader's liability for consequential loss

The service provider's responsibility is limited to loss or damage that could have been expected to result from the failure of the service.

A service provider is not liable for losses that are not foreseeable.

Eg, a repairer causes a flood in the laundry while working on your washing machine. The repairer may be liable for damage to the vinyl in the laundry. If water from the flood runs

outside, ruining a valuable Persian rug put out to air, this would be an unforeseeable loss.

A service provider might minimise their responsibility for consequential loss by offering a replacement while they fix the goods again.

Eg, a car that was towed had to be repaired again. This leaves you without transport. It may be worthwhile for the garage to supply a “loaner” vehicle to you while the car is being repaired. This will save you spending time and money hiring a car then trying to recover those costs from the garage.

Putting a value on consequential loss

Sometimes it is hard to put a “dollar figure” on the loss you have suffered because the damage has affected more than the goods themselves.

Eg, you have arranged for a carpet cleaning firm to clean your living room carpet. The process leaves small stains on one patch of the carpet. The stains cannot be removed.

Is the carpet cleaner liable for a “patch up” job or the cost of the carpet in that room?

This will depend on whether a “patched” carpet will compensate you properly. Compensation should put you into the position you would have been in if the job had been done properly. If the “patch” job does not do this, then the cleaner would be responsible for the cost of replacing the carpet.

If the matter went to a Disputes Tribunal, the Tribunal would take into account the expectations that you had of the carpet cleaner’s services and the age and wear of the carpet in deciding an appropriate level of compensation.

Can a trader contract out of the responsibility for consequential loss?

A trader cannot contract out of the Consumer Guarantees Act, except where they are selling goods or services to someone for use in their business.

A service provider cannot write a term into a service agreement that says that they will not be responsible for extra loss suffered.

If traders attempt to contract out of the Act when selling consumer goods or services, they may be breaching the Fair Trading Act by misleading you about your legal rights.

Taking the matter further

When you are unable to resolve the problem with the trader you could:

- see if there is a trade association that the trader belongs to. Some associations offer a complaints scheme to resolve disputes between customers and traders
- take a claim to the Disputes Tribunal. The Tribunal is an informal and relatively inexpensive way to resolve a complaint under the Act. You don't need a lawyer to take your claim to the Tribunal.

For more information about making a claim in the Disputes Tribunal see our factsheet *The Disputes Tribunal* or contact your nearest District Court.

Is there a time limit for taking action?

You have six years from the time the problem appears to take legal action.

Whether or not the trader has any responsibility under the Act will depend on the nature of the problem and whether it is reasonable in the circumstances.

A long delay in complaining may affect your remedies or make it difficult to prove the problem with the service. We recommend that you advise the trader of the problem as soon as possible so that the trader can record the complaint. For more information about making a complaint see our factsheet *Making a Customer Complaint*.

Related Ministry resources

- The Consumer Guarantees Act – Goods
- The Disputes Tribunal
- Fair Trading Act
- Making a Customer Complaint
- Repair Problems
- When Can I Cancel a Contract?

OR check out our website
www.consumeraffairs.govt.nz

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