

Reprint  
as at 1 March 2017



## Consumer Guarantees Act 1993

Public Act 1993 No 91  
Date of assent 20 August 1993  
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 Business, Innovation, and Employment.**

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**Title [Repealed]**

Title: repealed, on 18 December 2013, by section 4 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

**1 Short Title and commencement**

- (1) This Act may be cited as the Consumer Guarantees Act 1993.
- (2) This Act shall come into force on 1 April 1994.

**1A Purpose**

- (1) The purpose of this Act is to contribute to a trading environment in which—
  - (a) the interests of consumers are protected; and
  - (b) businesses compete effectively; and
  - (c) consumers and businesses participate confidently.
- (2) To this end, the Act provides that consumers have—
  - (a) certain guarantees when acquiring goods or services from a supplier, including—
    - (i) that the goods are reasonably safe and fit for purpose and are otherwise of an acceptable quality; and
    - (ii) that the services are carried out with reasonable care and skill; and
  - (b) certain rights of redress against suppliers and manufacturers if goods or services fail to comply with a guarantee.

Section 1A: inserted, on 18 December 2013, by section 5 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
 

**acquire**,—

  - (a) in relation to goods, means obtain by way of gift, purchase, or exchange; and also means take on lease, hire, or hire purchase;
  - (b) in relation to services, includes accept

**business** means—

- (a) any undertaking whether carried on for gain or reward or not; or
- (b) any undertaking in the course of which—
  - (i) goods or services are acquired or supplied; or
  - (ii) any interest in land is acquired or disposed of—  
whether free of charge or not

**consumer** means a person who—

- (a) acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and
- (b) does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of—
  - (i) resupplying them in trade; or
  - (ii) consuming them in the course of a process of production or manufacture; or
  - (iii) in the case of goods, repairing or treating in trade other goods or fixtures on land

**express guarantee**, in relation to any goods, means an undertaking, assertion, or representation in relation to—

- (a) the quality, performance, or characteristics of the goods; or
- (b) the provision of services that are or may at any time be required in respect of the goods; or
- (c) the supply of parts that are or may at any time be required for the goods; or
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion, or representation is given or made form part—

given or made in connection with the supply of the goods or in connection with the promotion by any means of the supply or use of the goods

**goods**—

- (a) means personal property of every kind (whether tangible or intangible), other than money and choses in action; and
- (b) includes—
  - (i) goods attached to, or incorporated in, any real or personal property;
  - (ii) ships, aircraft, and vehicles;
  - (iii) animals, including fish;
  - (iv) minerals, trees, and crops, whether on, under, or attached to land or not;
  - (v) non-reticulated gas;

- (vi) to avoid doubt, water and computer software; but
- (c) despite paragraph (b)(i), does not include a whole building, or part of a whole building, attached to land unless the building is a structure that is easily removable and is not designed for residential accommodation

**line function services** has,—

- (a) in relation to gas, the meaning set out in section 2(1) of the Gas Act 1992; and
- (b) in relation to electricity, the meaning set out in section 2(1) of the Electricity Act 1992

**manufacturer** means a person that carries on the business of assembling, producing, or processing goods, and includes—

- (a) any person that holds itself out to the public as the manufacturer of the goods:
- (b) any person that attaches its brand or mark or causes or permits its brand or mark to be attached, to the goods:
- (c) where goods are manufactured outside New Zealand and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, a person that imports or distributes those goods

**ordinary place of business in New Zealand**, in relation to a manufacturer, does not include a New Zealand subsidiary of a foreign manufacturer

**ownership**, in relation to goods, means the general property in the goods

**person** includes a local authority, every public body, and any association of persons whether incorporated or not

**price** includes valuable consideration in any form

**security** includes charge and encumbrance

**services**—

- (a) includes any rights (including rights in relation to, and interests in, personal property), benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier; and
- (b) includes (without limitation) the rights, benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier under any of the following classes of contract:
  - (i) a contract for, or in relation to, the performance of work (including work of a professional nature), whether with or without the supply of goods:
  - (ii) a contract for, or in relation to, the provision in trade of facilities for accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation:

- (iii) a contract of insurance, including life assurance and life reinsurance:
  - (iv) a contract between a bank and a customer of the bank:
  - (v) a contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits:
  - (vi) a contract for, or in relation to, the supply of telecommunications or water, or the removal of waste water:
  - (vii) a contract relating to (but not for) the supply of gas or electricity, other than line function services; but
- (c) does not include—
- (i) any rights, benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier by simply paying or crediting any money to the consumer without the performance of any other task (other than one that is merely incidental to the making of the payment or credit); and
  - (ii) rights or benefits in the form of the supply of goods or the performance of work under a contract of service

**subsidiary** has the same meaning as in sections 5 and 6 of the Companies Act 1993

**supplier**—

- (a) means a person who, in trade,—
- (i) supplies goods to a consumer by—
    - (A) transferring the ownership or the possession of the goods under a contract of sale, exchange, lease, hire, or hire purchase to which that person is a party; or
    - (B) transferring the ownership of the goods as the result of a gift from that person; or
    - (C) transferring the ownership or possession of the goods as directed by an insurer; or
  - (ii) supplies services to an individual consumer or a group of consumers (whether or not the consumer is a party, or the consumers are parties, to a contract with the person); and
- (b) includes,—
- (i) where the rights of the supplier have been transferred by assignment or by operation of law, the person for the time being entitled to those rights:

- (ii) a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 who has lent money on the security of goods supplied to a consumer, if the whole or part of the price of the goods is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the goods:
- (iii) a person who, in trade, assigns or procures the assignment of goods to a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 to enable the creditor to supply those goods, or goods of that kind, to the consumer:
- (iv) a person (other than an auctioneer) who, in trade, is acting as an agent for another, whether or not that other is supplying in trade

(c) *[Repealed]*

**supply,—**

- (a) in relation to goods, means supply (or resupply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) in relation to services, means provide, grant, or confer

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services.

- (2) In any case where it is necessary under this Act to determine the time at which a guarantee in this Act commences to apply,—
  - (a) goods shall be treated as supplied at the time when the consumer acquires the right to possess the goods:
  - (b) services shall be treated as supplied at the time when they are provided, granted, or conferred.
- (3) However, despite subsection (2), a guarantee under section 6 applies to the goods delivered to the consumer on and from the time at which the consumer receives the goods.

Compare: 1971 No 147 s 2; 1986 No 121 s 2; Trade Practices Act 1974 ss 4B, 74A(1), (3), (4) (Aust); Consumer Products Warranties Act 1977 s 2(h) (Saskatchewan)

Section 2(1) **goods**: substituted, on 8 July 2003, by section 3 of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

Section 2(1) **goods** paragraph (b)(v): replaced, on 17 June 2014, by section 6(1) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(1) **line function services**: inserted, on 17 June 2014, by section 6(2) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(1) **services**: substituted, on 8 July 2003, by section 3 of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

Section 2(1) **services** paragraph (b)(vi): replaced, on 17 June 2014, by section 6(3) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(1) **services** paragraph (b)(vii): inserted, on 17 June 2014, by section 6(3) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(1) **subsidiary**: substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(1) **supplier**: substituted, on 8 July 2003, by section 3 of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

Section 2(1) **supplier** paragraph (b)(ii): substituted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **supplier** paragraph (b)(iii): substituted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **supplier** paragraph (b)(iv): replaced, on 17 June 2014, by section 6(4) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(1) **supplier** paragraph (c): repealed, on 17 June 2014, by section 6(5) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 2(3): inserted, on 17 June 2014, by section 6(6) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

### 3 Act to bind the Crown

This Act shall bind the Crown.

### 4 Act not a code

- (1) The rights and remedies provided in this Act are in addition to any other right or remedy under any other Act or rule of law unless the right or remedy is expressly or impliedly repealed or modified by this Act.
- (2) No provision of this Act shall be construed as repealing, invalidating, or superseding the provisions of any other Act unless this Act by express provision or by necessary implication clearly intends such a provision to be so construed.

Compare: Consumer Products Warranties Act 1977 s 3 (Saskatchewan)

## Part 1

### Guarantees in respect of supply of goods

#### 5 Guarantees as to title

- (1) Subject to section 41, the following guarantees apply where goods are supplied to a consumer:
  - (a) that the supplier has a right to sell the goods; and
  - (b) that the goods are free from any undisclosed security; and
  - (c) that the consumer has the right to undisturbed possession of the goods, except in so far as that right is varied pursuant to—
    - (i) a term of the agreement for supply in any case where that agreement is a hire purchase agreement within the meaning of the Income Tax Act 2007; or
    - (ii) a security, or a term of the agreement for supply, in respect of which the consumer has received—

- (A) oral advice, acknowledged in writing by the consumer, as to the way in which the consumer's right to undisturbed possession of the goods could be affected, sufficient to enable a reasonable consumer to understand the general nature and effect of the variation; and
  - (B) a written copy of the agreement for supply or security, or a written copy of the part thereof which provides for the variation.
- (2) A reference in subsection (1)(a) to a **right to sell** goods means a right to dispose of the ownership of the goods to the consumer at the time when that ownership is to pass.
  - (3) An **undisclosed security** referred to in this section means any security that was neither disclosed to the consumer in writing before he or she agreed to the supply nor created by or with the express consent of the consumer.
  - (4) Nothing in subsection (1)(a) or (1)(b) shall apply in any case where the goods are only hired or leased.
  - (5) Where the goods are only hired or leased, the guarantee set out in subsection (1)(c) shall confer a right to undisturbed possession of the goods only for the period of the hire or lease.
  - (6) Part 2 gives the consumer a right of redress against the supplier where the goods fail to comply with any guarantee in this section.

Compare: 1908 No 168 s 14; 1971 No 147 s 11

Section 5(1)(c)(i): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 5A Guarantee as to delivery

- (1) Where a supplier is responsible for delivering, or for arranging for the delivery of, goods to a consumer there is a guarantee that the goods will be received by the consumer—
  - (a) at a time, or within a period, agreed between the supplier and the consumer; or
  - (b) if no time or period has been agreed, within a reasonable time.
- (2) Where the delivery of the goods fails to comply with the guarantee under this section, Part 2 gives the consumer a right of redress against the supplier and, in that case, the consumer may,—
  - (a) if the failure is of a substantial character, reject the goods under section 18(3); and
  - (b) in any case, obtain damages under section 18(4) (other than damages relating to the remedies set out in section 18(2)), whether or not the consumer also rejects the goods.

- (3) For the purposes of this section, the reference in section 20(1)(b) to an agent of the supplier must be treated as including any carrier or other person who undertakes to deliver the goods on behalf of the supplier.
- (4) A consumer's rights of redress under Part 2 in relation to the guarantee under this section are limited to those specified in subsection (2).

Section 5A: inserted, on 17 June 2014, by section 7 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

## 6 Guarantee as to acceptable quality

- (1) Subject to section 41, where goods are supplied to a consumer there is a guarantee that the goods are of acceptable quality.
- (2) Where the goods fail to comply with the guarantee in this section,—
  - (a) Part 2 may give the consumer a right of redress against the supplier; and
  - (b) Part 3 may give the consumer a right of redress against the manufacturer.

Compare: 1908 No 168 s 16(b); 1971 No 147 s 12; Consumer Products Warranties Act 1977 s 11(4), (7) (Saskatchewan)

## 7 Meaning of acceptable quality

- (1) For the purposes of section 6, goods are of **acceptable quality** if they are as—
  - (a) fit for all the purposes for which goods of the type in question are commonly supplied; and
  - (b) acceptable in appearance and finish; and
  - (c) free from minor defects; and
  - (d) safe; and
  - (e) durable,—

as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to—

- (f) the nature of the goods;
  - (g) the price (where relevant);
  - (h) any statements made about the goods on any packaging or label on the goods;
  - (ha) the nature of the supplier and the context in which the supplier supplies the goods;
  - (i) any representation made about the goods by the supplier or the manufacturer;
  - (j) all other relevant circumstances of the supply of the goods.
- (2) Where any defects in goods have been specifically drawn to the consumer's attention before he or she agreed to the supply, then notwithstanding that a reasonable consumer may not have regarded the goods as acceptable with those

defects, the goods will not fail to comply with the guarantee as to acceptable quality by reason only of those defects.

- (3) Where goods are displayed for sale or hire, the defects that are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (2) are those disclosed on a written notice displayed with the goods.
- (4) Goods will not fail to comply with the guarantee of acceptable quality if—
  - (a) the goods have been used in a manner, or to an extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and
  - (b) the goods would have complied with the guarantee of acceptable quality if they had not been used in that manner or to that extent.
- (5) A reference in subsections (2) and (3) to a defect means any failure of the goods to comply with the guarantee of acceptable quality.

Compare: Consumer Products Warranties Act 1977 ss 2(a), 34 (Saskatchewan)

Section 7(1)(ha): inserted, on 17 June 2014, by section 8 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

#### **7A Guarantee of acceptable quality in supply of gas and electricity**

- (1) 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.
- (2) The guarantee of acceptable quality is a guarantee that—
  - (a) the supply of gas or electricity is as safe as a reasonable consumer would expect it to be; and
  - (b) 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; and
  - (c) the quality of the gas or electricity supplied is such that it can be consistently used for the things that a reasonable consumer would expect to use gas or electricity for.
- (3) When determining what a reasonable consumer would expect, it is assumed that the consumer has considered—
  - (a) that the supply of gas or electricity may be affected by emergencies, or other events or circumstances, outside the control of the retailer or any other person involved in the supply of gas or electricity; and
  - (b) that the supply of gas or electricity may be interrupted for safety, maintenance, or other technical reasons; and
  - (c) that the quality of gas or electricity supplied may fluctuate, but that fluctuations are acceptable only within tolerances permitted by gas and electricity safety regulations; and

- (d) that the reliability and quality of the supply of gas or electricity may vary depending on the location of the place to which the gas or electricity is supplied; and
  - (e) that reliability and quality of supply may be related to price.
- (4) The supply of gas or electricity will not fail to comply with the guarantee of acceptable quality—
- (a) if the gas or electricity has been used by the consumer in an unreasonable manner or to an unreasonable extent, and the supply of gas or electricity would have complied with the guarantee of acceptable quality if it had not been used in that manner or to that extent; or
  - (b) if, in a case where the quality and reliability of supply by a gas or electricity retailer to a particular consumer is likely to be significantly worse than the quality and reliability of supply that generally applies to gas or electricity supplied by the retailer,—
    - (i) the retailer or the person supplying line function services has specifically explained to the consumer the ways in which the supply is likely to be significantly worse; and
    - (ii) the consumer has accepted the supply on that basis, even if an otherwise reasonable consumer may not regard that supply as acceptable.
- (5) In this section and section 7B,—

**electricity retailer** means a retailer as defined in the Electricity Industry Act 2010

**gas retailer** means a gas retailer as defined in the Gas Act 1992.

Section 7A: inserted, on 17 June 2014, by section 9 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

#### **7B Relationship of section 7A with rest of Act**

- (1) For the purposes of this Act, except as described in this section, gas (other than non-reticulated gas) and electricity are not to be treated as being goods, and the supply of gas or electricity by retailers is not to be treated as the supply of a service.
- (2) If the supply of gas or electricity fails to comply with the guarantee of acceptable quality in section 7A, in order that Part 2 may apply to give consumers a right of redress against gas retailers and electricity retailers, that Part must be applied as if gas and electricity were goods, and as if gas retailers and electricity retailers were the suppliers of those goods.
- (3) For the purpose of applying the provisions of Part 5 to the supply of gas and electricity to consumers, that Part must be applied as if gas and electricity were goods, and as if gas retailers and electricity retailers were the suppliers of those goods.

- (4) To avoid doubt, the guarantee provided by section 7A is the only guarantee provided under this Act that relates to the supply of gas (other than non-reticulated gas) or electricity by gas retailers and electricity retailers.

Section 7B: inserted, on 17 June 2014, by section 9 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

## **8 Guarantees as to fitness for particular purpose**

- (1) Subject to section 41, the following guarantees apply where goods are supplied to a consumer:
- (a) that the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and
  - (b) that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.
- (2) Those guarantees do not apply where the circumstances show that—
- (a) the consumer does not rely on the supplier's skill or judgment; or
  - (b) it is unreasonable for the consumer to rely on the supplier's skill or judgment.
- (3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.
- (4) Part 2 gives the consumer a right of redress against the supplier where the goods fail to comply with any guarantee in this section.

Compare: 1908 No 168 s 16(a); 1971 No 147 s 13

## **9 Guarantee that goods comply with description**

- (1) Subject to section 41, where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description.
- (2) A supply of goods is not prevented from being a supply by description by reason only that, being exposed for sale or hire, they are selected by a consumer.
- (3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and in section 10 will both apply.
- (4) Where the goods fail to comply with the guarantee in this section,—
- (a) Part 2 gives the consumer a right of redress against the supplier; and
  - (b) Part 3 may give the consumer a right of redress against the manufacturer.

Compare: 1908 No 168 s 15; 1971 No 147 s 14(2); Trade Practices Act 1974 s 70(2) (Aust)

## **10 Guarantee that goods comply with sample**

- (1) Subject to section 41, the following guarantees apply where goods are supplied to a consumer by reference to a sample or demonstration model:

- (a) that the goods correspond with the sample or demonstration model in quality; and
  - (b) that the consumer will have a reasonable opportunity to compare the goods with the sample.
- (2) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and section 9 will both apply.
- (3) Part 2 gives the consumer a right of redress against the supplier where the goods fail to comply with any guarantee in this section.

Compare: 1908 No 168 s 17; 1971 No 147 s 14(1)

### **11 Guarantee as to price**

- (1) Subject to section 41, where goods are supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the goods in any case where the price for the goods is not—
- (a) determined by the contract; nor
  - (b) left to be determined in a manner agreed by the contract; nor
  - (c) left to be determined by the course of dealing between the parties.
- (2) Where there is a failure to comply with the guarantee in this section, the consumer's right of redress is to refuse to pay more than a reasonable price.
- (3) Nothing in Part 2 confers any other right of redress.

Compare: 1908 No 168 s 10; Supply of Goods and Services Act 1982 s 15 (UK)

### **12 Guarantee as to repairs and spare parts**

- (1) Subject to sections 41 and 42, where goods are first supplied to a consumer in New Zealand (whether or not that supply is the first-ever supply of the goods), there is a guarantee that the manufacturer will take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are reasonably available for a reasonable period after the goods are so supplied.
- (2) Part 3 gives the consumer a right of redress against the manufacturer where the goods fail to comply with the guarantee in this section.

Compare: Trade Practices Act 1974 s 74F(1) (Aust); Consumer Products Warranties Act 1977 s 11(8) (Saskatchewan)

### **13 Express guarantees**

- (1) Where goods are supplied to a consumer, this Act applies to any express guarantee given by a manufacturer of the goods which is binding on the manufacturer in accordance with section 14.
- (2) Part 3 gives the consumer a right of redress against the manufacturer where the goods fail to comply with any such guarantee.

*General provisions***14 Provisions relating to manufacturers' express guarantees**

- (1) An express guarantee given by a manufacturer in a document in respect of goods binds the manufacturer where the document is given to a consumer with the actual or apparent authority of the manufacturer in connection with the supply by a supplier of those goods to the consumer.
- (2) An express guarantee which is included in a document relating to goods and which appears to have been made by the manufacturer of the goods shall in the absence of proof to the contrary be presumed to have been made by the manufacturer.
- (3) Proof that a consumer was given a document containing express guarantees by a manufacturer in respect of goods in connection with the supply of those goods to the consumer shall, in the absence of proof to the contrary, constitute proof that the document was given to the consumer with the authority of the manufacturer.

Compare: Trade Practices Act 1974 s 74G (Aust)

**15 Contracts of work and materials**

The guarantees in this Part apply whether or not the goods are supplied in connection with a service.

**Part 2****Right of redress against suppliers in respect of supply of goods***Right of redress against suppliers***16 Circumstances where consumers have right of redress against suppliers**

This Part gives a consumer a right of redress against a supplier of goods where the goods fail to comply with any guarantee set out in any of sections 5 to 10.

**17 Exception in respect of guarantee as to acceptable quality**

Notwithstanding section 16, where—

- (a) the manufacturer, or a servant or agent of the manufacturer, makes a representation in respect of goods (otherwise than a statement on any packaging or label); and
- (b) the goods would have complied with the guarantee of acceptable quality if that representation had not been made,—

there shall be no right of redress against the supplier under this Act in respect of the failure of the goods to comply with the guarantee of acceptable quality.

*Remedies*

**18 Options against suppliers where goods do not comply with guarantees**

- (1) Where a consumer has a right of redress against the supplier in accordance with this Part in respect of the failure of any goods to comply with a guarantee, the consumer may exercise the following remedies.
- (2) Where the failure can be remedied, the consumer may—
  - (a) require the supplier to remedy the failure within a reasonable time in accordance with section 19;
  - (b) where a supplier who has been required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time,—
    - (i) have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having the failure remedied; or
    - (ii) subject to section 20, reject the goods in accordance with section 22.
- (3) Where the failure cannot be remedied or is of a substantial character within the meaning of section 21, the consumer may—
  - (a) subject to section 20, reject the goods in accordance with section 22; or
  - (b) obtain from the supplier damages in compensation for any reduction in value of the goods below the price paid or payable by the consumer for the goods.
- (4) In addition to the remedies set out in subsection (2) and subsection (3), the consumer may obtain from the supplier damages for any loss or damage to the consumer resulting from the failure (other than loss or damage through reduction in value of the goods) which was reasonably foreseeable as liable to result from the failure.

Compare: Consumer Products Warranties Act 1977 s 20(1) (Saskatchewan)

**19 Requirement to remedy**

- (1) A supplier may comply with a requirement to remedy a failure of any goods to comply with a guarantee—
  - (a) by—
    - (i) repairing the goods (in any case where the failure does not relate to title); or
    - (ii) curing any defect in title (in any case where the failure relates to title); or
  - (b) by replacing the goods with goods of identical type; or

- (c) where the supplier cannot reasonably be expected to repair the goods, by providing a refund of any money paid or other consideration provided by the consumer in respect of the goods.
- (2) Where a consumer obtains goods to replace defective goods pursuant to subsection (1), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier and the guarantees and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply to the replacement goods.
- (3) A refund referred to in subsection (1)(c) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.

*Provisions relating to rejection of goods*

**20 Loss of right to reject goods**

- (1) The right to reject goods conferred by this Act shall not apply if—
  - (a) the right is not exercised within a reasonable time within the meaning of subsection (2); or
  - (b) the goods have been disposed of by the consumer, or have been lost or destroyed while in the possession of a person other than the supplier or an agent of the supplier; or
  - (c) the goods were damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply; or
  - (d) the goods have been attached to or incorporated in any real or personal property and they cannot be detached or isolated without damaging them.
- (2) In subsection (1)(a), the term **reasonable time** means a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent having regard to—
  - (a) the type of goods;
  - (b) the use to which a consumer is likely to put them;
  - (c) the length of time for which it is reasonable for them to be used;
  - (d) the amount of use to which it is reasonable for them to be put before the defect becomes apparent.
- (3) This section applies notwithstanding section 37 of the Sale of Goods Act 1908.  
Compare: Consumer Products Warranties Act 1977 s 20(2), (3) (Saskatchewan)

**21 Failure of substantial character**

For the purposes of section 18(3), a failure to comply with a guarantee is of a substantial character in any case where—

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the goods depart in 1 or more significant respects from the description by which they were supplied or, where they were supplied by reference to a sample or demonstration model, from the sample or demonstration model; or
- (c) the goods are substantially unfit for a purpose for which goods of the type in question are commonly supplied or, where section 8(1) applies, the goods are unfit for a particular purpose made known to the supplier or represented by the supplier to be a purpose for which the goods would be fit, and the goods cannot easily and within a reasonable time be remedied to make them fit for such purpose; or
- (d) the goods are not of acceptable quality within the meaning of section 7 because they are unsafe.

## **22 Manner of rejecting goods**

- (1) The consumer shall exercise the right to reject goods under this Act by notifying the supplier of the decision to reject the goods and of the ground or grounds for rejection.
- (2) Where the consumer exercises the right to reject goods, the consumer shall return the rejected goods to the supplier—
  - (a) unless,—
    - (i) because of the nature of the failure to comply with the guarantee in respect of which the consumer has the right to reject the goods; or
    - (ii) because of the size or height or method of attachment,—  
the goods cannot be returned or removed or transported without significant cost to the consumer, in which case the supplier shall collect the goods at the expense of the supplier; or
  - (b) unless the goods have already been returned to, or retrieved by, the supplier.
- (3) Where the ownership in the goods has passed to the consumer before the consumer exercises the right of rejection, the ownership in the goods revests in the supplier upon notification of rejection.

Compare: Trade Practices Act 1974 s 75A (Aust); Consumer Products Warranties Act 1977 ss 18, 22, 23 (Saskatchewan)

## **23 Consumers' options of refund or replacement**

- (1) Where the consumer exercises the right to reject goods, the consumer may choose to have either—

- (a) a refund of any money paid or other consideration provided by the consumer in respect of the rejected goods; or
  - (b) goods of the same type and of similar value to replace the rejected goods, where such goods are reasonably available to the supplier as part of the stock of the supplier,—
- and the supplier shall make provision accordingly.
- (2) A refund referred to in subsection (1)(a) means a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require.
  - (3) The obligation to refund cannot be satisfied by permitting the consumer to acquire goods from the supplier.
  - (4) Where a consumer obtains goods to replace rejected goods pursuant to subsection (1)(b), the replacement goods shall, for the purposes of this Act, be deemed to be supplied by the supplier, and the guarantees and obligations arising under this Act consequent upon a supply of goods to a consumer shall apply to the replacement goods.

### **23A Goods subject to collateral credit agreement**

- (1) This section applies if—
  - (a) a consumer acquires goods under a contract for the supply of goods; and
  - (b) the contract is associated with a collateral credit agreement; and
  - (c) the supplier is a party to the contract; and
  - (d) the consumer exercises the right to reject the goods under this Act.
- (2) A court or the Disputes Tribunal may order that all or any of the rights and obligations of the consumer under the collateral credit agreement vest in the supplier.
- (3) In this section,—

**collateral credit agreement**, in relation to a contract for the supply of goods, means a contract or an agreement that—

  - (a) is arranged or procured by the supplier of the goods; and
  - (b) is for the provision of credit by a person other than the supplier to enable the consumer to pay, or defer payment, for the goods

**supplier** does not include a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 who has lent money to a consumer, if the whole or part of the price of the goods is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the goods.

Section 23A: inserted, on 18 December 2013, by section 10 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 23A(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **24 Rights of donees**

Where a consumer acquires goods from a supplier and gives them to another person as a gift, that person may, subject to any defence which would be available to the supplier against the consumer, exercise any rights or remedies under this Part which would be available to that person if he or she had acquired the goods from the supplier, and any reference in this Part to a consumer shall include a reference to that person accordingly.

Compare: Consumer Products Warranties Act 1977 s 4 (Saskatchewan)

## **Part 3**

### **Right of redress against manufacturers in respect of supply of goods**

#### *Right of redress against manufacturers*

## **25 Circumstances where consumers have right of redress against manufacturers**

This Part gives a consumer a right of redress against a manufacturer of goods where—

- (a) the goods fail to comply with the guarantee as to acceptable quality set out in section 6:
- (b) the goods fail to comply with the guarantee as to correspondence with description set out in section 9 due to the failure of the goods to correspond with any description applied to the goods by or on behalf of the manufacturer or with the express or implied consent of the manufacturer:
- (c) the goods fail to comply with the guarantee as to repairs and parts set out in section 12:
- (d) the goods fail, during the currency of the guarantee, to comply with any express guarantee given by the manufacturer that is binding on the manufacturer in accordance with section 14.

## **26 Exceptions to right of redress against manufacturers**

Notwithstanding section 25, there shall be no right of redress against the manufacturer under this Act in respect of goods which—

- (a) fail to comply with the guarantee of acceptable quality only because of—
  - (i) an act or default or omission of, or any representation made by, any person other than the manufacturer or a servant or agent of the manufacturer; or
  - (ii) a cause independent of human control, occurring after the goods have left the control of the manufacturer; or

- (iii) the price charged by the supplier being higher than the manufacturer's recommended retail price or the average retail price:
- (b) fail to correspond with the guarantee as to correspondence with description because of—
  - (i) an act or default or omission of a person other than the manufacturer or a servant or agent of the manufacturer; or
  - (ii) a cause independent of human control, occurring after the goods have left the control of the manufacturer.

### *Remedies*

#### **27 Options against manufacturers where goods do not comply with guarantees**

- (1) Subject to subsection (3), where a consumer has a right of redress against a manufacturer in accordance with this Part, the consumer, or any person who acquires the goods from or through the consumer, may obtain damages from the manufacturer—
  - (a) subject to subsection (2), for any reduction in the value of the goods resulting from the failure—
    - (i) below the price paid or payable by the consumer for the goods; or
    - (ii) below the average retail price of the goods at the time of supply,—  
whichever price is lower:
  - (b) for any loss or damage to the consumer or that other person resulting from the failure (other than loss or damage through a reduction in value of the goods) which was reasonably foreseeable as liable to result from the failure.
- (2) Subject to subsection (3), where the consumer, or any person who acquires the goods from or through the consumer, is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by—
  - (a) repairing the goods; or
  - (b) replacing the goods with goods of identical type,—  
no action shall be commenced under subsection (1)(a) unless the consumer or that other person has required the manufacturer to remedy the failure and the manufacturer—
    - (c) has either refused or neglected to remedy the failure; or
    - (d) has not succeeded in remedying the failure within a reasonable time.
- (3) This section shall not apply to any person who acquires goods from or through a consumer unless that person comes within the terms of paragraph (b) of the definition of consumer in section 2.

## Part 4

### Supply of services

#### 28 Guarantee as to reasonable care and skill

Subject to section 41, where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

Compare: Trade Practices Act 1974 s 74(1) (Aust); Supply of Goods and Services Act 1982 s 13 (UK)

#### 29 Guarantee as to fitness for particular purpose

Subject to section 41, where services are supplied to a consumer there is a guarantee that the service, and any product resulting from the service, will be—

- (a) reasonably fit for any particular purpose; and
- (b) of such a nature and quality that it can reasonably be expected to achieve any particular result,—

that the consumer makes known to the supplier, before or at the time of the making of the contract for the supply of the service, as the particular purpose for which the service is required or the result that the consumer desires to achieve, as the case may be, except where the circumstances show that—

- (c) the consumer does not rely on the supplier's skill or judgment; or
- (d) it is unreasonable for the consumer to rely on the supplier's skill or judgment.

Compare: Trade Practices Act 1974 s 74(2) (Aust)

#### 30 Guarantee as to time of completion

Subject to section 41, where services are supplied to a consumer there is a guarantee that the service will be completed within a reasonable time in any case where the time for the service to be carried out is not—

- (a) fixed by the contract; nor
- (b) left to be fixed in a manner agreed by the contract; nor
- (c) left to be determined by the course of dealing between the parties.

Compare: Supply of Goods and Services Act 1982 s 14 (UK)

#### 31 Guarantee as to price

- (1) Subject to section 41, where services are supplied to a consumer there is a guarantee that the consumer is not liable to pay to the supplier more than a reasonable price for the service in any case where the price for the service is not—

- (a) determined by the contract; nor
- (b) left to be determined in a manner agreed by the contract; nor
- (c) left to be determined by the course of dealing between the parties.

- (2) Where there is a failure to comply with the guarantee in this section, the consumer's right of redress is to refuse to pay more than a reasonable price.
- (3) Nothing in this Part confers any other right of redress.
- Compare: 1908 No 168 s 10; Supply of Goods and Services Act 1982 s 15 (UK)

*Right of redress against suppliers where services fail to comply with guarantees*

**32 Options of consumers where services do not comply with guarantees**

Where a service supplied to a consumer fails to comply with a guarantee set out in any of sections 28 to 30, the consumer may,—

- (a) where the failure can be remedied,—
- (i) require the supplier to remedy it within a reasonable time;
  - (ii) where a supplier who has been required to remedy a failure refuses or neglects to do so, or does not succeed in doing so within a reasonable time,—
    - (A) have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied; or
    - (B) subject to section 35, cancel the contract for the supply of the service in accordance with section 37:
- (b) where the failure cannot be remedied or is of a substantial character within the meaning of section 36,—
- (i) subject to section 35, if there is a contract between the supplier and the consumer for the supply of the service, cancel that contract in accordance with section 37; or
  - (ii) obtain from the supplier damages in compensation for any reduction in value of the product of a service below the charge paid or payable by the consumer for the service:
- (c) in addition to the remedies set out in paragraphs (a) and (b), obtain from the supplier damages for any loss or damage to the consumer resulting from the failure (other than loss or damage through reduction in value of the product of the service) which was reasonably foreseeable as liable to result from the failure.

Section 32(b)(i): substituted, on 8 July 2003, by section 4 of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

**33 Exceptions to right of redress against supplier in relation to services**

Notwithstanding section 32, there shall be no right of redress against a supplier under this Act in respect of a service or any product resulting from a service which fails to comply with a guarantee set out in section 29 or section 30 only because of—

- (a) an act or default or omission of, or any representation made by, any person other than the supplier or a servant or agent of the supplier; or
- (b) a cause independent of human control.

### **34 Contracts of work and materials**

Nothing in section 32 limits or affects the rights of a consumer under Part 2 or Part 3 where the contract is one of work and materials.

#### *Provisions relating to cancellation*

### **35 Application of right to cancel contract**

Where the service to be supplied under the contract is merely incidental to the supply of goods, the consumer cannot cancel the contract under this Act if he or she has or had the right to reject the goods under section 18.

### **36 Failure of substantial character**

For the purposes of section 32(b), a failure to comply with a guarantee is of a substantial character in any case where—

- (a) the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the product of the service is substantially unfit for a purpose for which services of the type in question are commonly supplied and the product cannot easily and within a reasonable time be remedied to make it fit for the purpose; or
- (c) where section 29 applies, the product of the service is unfit for a particular purpose, or is of such a nature and quality that the product of the service cannot be expected to achieve any particular result, made known to the supplier and the product cannot easily and within a reasonable time be remedied to make it fit for the particular purpose or to achieve the particular result; or
- (d) the product of the service is unsafe.

### **37 Rules applying to cancellation**

- (1) The cancellation by a consumer of a contract for the supply of a service shall not take effect—
  - (a) before the time at which the cancellation is made known to the supplier; or
  - (b) where it is not reasonably practicable to communicate with the supplier, before the time at which the consumer indicates, by means which are reasonable in the circumstances, his or her intention to cancel the contract.

- (2) Subject to subsection (3), the cancellation may be made known by words, or by conduct indicating an intention to cancel, or both, and it shall not be necessary to use any particular form of words, so long as the intention to cancel is made known.
- (3) Where it is reasonably practicable to communicate with the supplier, subsection (2) shall take effect subject to any provision in the contract for the supply of a service requiring notice of cancellation in writing.

Compare: 1979 No 11 s 8(1), (2)

### **38 Effects of cancellation**

- (1) Where a consumer cancels a contract for the supply of services under this Act,—
  - (a) the consumer shall be entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the services unless a court or the Disputes Tribunal orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer:
  - (b) so far as the contract has been performed at the time of the cancellation, no party shall, by reason of the cancellation, be divested of any property transferred or money paid pursuant to the contract, except as otherwise provided in paragraph (a):
  - (c) so far as the contract remains unperformed at the time of the cancellation, no party shall be obliged or entitled to perform it further.
- (2) Nothing in subsection (1) shall affect—
  - (a) the right of a party to recover damages in respect of a misrepresentation or the repudiation or breach of the contract by another party; or
  - (b) the right of the consumer to recover damages under section 32(b)(ii) or 32(c) for failure to comply with a guarantee; or
  - (c) the right of the consumer under this Act to reject goods supplied in connection with the service.

Compare: 1979 No 11 s 8(3), (4)

Section 38(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **39 Ancillary power of court or Disputes Tribunal to grant relief**

- (1) Where a consumer cancels under this Act a contract for the supply of services, a court or the Disputes Tribunal, 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 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) direct any party to the proceedings to transfer or assign to any other such party or to give him or her 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:
  - (c) without prejudice to any right to recover damages, direct any party to the proceedings to pay to any other such party such sum as the court or Tribunal thinks just:
  - (d) 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 or Tribunal thinks just:
  - (e) permit a supplier to retain the whole or part of any money paid or other consideration provided in respect of the services under the contract.
- (3) Any such order, or any provision of it, may be made upon and subject to such terms and conditions as the court or the Tribunal 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 or Tribunal shall have regard to—
  - (a) any benefit or advantage obtained by the consumer by reason of anything done by the supplier in or for the purpose of supplying the service; and
  - (b) the value, in the opinion of the court or Tribunal, of any work or services performed by the supplier in or for the purpose of supplying the service; and
  - (c) any expenditure incurred by the consumer or the supplier in or for the purpose of the performance of the service; and
  - (d) the extent to which the supplier or the consumer was or would have been able to perform the contract in whole or in part; and
  - (e) such other matters as the court or the Tribunal thinks fit.
- (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 or her 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 or her 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 or Tribunal be inequitable to any party to make such an order.

- (7) An application for an order under this section may be made by—
- (a) the consumer; or
  - (b) the supplier; or
  - (c) any person claiming through or under the consumer or the supplier; or
  - (d) any other person if it is material for him or her to know whether relief under this section will be granted.

Compare: 1979 No 11 s 9

Section 39(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **39A Services subject to collateral credit agreement**

- (1) This section applies if—
- (a) a consumer acquires services under a contract for the supply of services; and
  - (b) the contract is associated with a collateral credit agreement; and
  - (c) the supplier is a party to the contract; and
  - (d) the consumer exercises the right to cancel the contract for the supply of the services under this Act.
- (2) A court or the Disputes Tribunal may order that all or any of the rights and obligations of the consumer under the collateral credit agreement vest in the supplier.
- (3) In this section,—
- collateral credit agreement**, in relation to a contract for the supply of services, means a contract or an agreement that—
- (a) is arranged or procured by the supplier of the services; and
  - (b) is for the provision of credit by a person other than the supplier to enable the consumer to pay, or defer payment, for the services

**supplier** does not include a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 who has lent money to a consumer, if the whole or part of the price of the services is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the services.

- (4) This section does not limit section 39.

Section 39A: inserted, on 18 December 2013, by section 11 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 39A(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **40 Saving**

Nothing in this Part limits or affects—

- (a) any rule of law or any enactment which imposes on the supplier a duty stricter than that imposed by this Part; or
- (b) any rule of law whereby any term not inconsistent with this Part is to be implied in a contract for the supply of a service; or
- (c) any enactment which defines or restricts the rights, duties, or liabilities arising in connection with a service of any description; or
- (d) any rule of law or any enactment relating to contracts of employment or contracts of apprenticeship; or
- (e) any rule of law conferring immunity from suit on a barrister or solicitor for work done in the course of, or in connection with, proceedings before any court or Tribunal.

## **Part 5**

### **Miscellaneous provisions**

#### *Exceptions*

#### **41 Exceptions**

- (1) Nothing in this Act shall apply in any case where goods or services are supplied otherwise than in trade.
- (2) Nothing in this Act shall give any person a right of redress against a charitable organisation in any case where goods or services are supplied by the charitable organisation for the principal purpose of benefiting the person to whom the supply is made.
- (3) *[Repealed]*

Section 41(3): repealed, on 17 June 2014, by section 12 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

#### **42 Exception in respect of repairs and parts**

- (1) Section 12 does not apply where reasonable action is taken to notify the consumer who first acquires the goods from a supplier in New Zealand, at or before the time the goods are supplied, that the manufacturer does not undertake that repair facilities and parts will be available for those goods.
- (2) Where reasonable action is taken to notify the consumer who first acquires the goods from a supplier in New Zealand, at or before the time the goods are supplied, that the manufacturer does not undertake that repair facilities and parts will be available for those goods after the expiration of a specified period, section 12 shall not apply in relation to those goods after the expiration of that period.

Compare: Trade Practices Act 1974 s 74F(2), (3) (Aust)

**43 No contracting out except for business transactions**

- (1) Subject to this section and to sections 40, 41, and 43A, the provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement.
- (2) However, despite subsection (1), parties to an agreement may include a provision in their agreement to the effect that the provisions of this Act will not apply to that agreement, provided that—
  - (a) the agreement is in writing; and
  - (b) the goods or services are, or (in connection only with the guarantee of acceptable quality in section 7A) the gas or electricity is, supplied and acquired in trade; and
  - (c) all parties to the agreement—
    - (i) are in trade; and
    - (ii) agree to contract out of the provisions of this Act; and
  - (d) it is fair and reasonable that the parties are bound by the provision in the agreement.
- (2A) If, in any case, a court is required to decide what is fair and reasonable for the purposes of subsection (2)(d), the court must take account of all the circumstances of the agreement, including—
  - (a) the subject matter of the agreement; and
  - (b) the value of the goods, services, gas, or electricity (as relevant); and
  - (c) the respective bargaining power of the parties, including—
    - (i) the extent to which a party was able to negotiate the terms of the agreement; and
    - (ii) whether a party was required to either accept or reject the agreement on the terms and conditions presented by another party; and
  - (d) whether all or any of the parties received advice from, or were represented by, a lawyer, either at the time of the negotiations leading to the agreement or at any other relevant time.
- (3) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.
- (4) Every supplier and every manufacturer commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act other than in accordance with subsection (2) or section 43A.
- (5) Where an agreement of the kind described in subsection (2) excludes any provision of this Act, the benefit of the exclusion shall be deemed to be conferred on any manufacturer of the goods supplied under the agreement, as well as on the supplier of those goods.

- (6) Nothing in subsection (1) shall limit or affect any term in an agreement in writing between a supplier and a consumer to the extent that the term—
- (a) imposes a stricter duty on the supplier than that imposed by this Act; or
  - (b) provides a remedy more advantageous to the consumer than the remedies provided by this Act.
- (7) Nothing in subsection (1) prevents a consumer who has a claim under this Act from agreeing to settle or compromise that claim.

Compare: 1971 No 147 s 51

Section 43(1): amended, on 8 July 2003, by section 5(1) of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

Section 43(2): replaced, on 17 June 2014, by section 13 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 43(2A): inserted, on 17 June 2014, by section 13 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 43(4): amended, on 8 July 2003, by section 5(2) of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

#### **43A Exclusion of liability in favour of non-contracting supplier**

- (1) An agreement of the kind referred to in section 43(2) may exclude any provision of this Act that applies to a non-contracting supplier of services to the consumer with whom the agreement is made.
- (2) The non-contracting supplier has the benefit of the exclusion.

Section 43A: inserted, on 8 July 2003, by section 6 of the Consumer Guarantees Amendment Act 2003 (2003 No 33).

### *General provisions*

#### **44 Assessment of damages in case of hire purchase agreements**

The damages that a consumer may recover for a failure of goods supplied under a hire purchase agreement to comply with a guarantee set out in this Act shall be assessed, in the absence of evidence to the contrary, on the basis that the consumer will complete the purchase of the goods or would have completed that purchase if the goods had complied with the guarantee.

Compare: 1971 No 147 s 15

#### **45 Liability for representations**

- (1) Where goods assigned or procured to be assigned to the supplier by a person acting in trade (in this section referred to as the **dealer**) are supplied to a consumer, every representation made to the consumer by the dealer, or anyone acting on behalf of the dealer, in connection with or in the course of negotiations leading to the supply of the goods shall give the consumer—
- (a) as against the supplier, subject to section 46, the same rights as the consumer would have had under this Act if the representation had been made by the supplier personally:

- (b) as against the dealer who made the representation and any person on whose behalf the dealer was acting in making it, the same rights against any or all of them personally as the consumer would have had under this Act if that person had supplied the goods to the consumer as a result of the negotiations.
- (2) Without prejudice to any other rights or remedies to which a supplier may be entitled, a supplier shall be entitled, where the representation was made without his or her express or implied authority, to be indemnified by the dealer who made the representation and by any person on whose behalf the dealer was acting in making it, against any damage suffered by the supplier through the operation of subsection (1).

Compare: 1971 No 147 s 17

#### **46 Liability of assignees and creditors**

- (1) The liability under this Act of an assignee of the rights of a supplier under a contract of supply shall not exceed the amount owing by the consumer under the contract at the date of the assignment.
- (2) The liability under this Act of a creditor who has lent money on the security of goods supplied to a consumer shall not exceed the amount owing by the consumer at the date of the loan.
- (3) Where the assignee referred to in subsection (1), or the creditor referred to in subsection (2), suffers any losses because of a liability to the consumer under this Act, the assignee or creditor shall, subject to any agreement with the supplier, be entitled to be indemnified by the supplier against those losses.
- (4) No assignment of the rights under a contract of supply shall affect the exercise of any right or remedy given by this Act against the supplier.

Compare: 1971 No 147 s 18

Section 46 heading: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 46(2): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 46(3): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

#### **46A Indemnification of gas and electricity retailers**

- (1) This section applies if—
- (a) there has been a failure of the acceptable quality guarantee in section 7A in the supply of gas or electricity to a consumer by a retailer, as determined—
- (i) by the retailer; or
- (ii) if the retailer does not make a determination or if the retailer's determination is challenged, by the dispute resolution scheme following a complaint made under section 43EA of the Gas Act 1992

- or under section 95 of the Electricity Industry Act 2010 (as the case requires); or
- (iii) by a court or the Disputes Tribunal (if a court or the Disputes Tribunal makes a determination on the issue); and
- (b) the failure of acceptable quality was wholly or partly the result of an event, circumstance, or condition associated with—
- (i) a gas pipeline or other equipment that was, at the time of the failure, the responsibility of a person then supplying line function services (a **responsible party**); or
  - (ii) electricity lines or other equipment that was, at the time of the failure, the responsibility of a person (including Transpower (as defined in the Electricity Industry Act 2010)) then supplying line function services (a **responsible party**); and
- (c) the failure was not a result of a person involved in the supply complying with a rule or order with which it was legally obliged to comply; and
- (d) the failure was not a result of action taken by Transpower in its capacity as system operator under the Electricity Industry Act 2010; and
- (e) the consumer obtains a remedy under Part 2 in relation to the failure against the gas or electricity retailer; and
- (f) that remedy is a cost to the retailer (a **remedy cost**).
- (2) If this section applies, a retailer that has incurred remedy costs is entitled to be indemnified for those costs by the responsible party or responsible parties.
- (3) The amount of a responsible party's liability under the indemnity is limited to the proportion of the remedy costs that is attributable to the events, circumstances, or conditions associated with the gas pipelines, electricity lines, or other equipment that the responsible party was responsible for at the time of the failure.
- (4) However,—
- (a) if a responsible party pays compensation to a consumer (**payment A**) in respect of a service provided directly by the responsible party to the consumer; and
  - (b) if the retailer incurs remedy costs in relation to that consumer for a failure of acceptable quality that arose from the same event, circumstance, or condition that led to the payment of payment A; then
  - (c) the amount that the retailer would otherwise recover from the responsible party in respect of that consumer must be reduced by the amount of payment A.
- (5) Disputes between gas or electricity retailers and responsible parties relating to the existence or allocation of liability under the indemnity may be dealt with by the dispute resolution scheme referred to,—

- (a) in the case of gas, in section 43E of the Gas Act 1992; and
- (b) in the case of electricity, in section 95 of the Electricity Industry Act 2010.

Section 46A: inserted, on 17 June 2014, by section 14 of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 46A(1)(a)(iii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### 47 Jurisdiction

- (1) Any court of competent jurisdiction, and the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 if it has jurisdiction under this section, may hear and determine any claim for costs, damages, or for a refund payable under this Act and may make an order under section 23A or 39.
- (2) In this section, **court of competent jurisdiction** means—
  - (a) the High Court;
  - (b) the District Court in any case where—
    - (i) a claim referred to in subsection (1) does not exceed \$350,000; or
    - (ii) an order under section 23A or 39 does not exceed the limits prescribed by subsection (3).
- (3) The District Court may make an order under section 23A or 39 if the order does not—
  - (a) require a person to pay an amount exceeding \$350,000;
  - (b) vest any property exceeding \$350,000 in value in any person;
  - (c) direct the transfer or assignment or delivery of possession of any property exceeding \$350,000 in value;
  - (d) permit a supplier to retain any money paid or other consideration provided in excess of an aggregate value of \$350,000.
- (4) Subject to subsection (6), the Disputes Tribunal shall have jurisdiction to hear and determine any claim referred to in subsection (1) where the claim does not exceed \$15,000.
- (5) Subject to subsection (6), the Disputes Tribunal may make an order under section 23A or 39 if the order does not—
  - (a) require a person to pay an amount exceeding \$15,000;
  - (b) vest any property exceeding \$15,000 in value;
  - (c) direct the transfer or assignment or delivery of possession of any property exceeding \$15,000 in value;
  - (d) permit a supplier to retain any money paid or other consideration provided in excess of an aggregate value of \$15,000.
- (6) Where in respect of any proceedings properly before the Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made pur-

suant to section 13 of the Disputes Tribunal Act 1988, subsections (4) and (5) shall be read as if every reference in those subsections to \$15,000 were a reference to \$20,000.

Section 47(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(1): amended, on 18 December 2013, by section 15(2) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 47(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(2)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(2)(b)(ii): amended, on 18 December 2013, by section 15(2) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 47(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(3): amended, on 18 December 2013, by section 15(2) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 47(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(3)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(3)(d): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(4): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 47(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(5): amended, on 18 December 2013, by section 15(2) of the Consumer Guarantees Amendment Act 2013 (2013 No 144).

Section 47(5)(a): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 47(5)(b): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 47(5)(c): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 47(5)(d): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 47(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 47(6): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

*Amendment to Sale of Goods Act 1908***48 Exclusion where Consumer Guarantees Act 1993 applies**

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

*Amendment to Hire Purchase Act 1971*

*[Repealed]*

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

**49 Exclusion where Consumer Guarantees Act 1993 applies**

*[Repealed]*

Section 49: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

*Amendments to Motor Vehicle Dealers Act 1975***50 Application of Motor Vehicle Dealers Fidelity Guarantee Fund**

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

**51 Jurisdiction of Disputes Tribunal**

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

**52 Referral of certain disputes to Disputes Tribunal**

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

*Amendments to Contractual Remedies Act 1979***53 Assignees**

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

**54 Savings**

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

*Amendment to Building Act 1991***55 Fair Trading Act 1986 and Consumer Guarantees Act 1993 not affected**

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

*Application of Act***56 Application of Act**

This Act does not apply to any contract for the supply of goods or services made before the commencement of this Act.

Compare: 1979 No 11 s 16; 1982 No 132 s 15

## Reprints notes

### **1**    *General*

This is a reprint of the Consumer Guarantees Act 1993 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*

District Court Act 2016 (2016 No 49): section 261

Consumer Guarantee Amendment Act 2013 (2013 No 144)

Disputes Tribunals Amendment Act 2009 (2009 No 22): section 8

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

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

Consumer Guarantees Amendment Act 2003 (2003 No 33)

Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 2