

**Reprint  
as at 1 September 2017**



## **Frustrated Contracts Act 1944**

Public Act      1944 No 20  
Date of assent      5 December 1944  
Commencement      5 December 1944

Frustrated Contracts Act 1944: repealed, on 1 September 2017, by section 345(1)(f) of the Contract and Commercial Law Act 2017 (2017 No 5).

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### **An Act to amend the law relating to the frustration of contracts**

#### **1 Short Title**

This Act may be cited as the Frustrated Contracts Act 1944.

#### **2 Interpretation**

In this Act, **court** means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined.

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

Section 2: replaced, on 19 December 2002, by section 3 of the Frustrated Contracts Amendment Act 2002 (2002 No 81).

### **3 Adjustment of rights and liabilities of parties to frustrated contracts**

- (1) Where a contract governed by the law of New Zealand has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section 4, have effect in relation thereto.
- (2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as the time of discharge) shall, in the case of sums so paid, be recoverable from him or her as money received by him or her for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:  
provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him or her to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.
- (3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the last preceding subsection applies) before the time of discharge, there shall be recoverable from him or her by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular,—
  - (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him or her to any other party in pursuance of the contract and retained or recoverable by that party under the last preceding subsection; and
  - (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.
- (4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.
- (5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under

any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

- (6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

Compare: Law Reform (Frustrated Contracts) Act 1943 s 1 (Imp)

#### **4 Provision as to application of this Act**

- (1) This Act shall apply to contracts, whether made before or after the commencement of this Act, as respects which the time of discharge is on or after 1 November 1944, but not to contracts as respects which the time of discharge is before the said date.
- (2) This Act shall apply to contracts to which the Crown is a party in like manner as to contracts between subjects.
- (3) Where any contract to which this Act applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to the last preceding section of this Act to such extent (if any) as appears to the court to be consistent with the said provision.
- (4) Where it appears to the court that a part of any contract to which this Act applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat the last preceding section of this Act as only applicable to the remainder of that contract.
- (5) This Act shall not apply—
- (a) to any charter party, except a time charter party or a charter party by way of demise, or to any contract (other than a charter party) for the carriage of goods by sea; or
  - (b) to any contract of insurance, save as is provided by subsection (5) of the last preceding section; or
  - (c) to any contract to which section 9 of the Sale of Goods Act 1908 (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale,

or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

Compare: Law Reform (Frustrated Contracts) Act 1943 s 2 (Imp)

## **Reprints notes**

### **1    *General***

This is a reprint of the Frustrated Contracts Act 1944 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Contract and Commercial Law Act 2017 (2017 No 5): section 345(1)(f)  
Frustrated Contracts Amendment Act 2002 (2002 No 81)