

Consumer Protection

Booklet | Consumer Guarantees Act

Your consumer rights
(Services)



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.

Services: worked carried out for personal or household use eg. car repairs, haircut or which a consumer contracts a trader to do, eg. sell goods on their behalf.

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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 services. Goods are covered in our booklet *Your consumer rights (Goods)*.

Services must meet the guarantees of being:

- › 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.

Services covered by the Act:

- › services which are ordinarily done for personal or household use – e.g. 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 – e.g. a boat dealer, recycled clothing trader.



BE AWARE

The Act can apply to more than one trader at a time – e.g. your gas company sub-contracts meter reading to another company. The meter reading company have to provide a service with reasonable care and skill.

Services not covered by the Act:

- › services ordinarily bought for commercial use
 - e.g. installation of farm irrigation system, repairing machinery
- › services that are gifted
- › services that are provided for by paying a statutory fee
 - e.g. rates.



BE AWARE

The trader can opt out of the Act if 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. In addition both you and the trader must be in business, both must agree to the contracting out and the contracting out be fair and reasonable to both parties.

What are my rights if the Act does not apply?

If the Act doesn't cover you and a service goes wrong, your rights may exist either in the terms of the contract you have or the common law rules for contracts.

Common law (or case law) are 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:

- › work must be done with due care and skill;
- › 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 website:

www.consumerprotection.govt.nz/for-business/buying-products-and-services-for-commercial-use/

Guarantees for services

1) Reasonable care and skill

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

For example:

Shelley hires someone to paint her house. Before starting the job, the painter does not remove all of the old paint. Six months later the new paint starts to flake. Shelley talks to other house painters. They all say that, in their view, the painter did not use reasonable skill when painting the house. Shelley has a right to a remedy.



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 – e.g. if the painter you hired to paint your house knocks over a can of paint which spills over your driveway, the painter has not taken reasonable care.

From the courts

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



2) 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 ask for.

For example:

Leslie asked for a jazz trio to play at her wedding. On the day of the wedding the band turns up and plays heavy rock. Under the guarantee of fit for particular purpose, Leslie has a right to get the problem fixed.

However, there may be times when it's not appropriate to rely solely on discussions with a service provider – e.g. it may be unreasonable to expect a receptionist in a large trucking company to know delivery times or freight loads of the company's trucks.



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.



For example:

Liz asks the dry-cleaner to try to remove an old mayonnaise stain from her jacket. The cleaner tells Liz that the stain has been there a while and can't come out without taking colour out of the jacket.

Liz, who likes to get her own way and won't take no for an answer, insists 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 Liz was told this could happen.

But 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.

For example:

Simon decides to go to a dry-cleaners that has just opened in town to get his favourite business shirt dry-cleaned. The dry-cleaner tells him that they are not sure if the shirt will come out exactly the same colour.

Simon's understanding is that the job should be straightforward because he's taken this shirt to be dry-cleaned before. Later on he finds 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 particular 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.

For example:

Efi takes his car to a mechanic because it's not running properly. He tells the mechanic to go ahead and fix it. As Efi wasn't specific with his instructions to the mechanic, he will need to pay for all the work the mechanic does to his car.

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

For example:

Kitty asks a painter to put only one top coat on her house because she is planning to sell it. The end result may be less fit for its normal purpose than if she had been prepared to pay to have the job completed properly.

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

3) Completed within a reasonable time

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 is judged on the time it takes a competent person who works in that type of job to complete the task.



BE AWARE

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

4) Reasonable price

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.

For example:

Josephine hires a plumber to repair a leaking tap. She didn't discuss the price as she was in a hurry. Josephine has had plumbing work done before and was expecting the bill to be about \$80. She was very surprised when a bill arrives for \$160.

Josephine finds out that other plumbers in her area normally charge \$70 for this type of job, so a reasonable price for her to pay is \$70.

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



BE AWARE

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

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

For example:

Frances' hairdresser cuts her hair too short without her 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.

For example:

Louise's hairdresser has permed and cut her hair. The cut is good but the perm has 'fallen out' after a day. In this situation Louise should pay for the cut but not for the perm. Another hairdresser will not need to recut her 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 – e.g. the electrician who has wired your new kitchen has made the electrical outlets unsafe to use

- › the product of the service is considerably unfit for the purpose that type of service is ordinarily provided for – e.g. 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.

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

No, they are not.

For example:

Brendon is getting his garden landscaped. On average, it takes a reasonable landscaper three weeks to finish a landscaping job. However, Brendon's landscaper has now taken four weeks.

The only reason for the delay has been the weather, which is outside the landscaper's control. Brendon will just have to be patient and cross his fingers for a bit of sunny weather.

Remedies if the problem is minor and can be fixed

For example:

Alison's sole of her shoe is coming away, so she takes it to a shoe repairer. However, a few days after picking her shoes up from the repairer and wearing them again, the sole comes away. The repairer has not put enough glue on her shoes.

You must give the trader who did the job 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?

For example:

Jimmy is an avid camper and hires an electrician to install a new stove in his caravan. On his next camping trip to Gore he finds that the stove is not working because the wiring job was not done properly.

Jimmy desperately needs a stove to heat his baked beans and is not able to get back home in order to have the electrician 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, you should 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.

You can 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 get someone else to fix the problem, who pays the second trader's bill?

You may need to 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. If fixing a problem with services includes goods, and 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 website:

www.consumerprotection.govt.nz/get-guidance/returns-refunds-and-repairs/getting-repairs/

How do I claim the cost from the first trader?

If you **haven't** 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 to 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 *Your consumer rights (Goods)* or our website for information about remedies for faulty goods.

Extra loss or damage



Consequential loss

Consequential loss is a loss, usually money, that you suffer as a 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.

For example:

Paul has faulty pipes in his bathroom repaired. But as a result of the repair, the plumber floods Paul's house, damaging the 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.

However, you also have a duty to take reasonable steps to prevent further loss. So, if Paul's household goods could have been saved from the damp carpet by moving them to another room or outside, Paul may not be able to claim for the damage or loss to those goods.

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.

For example:

Rihari calls a repairer to fix his washing machine. The repairer causes a flood in the laundry whilst working on the washing machine. The repairer may be liable for damage to the vinyl in the laundry. But 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.

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:

Saida has arranged for a carpet cleaning firm to clean her living room carpet. The process leaves small stains on one patch of the carpet. The stains can't 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 Saida properly. Compensation should put Saida in the position she would have been in if the job had been done properly. If the “patch-up” job doesn't 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 may take into account the expectations that Saida 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?

No. A trader cannot contract out of the Consumer Guarantees Act, except where they are selling goods or services to someone else for use in that person's business. See page 3.

A service provider cannot write a term into a service agreement that says that they will not be responsible for extra loss suffered. If a trader attempts to contract out of the Act when selling consumer goods or services, they may be breaching the Fair Trading Act by misleading a consumer about their legal rights.



Taking the matter further



What if the trader won't give me what I want?

The law gives you the general principles but in the real world things are often not as clear cut. There are lots of reasons why a trader may not give you what you are asking for.

Perhaps the trader doesn't accept that there is a problem, or thinks that you caused the problem. Perhaps the trader does not agree that the problem is serious and will only do a 'patch-up' job. Or perhaps the trader does not understand their obligations under the law.

Some suggestions to help resolve a dispute with a trader are:

- › give this booklet to the trader to read
- › talk to the manager, not just the staff at the counter
- › if the business has a head office, contact them
- › keep notes of any discussions you have with the trader
- › get a second opinion on the problem from another trader
- › write a letter describing the problem and the remedy you are asking for, and why you believe you are entitled to this remedy.

Sometimes, the key to resolving disputes can be by negotiation. Think about what the trader is offering you and ask yourself if this is a reasonable compromise.

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 trader, 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/resolve-a-problem

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 service. It is recommended that you advise the trader of the problem as soon as possible so that the trader can record the complaint. Keep a record of when you first complained.

For more general information about making a complaint see our website: www.consumerprotection.govt.nz/resolve-a-problem

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ISBN 978-1-851748-3 (print)

MB13927 | MBCA0005 | April 2017