

Reprint  
as at 1 March 2017



## Contractual Remedies Act 1979

Public Act 1979 No 11  
Date of assent 6 August 1979  
Commencement see section 1(2)

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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.**

**An Act to reform the law relating to remedies for misrepresentation and breach of contract****1 Short Title and commencement**

- (1) This Act may be cited as the Contractual Remedies Act 1979.
- (2) This Act shall come into force on 1 April 1980.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**cancel**, in relation to a contract, means cancel in accordance with section 7; and **cancelled** and **cancellation** have corresponding meanings

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

Section 2 **court**: replaced, on 19 December 2002, by section 3 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

**3 Act to bind the Crown**

This Act shall bind the Crown.

**4 Statements during negotiations for a contract**

- (1) If a contract, or any other document, contains a provision purporting to preclude a court from inquiring into or determining the question—
  - (a) whether a statement, promise, or undertaking was made or given, either in words or by conduct, in connection with or in the course of negotiations leading to the making of the contract; or
  - (b) whether, if it was so made or given, it constituted a representation or a term of the contract; or
  - (c) whether, if it was a representation, it was relied on—

the court shall not, in any proceedings in relation to the contract, be precluded by that provision from inquiring into and determining any such question unless the court considers that it is fair and reasonable that the provision should be conclusive between the parties, having regard to all the circumstances of the case, including the subject matter and value of the transaction, the respective bargaining strengths of the parties, and the question whether any party was represented or advised by a solicitor at the time of the negotiations or at any other relevant time.

- (2) If a contract, or any other document, contains a provision purporting to preclude a court from inquiring into or determining the question whether, in respect of any statement, promise, or undertaking made or given by any person,

that person had the actual or ostensible authority of a party to make or give it, the court shall not, in any proceedings in relation to the contract, be precluded by that provision from inquiring into and determining that question.

- (3) Notwithstanding anything in section 56 or section 60(2) of the Sale of Goods Act 1908, this section shall apply to contracts for the sale of goods.
- (4) In any proceedings properly before the Disputes Tribunal, this section shall not limit the powers of the Tribunal under section 18(7) of the Disputes Tribunal Act 1988.

Section 4(4): replaced, on 1 March 1989, by section 67 of the Disputes Tribunals Act 1988 (1988 No 110).

Section 4(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **4A Stipulations not essence of contracts**

Stipulations in contracts as to time or otherwise that would not, before 13 September 1882 (the date of the coming into force of the Law Amendment Act 1882), have been deemed to be or to have become the essence of such contracts in a court of equity must receive in all courts the same construction and effect as they would have received in equity before that date.

Section 4A: inserted, on 1 March 2017, by section 4 of the Contractual Remedies Amendment Act 2016 (2016 No 58).

#### **5 Remedy provided in contract**

If a contract expressly provides for a remedy in respect of misrepresentation or repudiation or breach of contract or makes express provision for any of the other matters to which sections 6 to 10 relate, those sections shall have effect subject to that provision.

#### **6 Damages for misrepresentation**

- (1) If a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made to him by or on behalf of another party to that contract—
  - (a) he shall be entitled to damages from that other party in the same manner and to the same extent as if the representation were a term of the contract that has been broken; and
  - (b) he shall not, in the case of a fraudulent misrepresentation, or of an innocent misrepresentation made negligently, be entitled to damages from that other party for deceit or negligence in respect of that misrepresentation.
- (2) Notwithstanding anything in section 56 or section 60(2) of the Sale of Goods Act 1908, but subject to section 5 of this Act, subsection (1) shall apply to contracts for the sale of goods.

**7 Cancellation of contract**

- (1) Except as otherwise expressly provided in this Act, this section shall have effect in place of the rules of the common law and of equity governing the circumstances in which a party to a contract may rescind it, or treat it as discharged, for misrepresentation or repudiation or breach.
- (2) Subject to this Act, a party to a contract may cancel it if, by words or conduct, another party repudiates the contract by making it clear that he does not intend to perform his obligations under it or, as the case may be, to complete such performance.
- (3) Subject to this Act, but without prejudice to subsection (2), a party to a contract may cancel it if—
  - (a) he has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made by or on behalf of another party to that contract; or
  - (b) a term in the contract is broken by another party to that contract; or
  - (c) it is clear that a term in the contract will be broken by another party to that contract.
- (4) Where subsection (3)(a) or subsection (3)(b) or subsection (3)(c) applies, a party may exercise the right to cancel if, and only if,—
  - (a) the parties have expressly or impliedly agreed that the truth of the representation or, as the case may require, the performance of the term is essential to him; or
  - (b) the effect of the misrepresentation or breach is, or, in the case of an anticipated breach, will be,—
    - (i) substantially to reduce the benefit of the contract to the cancelling party; or
    - (ii) substantially to increase the burden of the cancelling party under the contract; or
    - (iii) in relation to the cancelling party, to make the benefit or burden of the contract substantially different from that represented or contracted for.
- (5) A party shall not be entitled to cancel the contract if, with full knowledge of the repudiation or misrepresentation or breach, he has affirmed the contract.
- (6) A party who has substantially the same interest under the contract as the party whose act constitutes the repudiation, misrepresentation, or breach may cancel the contract only with the leave of the court.
- (7) The court may, in its discretion, on application made for the purpose, grant leave under subsection (6), subject to such terms and conditions as the court thinks fit, if it is satisfied that the granting of such leave is in the interests of justice.

Section 7(3)(b): amended, on 19 December 2002, by section 4 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

Section 7(3)(c): amended, on 19 December 2002, by section 4 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

Section 7(4)(a): amended, on 19 December 2002, by section 4 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

## **8 Rules applying to cancellation**

- (1) The cancellation of a contract by a party shall not take effect—
  - (a) before the time at which the cancellation is made known to the other party; or
  - (b) before the time at which the party cancelling the contract evinces, by some overt means reasonable in the circumstances, an intention to cancel the contract, if—
    - (i) it is not reasonably practicable for the cancelling party to communicate with the other party; or
    - (ii) the other party cannot reasonably expect to receive notice of the cancellation because of that party's conduct in relation to the contract.
- (2) The cancellation may be made known by words, or by conduct evincing an intention to cancel, or both. It shall not be necessary to use any particular form of words, so long as the intention to cancel is made known.
- (3) Subject to this Act, when a contract is cancelled the following provisions shall apply:
  - (a) so far as the contract remains unperformed at the time of the cancellation, no party shall be obliged or entitled to perform it further:
  - (b) so far as the contract has been performed at the time of the cancellation, no party shall, by reason only of the cancellation, be divested of any property transferred or money paid pursuant to the contract.
- (4) Nothing in subsection (3) shall affect the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of the contract by another party.

Section 8(1)(b): replaced, on 19 December 2002, by section 5 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

## **9 Power of court to grant relief**

- (1) When a contract is cancelled by any party, the court, in any proceedings or on application made for the purpose, may from time to time if it is just and practicable to do so, make an order or orders granting relief under this section.
- (2) An order under this section may—
  - (a) vest in any party to the proceedings, or direct any such party to transfer or assign to any other such party or to deliver to him the possession of,

- the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it:
- (b) subject to section 6, direct any party to the proceedings to pay to any other such party such sum as the court thinks just:
  - (c) direct any party to the proceedings to do or refrain from doing in relation to any other party any act or thing as the court thinks just.
- (3) Any such order, or any provision of it, may be made upon and subject to such terms and conditions as the court thinks fit, not being in any case a term or condition that would have the effect of preventing a claim for damages by any party.
- (4) In considering whether to make an order under this section, and in considering the terms of any order it proposes to make, the court shall have regard to—
- (a) the terms of the contract; and
  - (b) the extent to which any party to the contract was or would have been able to perform it in whole or in part; and
  - (c) any expenditure incurred by a party in or for the purpose of the performance of the contract; and
  - (d) the value, in its opinion, of any work or services performed by a party in or for the purpose of the performance of the contract; and
  - (e) any benefit or advantage obtained by a party by reason of anything done by another party in or for the purpose of the performance of the contract; and
  - (f) such other matters as it thinks proper.
- (5) No order shall be made under subsection (2)(a) that would have the effect of depriving a person, not being a party to the contract, of the possession of or any estate or interest in any property acquired by him in good faith and for valuable consideration.
- (6) No order shall be made under this section in respect of any property, if any party to the contract has so altered his position in relation to the property, whether before or after the cancellation of the contract, that, having regard to all relevant circumstances, it would in the opinion of the court be inequitable to any party to make such an order.
- (7) An application for an order under this section may be made by—
- (a) any party to the contract; or
  - (b) any person claiming through or under any such party; or
  - (c) any other person if it is material for him to know whether relief under this section will be granted.

## 10 Recovery of damages

- (1) Subject to sections 4 to 6, a party to a contract shall not be precluded by the cancellation of the contract, or by the granting of relief under section 9, from recovering damages in respect of a misrepresentation or the repudiation or breach of the contract by another party; but the value of any relief granted under section 9 shall be taken into account in assessing any such damages.
- (2) Any sum ordered to be paid by any party to the contract to any other such party under section 9(2) may be set off against any damages payable by him to that other party.

## 11 Assignees

- (1) Subject to this section, if a contract, or the benefit or burden of a contract, is assigned, the remedies of damages and cancellation shall, except to the extent that it is otherwise provided in the assigned contract, be enforceable by or against the assignee.
- (2) Except to the extent that it is otherwise agreed by the assignee or provided in the assigned contract, the assignee shall not be liable in damages, whether by way of set-off, counterclaim, or otherwise, in a sum exceeding the value of the performance of the assigned contract to which he is entitled by virtue of the assignment.
- (3) Unless it is otherwise agreed between the assignor and the assignee, the assignee shall be entitled to be indemnified by the assignor against any loss suffered by the assignee and arising out of—
  - (a) any term of the assigned contract that was not disclosed to him before or at the time of the assignment; or
  - (b) any misrepresentation that was not so disclosed.
- (4) This section shall be read subject—
  - (a) in the case of a mortgage of land, to subpart 8 of Part 3 of the Property Law Act 2007;
  - (b) *[Repealed]*
  - (c) in the case of a contract for the supply of goods or services to a consumer, to section 46 of the Consumer Guarantees Act 1993.
- (5) Nothing in this section shall affect the law relating to negotiable instruments.

Section 11(4)(a): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 11(4)(b): repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 11(4)(c): inserted, on 1 April 1994, by section 53 of the Consumer Guarantees Act 1993 (1993 No 91).

**12 Jurisdiction of District Courts**

*[Repealed]*

Section 12: repealed, on 19 December 2002, by section 6 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

**13 Jurisdiction of Disputes Tribunals**

*[Repealed]*

Section 13: repealed, on 19 December 2002, by section 6 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

**14 Amendments and repeals**

(1) *Amendment(s) incorporated in the Act(s).*

(2) *[Repealed]*

(3) *[Repealed]*

(4) *Amendment(s) incorporated in the Act(s).*

Section 14(2): repealed, on 1 July 1997, by section 18 of the Arbitration Act 1996 (1996 No 99).

Section 14(3): repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

**14A Act does not apply to contracts governed by foreign law**

This Act does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Section 14A: inserted, on 19 December 2002, by section 7 of the Contractual Remedies Amendment Act 2002 (2002 No 79).

**15 Savings**

Except as provided in sections 4(3), 6(2), and 14, nothing in this Act shall affect—

- (a) the law relating to specific performance or injunction:
- (b) the law relating to mistake, duress, or undue influence:
- (c) the doctrine of *non est factum*:
- (d) the Sale of Goods Act 1908:
- (e) the Frustrated Contracts Act 1944:
- (f) *[Repealed]*
- (g) sections 253 to 260 of the Property Law Act 2007 (which relate to relief against cancellation of leases for breach of covenant or condition):
- (ga) the Consumer Guarantees Act 1993:
- (h) any other enactment so far as it prescribes or governs terms of contracts or remedies available in respect of contracts, or governs the enforcement of contracts.

Section 15(f): repealed, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).



Section 15(g): replaced, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 15(ga): inserted, on 1 April 1994, by section 54 of the Consumer Guarantees Act 1993 (1993 No 91).

## **16 Application of Act**

This Act shall not apply to any contract made before the commencement of this Act.

## Reprints notes

### 1 *General*

This is a reprint of the Contractual Remedies Act 1979 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*

Contractual Remedies Amendment Act 2016 (2016 No 58)

District Court Act 2016 (2016 No 49) section 261

Limitation Act 2010 (2010 No 110): section 58

Property Law Act 2007 (2007 No 91): section 364(1)

Credit Contracts and Consumer Finance Act 2003 (2003 No 52): section 139

Contractual Remedies Amendment Act 2002 (2002 No 79)

Arbitration Act 1996 (1996 No 99): section 18

Consumer Guarantees Act 1993 (1993 No 91): sections 53, 54

Disputes Tribunals Act 1988 (1988 No 110): section 67