

Consumer Protection

Booklet | Consumer Guarantees Act

Your consumer rights
(Goods)



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
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New Zealand Government

Watch your language

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

Goods: things we use – eg. food, clothing, furniture, cars.
“Goods” under the Consumer Guarantees Act includes pets.

Manufacturer: under the Act this term includes importers and distributors of goods brought into New Zealand.

Retailer: person or business that sells goods and services.

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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 goods. Services are covered in our booklet *Your consumer rights (Services)*.

Goods must meet the guarantees of:

- › acceptable quality
- › fitness for particular purpose
- › matching description
- › matching sample or demonstration model
- › the retailer having the right to sell goods
- › reasonable price (when the price is not set)
- › if the retailer arranges the delivery of the goods, the goods must be delivered undamaged and on time
- › manufacturers must ensure spare parts and repair facilities being available
- › acceptable quality in the supply of gas and electricity.

If a guarantee is not met you may have rights against the retailer (or in some cases the manufacturer) for a remedy to put the problem right.

If the problem is something that can be fixed, the retailer must provide a remedy. The retailer can choose to repair, replace or refund.

If the problem is something that can't be fixed or is major, you can reject the goods and choose between a refund or replacement. Or you can keep the goods and seek compensation for the reduction in the value of the goods.

In most cases which remedy you are entitled to will depend on how serious the problem is with the goods, and whether you are seeking a remedy from the retailer or manufacturer.

Goods covered by the Act:

- › goods (including second-hand goods) ordinarily bought for personal, domestic or household use – e.g. clothes, televisions, cars, groceries, water and computer software
- › goods ordinarily used for personal, domestic or household use that have been given to you (as a gift), hired, rented, leased or bought on hire purchase
- › free items given away by the retailer or manufacturer when you purchase goods.



BE AWARE

Goods that can equally be bought for both commercial and domestic use – e.g. stationery, pens, desks – will be covered by the Act.

Goods not covered by the Act:

- › goods not ordinarily bought for household or personal use – e.g. heavy machinery, and farming equipment
- › goods bought privately – e.g. from garage sales, school galas, and online private sellers
- › goods bought for re-sale or re-supply
- › real estate or land.

For example:

- 1) Sarah purchases a forklift to move around the garden statues and large pot planters in her garden. Forklifts are not the type of goods ordinarily purchased for personal, domestic or household use. So even though Sarah is using the forklift for her household use, the Act will not apply.

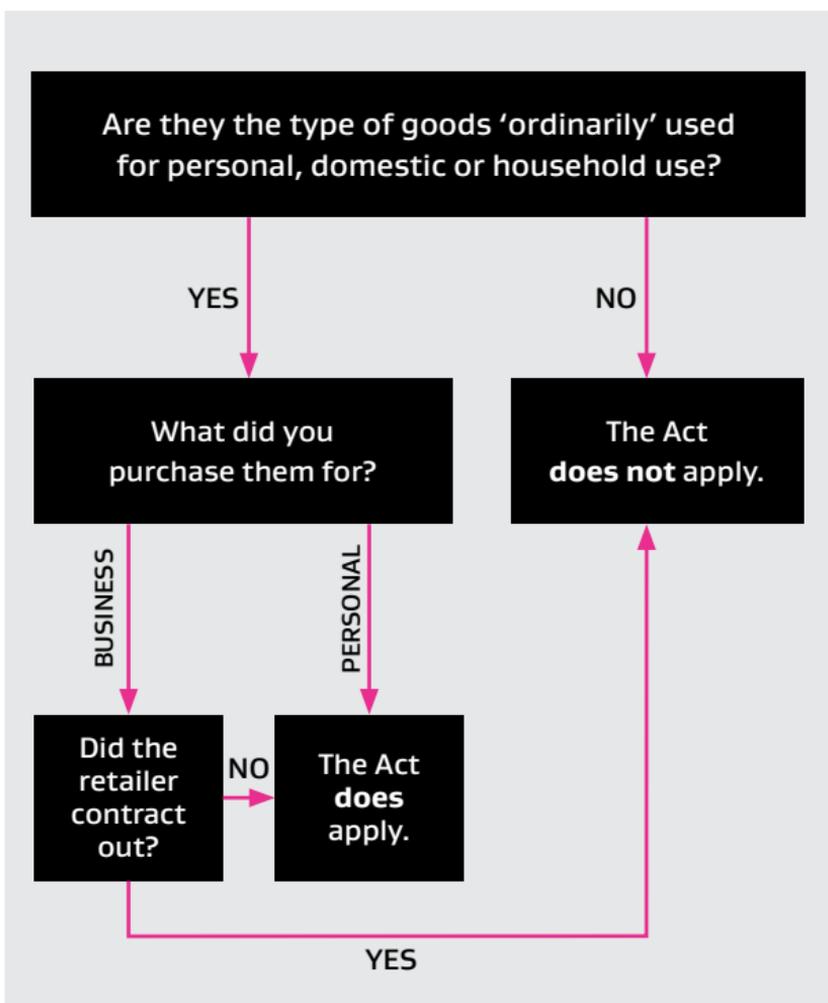


BE AWARE

The retailer can opt out (called “contract out”) of the Act if you have bought goods ordinarily bought for personal, domestic or household use for a business purpose.

- 2) Sarah has a computing business. She purchases mobile phones for her employees to use for work. Mobile phones are the type of goods ordinarily purchased for personal, domestic or household use. Therefore, the Act will apply.

Does the Consumer Guarantees Act apply?



However, when Sarah buys the phones the seller asks her to sign an agreement which contains a clause stating “The purchaser agrees that the goods are being purchased for a business purpose and are not subject to the Consumer Guarantees Act 1993.” The retailer can contract out of the Act by using this type of clause but both it and the buyer must be in business, both must agree to the contracting out and the contracting out must be fair and reasonable to both parties.

Do I have any rights if the Act does not apply?

If the goods are faulty your remedies may come under the Sale of Goods Act, or the terms and conditions of the agreement between you and the retailer. If a misrepresentation has been made to you about the goods, you may have rights under the Fair Trading Act or the Contractual Remedies Act.



Guarantees for goods

1) **Acceptable quality**

This means that goods must be:

- › fit for their normal purposes – e.g. a toaster must be able to toast bread
- › acceptable in finish and appearance – e.g. a new toaster should be free of scratches or have no screws sticking out
- › free from minor defects – e.g. the timer knob on the toaster should not fall off when used for the first time
- › safe – e.g. the toaster should not overheat
- › durable – e.g. the toaster must function for a reasonable time after you bought it without breaking down.

If the retailer or manufacturer arranges the goods to be delivered to you, the goods must arrive within the time agreed or within a reasonable time if not agreed. The goods must also be of acceptable quality when you receive them.

The test for deciding whether goods are of acceptable quality:

A **reasonable consumer** would find the goods acceptable taking into account:

- › the nature of the goods – e.g. a major appliance such as a fridge is expected to last longer than a pen
- › the price paid – e.g. a cheap second hand toaster is not expected to last as long as a top of the range one
- › any information on the goods or the package – e.g. the box for the toaster shows it has a special defroster function
- › any statement the retailer made about the goods – e.g. the retailer said that the crumb tray was easy to detach and clean
- › the nature of the supplier and the context in which the supplier supplies the goods – eg. one seller is a nationwide retail business which sells brand new toasters only while another seller is a second hand shop which sells reconditioned used toasters.

From the courts

In a case about a secondhand car the court decided that, just because the car had a current warrant of fitness did not mean that a retailer could claim the car was of acceptable quality.

A warrant of fitness is 'information about the goods'. It means that the vehicle was safe when it was inspected. There may still be other problems with the car – eg. in the engine – or that the car has become unsafe since the date of inspection.

Are secondhand goods covered by this guarantee?

Yes, but you need to consider their **age, price, condition** and the other factors on page 6 when deciding if they fail to meet the guarantee of acceptable quality.

For example:

Joanne buys a washing machine for \$250 from a secondhand store. The seller says it is two years old and is in good condition. The washing machine breaks down after two months. The store refuses to fix it because they say they only give a warranty for one month. A reasonable consumer might expect to get more than two months use from this machine. Joanne has the right to a remedy under the Act from the retailer.

What about goods sold as “seconds”?

The guarantee covers goods sold as “seconds” but if you were told about a fault at the time of the sale, you will not have the right to a remedy for the fault you were told about.

What about goods which I rent or lease?

These are covered too. When you hire or lease consumer goods they must also meet the guarantees under the Act.

For example:

- 1) Alan hires a water blaster to clean the slime off his driveway but the machine is lacking power and leaks. Alan is entitled to a remedy under the Act because the water blaster is not of acceptable quality.
- 2) Tourists Kristof and Ulrika hire a camper van to tour the South Island. Fifty kilometres out of Greymouth the camper van breaks down. When they finally get it to a mechanic he says that the van has not been properly maintained or serviced for some time. Kristof and Ulrika are entitled to a remedy.

2) Fit for particular purpose

This guarantee applies when:

- › you want the goods to do a specific job
- › you have told the retailer what you want the goods for; and
- › you rely on their knowledge.

Claims that retailers or manufacturers make about what goods can do may also be covered by this guarantee.

For example:

Rosalind is a keen diver and buys a watch which she is told will be suitable for diving. A couple of weeks later she goes for her first dive with her new watch, only to surface and see that the dial has filled with water. She may have a claim against the retailer or manufacturer who provided the information that it was suitable for diving.



BE AWARE

Goods must be fit for their normal purpose and any particular purpose you have told the retailer you want them for. For example, a car's normal purpose is for transporting people, but you have told the retailer you want to use the car to tow your boat (a particular purpose). The car in this case must be able to both transport people and tow a boat.

3) Matching description

If a description is given with the goods, it must be accurate. This guarantee is most important where goods are not available for inspection – e.g. when buying by online or from a television infomercial.

From the courts

A judge stated that the verbal statement by a car dealer that a car was a 'good one' was an element of the description of the goods.

When the car turned out to be a lemon, this amounted to a breach of the guarantee that goods must match their description.



4) Matching sample or demonstration model

If you buy the goods based on the model or sample the retailer has shown you, what you are supplied with must match with the sample.

If you buy something on the basis of a sample you have been shown, the supplier should give you a reasonable amount of time to compare the goods you receive with the sample.

For example:

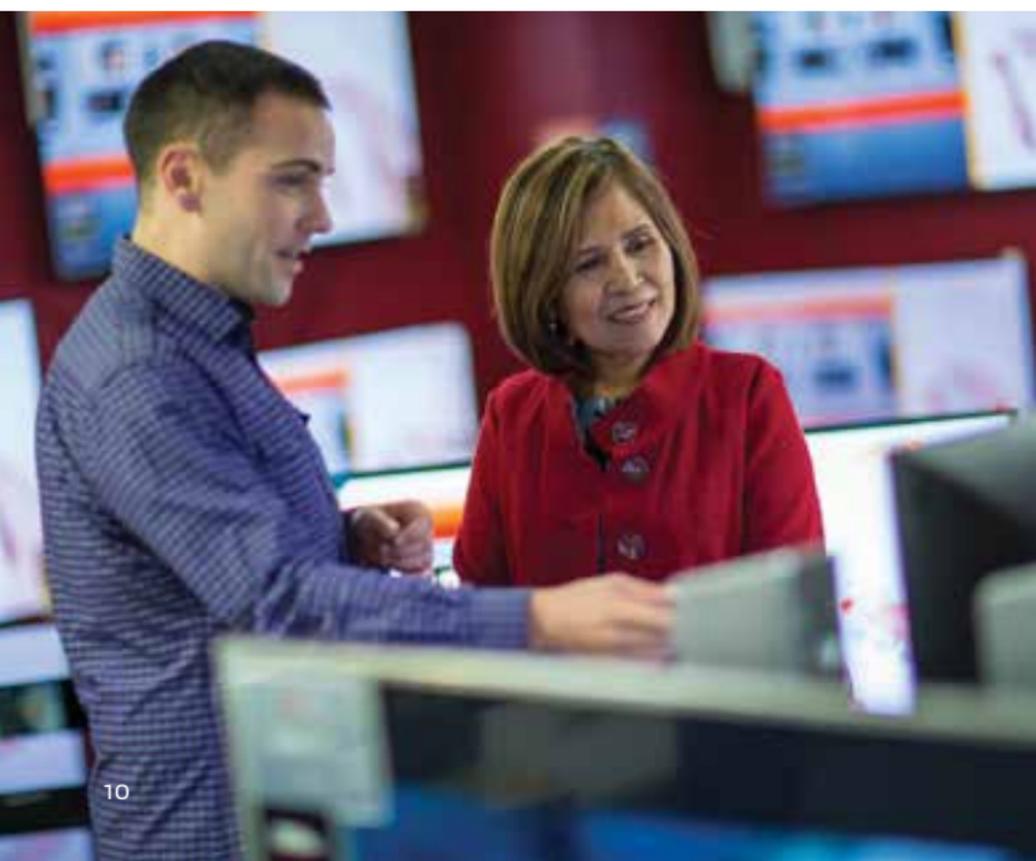
Julie gets shown a demonstration model of a television in the showroom of an appliance store and decides to buy it. When the television gets delivered a few days later, it must match the demonstration model she saw in the showroom.

However, you should note that reasonable allowances must be made for goods that are made of natural material. This takes into account variations occurring in such items as wood (the grain) or wool (for different batches of colour).

5) Right to sell the goods

When you buy goods, the retailer should be able to pass all the ownership rights or title in the goods to you. The retailer must tell you when someone else has rights over the goods.

You have the right to expect that no one will have any right to take the goods off you except if you bought the goods on credit and you default and the contract allows for repossession.



OR If you didn't pay the full price for the goods at the time you bought them AND if, before you bought the goods:

- › you were told about the possibility of the goods being taken off you if you do not pay the balance within a certain time; and
- › you were given a copy, or the relevant part of a document telling you about this.

This type of arrangement is sometimes called a "romalpa" or "a retention of title" clause.

For example:

Theresa orders a new rug and pays a deposit. The order form says that the retailer has the right to take the carpet back if the rest of the money is not paid within a month of the rug being delivered. The retailer must tell Theresa about this when she orders carpet and must give her a copy of the paperwork that explains this right. If they fail to do this, they have no right to take the rug back if Theresa does not pay the rest of the money.



BE AWARE

If you are buying a used vehicle from a motor vehicle retailer check the Consumer Information Notice on the vehicle. The following statement may be included on the front of the notice:

"There is a security interest registered over this motor vehicle".

If this is the case, then the person or company who has registered the security interest (eg. before money owing) may claim the car back from you.

6) Reasonable price

If a price for the goods is not set or agreed at the time you buy, the Act says you only have to pay a reasonable price. You can work out what a reasonable price is by finding out what other sellers in your area are charging for similar goods. We suggest you ask about the price before buying the goods.



BE AWARE

You cannot use this guarantee to recover money if you agree on the price for the goods and later find out that the price may be unreasonable.

7) Delivered on time

If the retailer or manufacturer arranges for goods to be delivered to you the goods must arrive at the time agreed, or if there was no time agreed then they must arrive within a reasonable time.

For example:

Dominic orders a new space heater in May. The retailer agrees to deliver it. August comes around and Dominic is still waiting for the heater to arrive. This is clearly not a reasonable time to wait.

8) Manufacturer's spare parts and repair facilities

The manufacturer or importer must take reasonable steps to provide spare parts and repair facilities (a place that can fix your goods) for a reasonable time after you purchase the goods. The manufacturer or importer can contract out of this guarantee by letting you know at the time you buy the goods that repair facilities and spare parts are not available.

For example:

Richard drops his digital camera which he bought new 12 months ago. He contacts the importer and asks where he can get it repaired. They say that they no longer supply parts for that model of camera. A reasonable consumer is likely to expect a camera only one year old to be repairable. Richard may seek a remedy against the importer under the Act.

Manufacturer's guarantee/ warranty

The Act gives consumers the right to seek a remedy from the manufacturer whether or not the goods come with a manufacturer's warranty (referred to in the Act as an "express guarantee").

Manufacturers do not have to provide a written warranty with their goods. However, if they choose to do so, the Act says they must honour their obligations under that warranty.

Should I buy an extended warranty?

Not unless you are sure it will be useful. The Fair Trading Act requires that a person selling you an extended warranty must tell you both verbally and in writing what protection the extended warranty gives you on top of the rights you already have under the Consumer Guarantees Act.

AND if you buy an extended warranty you have five working days to change your mind and cancel it and get a refund.

AND the seller must tell you about this right to cancel both verbally and in writing and if they don't, you can cancel at any time even after five days have passed.

AND this law is enforced by the Commerce Commission so those who don't follow the rules can be fined or prosecuted.

See our website for further information on extended warranties:

www.consumerprotection.govt.nz/selling-extended-warranties

For example:

Douglas bought a plasma television three years ago for \$6,000. Yesterday the television stopped working.

When Douglas went back to the retailer he was told that he had no rights as the television was only under the manufacturer's warranty for 12 months, and that he should have bought an extended warranty which would have given him five years cover.

Douglas tells the retailer that a reasonable consumer would expect more than three years use from a \$6,000 television and requires the retailer to provide a remedy under the Act.

g) Acceptable quality in supply of gas and electricity

There is a guarantee that the supply of gas by a gas retailer and the supply of electricity by an electricity retailer to a consumer is of an acceptable quality.

- › the supply of gas or electricity is as safe as a reasonable consumer would expect it to be
- › the supply of gas or electricity to a place is as reliable as a reasonable consumer would expect a supply to that place to be
- › the quality of the gas or electricity can be consistently used for the things that a reasonable consumer would expect to use gas or electricity for.

The test for deciding whether gas or electricity are of acceptable quality

A reasonable consumer would consider that the:

- › supply of gas or electricity may be:
 - affected by emergencies, or events outside the control of the retailer or the person supplying the gas or electricity
 - interrupted for safety, maintenance or other technical reasons
- › quality of gas or electricity supplied may fluctuate, but fluctuation is acceptable only within the ranges of gas and electricity regulations
- › reliability and quality of supply may
 - vary depending on where the gas or electricity is supplied
 - be related to price

The guarantee of acceptable quality in regard to gas and electricity does not apply:

- › if the gas or electricity has been used by a consumer in an unreasonable manner or to an unreasonable extent
- › the retailer specifically explained problems with the supply but the consumer accepted the supply on that basis.

Remedies

Do I have to deal with the manufacturer?

Where goods are not of acceptable quality, or do not comply with the manufacturer's description, you have the right to choose whether to go to the manufacturer or retailer for a remedy.

If you choose to claim a remedy from the retailer, the retailer must not tell you that you have to go back to the manufacturer, or that you have to claim under a manufacturer's warranty.

Likewise if you choose to go to the manufacturer they should not tell you to go to the retailer.

If either of them do this, they may be misleading you about your rights and breaching the Fair Trading Act.

Remedies from retailers

If the goods are not of acceptable quality, not fit for a particular purpose, do not match the description or sample, the retailer does not have the right to sell the goods, or the goods are not delivered on time, then you may have a right to a remedy from the retailer.

If the fault can be remedied, you have to give the retailer the chance to put the problem right. The retailer can choose between:

- › repairing the goods
- › giving you an identical replacement
- › providing you with a refund if the retailer can't be reasonably expected to repair the goods – e.g. the cost of repairing the goods would be more than the price you paid for them.

Repair to be within a reasonable time

If the retailer chooses to repair the goods, the repair must be carried out within a reasonable time. To decide what a reasonable time is, consider how long it would normally take for goods of that type to be repaired. This includes the time taken for goods to be sent to and from a repairer or to get spare parts.

What if the retailer refuses, fails, or takes too long to repair the goods?

You can:

- › reject the goods and ask for your money back; or
- › reject the goods and ask for replacement goods if these are reasonably available to the retailer; or
- › take the goods somewhere else to be fixed and ask the retailer to cover the cost of this repair.



BE AWARE

You may not be able to recover the money you have paid someone else to repair the goods from a retailer unless:

- › you can show that the goods were faulty
- › you can prove that you gave the retailer the chance to remedy the problem and they refused, failed or took too long to do so, before you had the goods repaired elsewhere, and
- › the repair was necessary.

You can ask the person who repairs the goods to provide information in writing about the fault and what was done to fix it. Keep the receipt and work record.

What if the retailer repairs or replaces the goods but the problem is still not fixed or there are problems with the replacement?

If repair was not successful either because the retailer did not have the skill to do the job or the problem with the goods can't be fixed, or if replacement goods have the same or a similar problem, you may choose to reject the goods and seek either a refund or a replacement.

Can the retailer charge me for sending the goods away to the repairer?

No, not if the retailer accepts that the goods are faulty.

Can the retailer refuse to fix goods when I have altered them?

Yes, if this is what caused the fault. But the retailer may have to provide a remedy for a fault that is not related to your alteration.

If goods are replaced, is the replacement covered by the Act too?

Yes. The Act says that the same guarantees apply to replacement goods.

If the fault is serious or can't be remedied

If the problem with the goods can't be remedied by a repair or a replacement, or the problem is a serious one, you (not the retailer) can choose between:

- › rejecting the goods and asking for a:
 - refund, or
 - replacement if goods of the same type and similar value are reasonably available to the retailer
- › keeping the goods but asking for compensation to make up for the drop in value caused by the fault.

It is not the retailer's right to decide the remedy for a serious fault

Where faulty goods are replaced by the retailer they do not have the right to ask you to pay extra for the replacement or if they give you a refund they cannot deduct anything because you have had the use of goods for a period of time. This is so there is an incentive for retailers to sort out problems with goods as quickly as possible.

How do I know if a fault is serious?

A serious fault is one where the goods are:

- › unsafe – e.g. an electric blanket has faulty wiring
- › significantly different from the sample or description – e.g. the wallpaper you ordered is striped not plain
- › unfit for the particular purpose you wanted to use them for and they cannot be repaired or modified to make them do the job – e.g. a car that is not powerful enough to tow your boat
- › substantially unfit for their normal purpose
 - e.g. a rain coat that is not shower proof.

Other things you should consider when deciding whether a fault is serious are:

- › **How long** have you had the goods before they developed the fault? The shorter the time the more serious the fault.
- › **How much** did the goods cost? The more expensive they are the less acceptable any fault is.
- › **What claims** were made about the goods in the advertising, packaging, or by the seller?
- › **Other faults** – have there been any other faults with the goods? If yes, then this may make this fault more likely to be serious.

From the courts

The courts have decided that a fault might be considered serious when:



- > the cost of the repair is high compared to the overall price of the goods – eg. repairs of \$1,000 required to be done to a car that was bought for \$5,000
- > there are a number of small faults with the goods which on their own are minor but together may be seen as serious.

What if the retailer does not think it is a serious fault, but I do?

You may have to get a technical opinion from someone who knows about that type of good to support your view that the fault is serious.

Do I have to return the goods?

You usually need to return the goods before you can ask for a refund or replacement. The Act calls this “rejecting the goods”.



If you decide you would like to reject the goods, it is important that you follow the correct steps.

You need to advise the retailer of your intention to reject the goods and your reason for doing so. You can do this verbally or in writing. However, if the retailer is reluctant to accept the goods back, we recommend that you put the rejection in writing.

The Act says you must reject goods within a reasonable time of discovering the problem.

From the courts

Six months after a consumer bought a car, they took it to get a warrant of fitness.



The car failed its warrant due to rust in the chassis. The consumer spent the next few months negotiating with the retailer over repairs. They finally got fed up and told the retailer they wanted their money back. The court said that they should have rejected the car when it failed the warrant of fitness check. By waiting so long to reject it, they lost the right to do so.

To ensure you do not lose the right to reject goods, you should notify the retailer that you want your money back immediately. You may still negotiate remedies with the retailer after doing so.

What if returning the goods is difficult or expensive?

If the cost of returning the goods is significant then the retailer must collect them from you at their expense.

For example:

Debbie bought a king-sized bed which has a serious fault. It is too big for her to take back to the retailer and she doesn't want to pay for a furniture remover. If the goods had to be delivered to her in the first place due to their size, it is reasonable to expect that the retailer should collect them from her.

What if the retailer won't accept the rejection?

If the retailer won't accept your rejection of the goods, and refuses to take the goods back, you may have to go to a Disputes Tribunal to get your money back.

In a case about a seriously faulty secondhand car, a consumer had told a car dealer that they wanted to reject the car and get their money back, but the dealer refused and offered to repair it instead. The court decided that it would be reasonable for the consumer to hold on to the car (but not use it) until the dealer had made a refund.

Can I reject goods if they have already been repaired?

Your right to reject goods after a repair by the retailer has failed will depend on whether the fault is serious. The court has decided that if a consumer was not given enough information about the fault by the retailer at the time to realise the fault was serious, they may still have the right to reject the goods.



BE AWARE

You cannot reject goods when:

- › they have been disposed of, destroyed, lost, or damaged after delivery
- › they have been attached to other property and cannot be removed without damaging them – e.g. defective wallpaper – taking it down off the walls will damage it. If it is possible to remove the installed goods, you don't have to attempt this, you can ask the retailer to remove them
- › you have run out of time to reject.

Can the retailer take into account the use I've had from the goods and reduce my refund?

No. The Act says any refund must be of the amount paid.

Can the retailer make me accept a credit note or buy other goods from them instead of giving me a refund?

No. The Act does not allow a retailer to do this.

Can the retailer reduce my refund because I cannot return the goods in their original packaging?

No. The Act entitles you to a refund of the amount you paid. It is reasonable that packaging might be broken or thrown away by a consumer before a fault is discovered.

I paid for the goods with cash and a trade-in.

Can I get my trade-in back?

The Act says that your refund should be of the price paid, including a value for any trade-in. The retailer cannot insist you take back the trade-in goods; you can ask for the value of the trade-in instead.

The goods were supplied as part of a service.

Can I get a remedy for the faulty service as well as the faulty goods?

For example:

Barbara hires a dressmaker to make a wedding dress. The dress is not well made. The dress doesn't fit her well and the stitching is very uneven.

If your contract is one for both services (making the dress) and goods (the dress itself), you may have a right to remedies from the dressmaker for both the poor service and the faulty dress.

See our booklet *Your consumer rights (Services)* for more information about the guarantees covering services.

Remedies from manufacturers



You can sometimes choose a remedy from either the manufacturer of the goods or the retailer you bought the goods from. Going to the manufacturer is useful when the retailer has gone out of business or is unreasonable to deal with.

Guarantees checklist

You can go to the manufacturer/importer if:

- › the goods you bought are not of acceptable quality
- › the goods are different from a description given by the manufacturer
- › there are no spare parts or repairs available (and you were not told this when you bought the goods)
- › the manufacturer does not provide what is promised in their written warranty.

You can go to the retailer if:

- › the goods you bought are not of acceptable quality
- › the goods are different from a description given by the retailer
- › the goods don't match the sample or model you were shown
- › the goods aren't fit for their particular purpose
- › the goods are sold at an unreasonable price (when no price is given or agreed)
- › the retailer did not have the right to sell the goods
- › delivered goods did not arrive on time or within a reasonable time, or arrived damaged.

Remedies checklist

Retailer

A fault that is not serious retailer can choose:

- › repair
- › replacement with identical goods
- › refund.

You can claim for consequential loss (see page 28).

Major/serious fault consumer can choose:

- › to reject goods and get a:
 - refund
 - replacement with goods of similar value and type; or
- › to keep goods and ask for compensation. You can claim for consequential loss.

Manufacturer/Importer

With a written warranty:

- › your rights will be set out in the warranty (usually repair or replacement with identical goods); and
- › you can claim for consequential loss.

With no warranty:

- › you can claim compensation; and
- › you can claim for consequential loss.

What amount of compensation can I ask for?

Where the manufacturer does not provide a written warranty the Act provides a remedy of compensation when there is a fault with the goods.

The amount of compensation is based on the drop in value the fault has caused to the goods. In some cases a serious fault may mean the goods have no value as a result.

In this case your compensation would equal the purchase price. If the fault is only minor, compensation may be worked out by the cost of the replacement spare parts and repair. You do not have to accept an offer to replace or repair unless this suits you.

What if I bought the goods directly from the manufacturer?

Manufacturers and importers are considered to be retailers when they sell goods directly to consumers, for example in a factory outlet shop.

The 12 month written warranty with the goods just expired. Can I still get a remedy if they become faulty tomorrow?

The Act may still give you a right to a remedy against the manufacturer if the goods do not meet the guarantee of acceptable quality.

The replacement for the faulty goods has a new written warranty for only eight months

The manufacturer can choose the expiry date for a written warranty. But if the manufacturer led you to believe the replacement would come with a full warranty, you may assume the new warranty will be for the same term as the first one.



BE AWARE

Remember the Act may provide a remedy for a faulty replacement if the manufacturer has not given you a written warranty.

Remedies involving guarantee of acceptable quality of gas and electricity

Where there has been a breach of this guarantee a consumer has the same remedies as set out above, ie. for lesser defects and failures of substantial character. However with gas and electricity, it is unlikely that a failure can be remedied by the gas or electricity retailer 'repairing' or 'replacing' the gas or electricity.

The right to reject the supply of gas or electricity and ask for a refund is also unlikely to be appropriate. Therefore where there has been a breach of the guarantee of acceptable quality for gas and electricity a consumer will most likely seek compensation for any extra loss or damage which resulted from the breach. See page 28 for further information.

Consumers who have problems with their gas or electricity under the CGA are entitled to make a claim in a Disputes Tribunal or the court. However it's more likely they will make their complaint through the gas or electricity retailer's dispute resolution scheme. For further information see www.utilitiesdisputes.co.nz/

Extra loss or damage



Consequential loss

Consequential loss is loss, usually 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 retailer.

For example:

Debbie's freezer breaks down due to a fault while she is away mountain biking for the weekend. As a result of the breakdown all the food in the freezer goes off. The retailer will be responsible for the cost of replacing the food lost as a result of the fault.



BE AWARE

You do have a duty to take reasonable steps to prevent further loss. So, if food could have been saved in time by moving it to another freezer, you would not be able to claim for loss of the food.

Retailer's liability for consequential loss

A retailer might minimise their liability for consequential loss by offering a replacement if your goods are being repaired and this repair will take some time.

For example:

Teresa's family washing has to be done at a laundrette some distance away while the repairer fixes a fault with her washing machine. It may be easier for the retailer to supply a replacement washing machine while hers is being repaired. If they do not she can claim back the cost of the travel and the extra costs of the laundrette.

The retailer's responsibility is not endless. It is limited to loss or damage that could have been expected to result from the product's failure. A retailer is not liable for losses that are not foreseeable.

For example:

A fault with Kevin's new dishwasher causes it to flood his kitchen, causing damage to the flooring and some furniture. He can claim for this, but if the flood also results in his prize hairless cat getting wet and catching a cold Kevin cannot get compensation for the vet's bill.

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.

For example:

Trich has used a liquid cleaner in accordance with the instructions to remove a spaghetti bolognese stain on her new curtains. The cleaner has badly damaged one of the four curtains in her living room.

What is the retailer liable for? A “patch-up” job or the cost of replacing all the living room curtains?

This will depend on whether a “patched” curtain will compensate Trich properly. Will a new curtain match the others? Compensation should put Trich into the position she would have been in if the cleaner had worked – four clean matching curtains.

If the curtains were new the retailer may have to meet the cost of replacing all the curtains. If the curtains were well worn, the compensation would be less to reflect their wear and tear.

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

No. A retailer can’t contract out of the Consumer Guarantees Act, except where they are selling goods or services to someone for use in their business.

A retailer can’t write a term into a sales contract that says that they will not be responsible for extra loss suffered.

If retailers 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



I've tried everything but we just can't agree – what do I do now?

Where you are unable to resolve the problem with a retailer or manufacturer, you could 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 information about making a claim in the Disputes Tribunal see their website: www.disputestribunal.govt.nz/

For more general information on making a complaint, see our website: www.consumerprotection.govt.nz/report-or-resolve-a-problem/general-problems/

Is there a time limit for taking action?

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

A long delay in complaining may affect your remedies or make it difficult to prove the problem with the goods. It is recommended that you advise the retailer of the problem as soon as possible so that the retailer can record the complaint.

Consumer Protection

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