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PURPOSE OF THE ACT

The Act is designed to give consumers remedies against suppliers and manufacturers of goods and services which fail to comply with guarantees set out in the Consumer Guarantees Act 1993 (the Act).

WHEN DOES THE ACT APPLY?

The Act applies whenever goods or services, in trade are supplied to a consumer of a kind which are normally bought for personal, domestic or household use.

However the Act does not cover goods supplied by auction or competitive tender.

It does not matter who actually buys them as long as they are not bought to be on sold as part of another business or provided certain other exceptions don't apply.

Second hand goods which are bought for personal, domestic or household use are also covered.

The Act does not apply where a business is dissatisfied with the goods or services supplied.

WHO IS A 'CONSUMER'?

A consumer is a person who obtains from a supplier, goods or services of a kind ordinarily obtained for personal, domestic or household use or consumption.

WHAT IS MEANT BY 'SUPPLY'?

In relation to *goods* supply can be made in trade by way of gift, sale, exchange, lease, hire or hire purchase.

In relation to *services* supply occurs whenever a service is provided, granted, or conferred in trade.

WHO IS A 'MANUFACTURER'?

- A person carrying on the business of assembling, producing or processing goods;
- Any person who represents themselves to the public as the manufacturer of the goods;
- Any person who attaches their brand or mark or causes or permits their brand or mark to be attached to goods;
- Where goods are manufactured outside of New Zealand and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, the manufacturer will be the importer or distributor of those goods.

WHAT IS SUPPLY IN 'TRADE'?

The term trade is defined by the Act as meaning any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services.

WHAT GUARANTEES APPLY TO A SUPPLIER OF GOODS?

IN RESPECT OF TITLE THE SUPPLIER GUARANTEES THAT

- They have the right to sell; and
- The goods are free from any undisclosed security; and
- The consumer has the right to undisturbed possession of the goods.

GUARANTEE THAT THE GOODS SUPPLIED WILL BE OF AN ACCEPTABLE QUALITY

This requires that the goods are

- Fit for all purposes for which the goods are commonly supplied; and
- Acceptable in appearance and finish; and
- Free from minor defects; and
- Safe and durable.

ACCEPTABILITY IS A QUESTION OF FACT HAVING REGARD TO

- The nature of the goods;
- The price of the goods;
- Any statements made about the goods on any packaging or label on the goods;
- Any representation made about the goods by the supplier or the manufacturer;
- All other relevant circumstances.

The test is whether a reasonable consumer fully aware of the state of the goods (including any hidden defects) would find them acceptable.

THE SUPPLIER MUST GUARANTEE THE GOODS ARE

- Fit for the purpose the consumer makes known, either expressly or by implication; and
- Fit for the purpose which the supplier claims.

FURTHER GUARANTEES REQUIRE

- Goods correspond with description. Descriptions must all be accurate; and
- Goods comply with sample or demonstration model. The goods must be of the same quality; and
- Where the price is not determined by contract then a consumer is not liable to pay more than a reasonable price; and
- Any express guarantees be met.

REMEDIES AGAINST THE SUPPLIER OF GOODS

A consumer has a right of redress against a supplier of goods where the goods fail to comply with any guarantees set out in the Act or which are expressly made.

The remedy available depends on whether there is a substantial failure of the goods in respect of the guarantees.

INSUBSTANTIAL FAILURE

If the failure can be remedied the consumer may require the supplier to remedy it within a reasonable time. If this is not done then the consumer can have the failure remedied elsewhere at the expense of the supplier, or reject the goods.

WHAT IS FAILURE OF A SUBSTANTIAL CHARACTER?

- Where the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure.
- Where there is a significant departure from the description, sample or demonstration model.

- The goods are substantially unfit for the purpose for which they are commonly supplied or for which the supplier represented.
- The goods are unsafe.

REMEDIES FOR SUBSTANTIAL FAILURE

The remedies for the substantial failure are:

- Rejection of the goods; or
- Damages from the supplier for compensation for any reduction in the value of goods below the price paid, or payable for the goods.

Damages may be sought in addition to the remedies above, for any loss, or damage which was reasonably foreseeable result from the failure.

Where the consumer exercises the right to reject goods, the consumer may choose to have either a full refund or replacement goods of an identical type to those rejected.

CONSUMER CAN LOSE THE RIGHT TO REJECT GOODS

The right of rejection is lost if:

- It is not exercised within a reasonable time.
- The goods are disposed of by the consumer or have been lost or destroyed while in the possession of a person other than the supplier of their agent.
- The goods are damaged after delivery

- The goods have been attached to or incorporated in any other property and cannot be detached or isolated without damaging them.

WHAT GUARANTEES APPLY TO A MANUFACTURER OF GOODS?

GUARANTEE OF REPAIR FACILITIES AND SPARE PARTS

When the goods are first supplied to a consumer in this country there is a implied guarantee that the manufacturer will take reasonable steps to ensure facilities for repair and supplies of replacement parts for the goods are reasonably available for a reasonable period after the supply of the goods.

The manufacturer may not contract out of its guarantee.

EXPRESS GUARANTEES MADE BY MANUFACTURER

Any express guarantees made in connection with the supply of the goods, or in connection with the promotion or the supply or use of the goods, made by the manufacturer of the goods shall apply in addition to those imposed by the Act.

GUARANTEE THAT GOODS ARE OF ACCEPTABLE QUALITY

Refer to the section on which guarantees apply to a supplier of goods for what this means.

GUARANTEE THAT GOODS COMPLY WITH DESCRIPTION

Where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description.

REMEDIES AGAINST THE MANUFACTURER

The consumer has a right to redress against a manufacturer who fails to comply with the guarantees in the Act or to any express guarantees made.

The consumer may obtain damages from the manufacturer for:

- Any reduction in the value of the goods resulting from the failure.
- Any other loss or damage resulting from the failure which was reasonably foreseeable as resulting from that failure.

The consumer can seek to have the goods repaired or replaced with goods of an identical type if the manufacturer expressly guaranteed this provision. However action can only be taken if the consumer has required the manufacturer to remedy the failure and the manufacturer has refused or neglected to remedy the failure or has not done so in a reasonable time.

A consumer does not have a right to redress against the manufacturer where a failure to comply with the guarantees of acceptable quality and compliance with description was only because of:

- An act or omission was by someone who is not the manufacturer, agent or servant of the manufacturer
- A cause independent of human control, occurring when the goods were no longer in the manufacturers control
- The price charged by the supplier being higher than the manufacturers recommended retail price or average retail price.

GUARANTEES FOR SUPPLY OF SERVICES

A supplier of services must guarantee that the service will be provided with reasonable care and skill. The standard is judged by comparison with other competent service providers doing similar work.

GUARANTEE AS TO FITNESS FOR PARTICULAR PURPOSE

Within reason, any product resulting from the service is to be:

- Fit for a particular purpose; and
- Of a nature and quality that it can be expected to achieve a particular result.

The purpose and/or result required must be made known to the service supplier except where the consumer is not relying on the supplier's skill or judgement or it would be unreasonable for them to do so.

GUARANTEE AS TO TIME OF COMPLETION

If this is not determined by contract it must be within a reasonable time.

GUARANTEE AS TO PRICE

If this is not determined by contract it must be a reasonable price. The consumers only right of redress is to refuse to pay more than a reasonable price.

REMEDIES AGAINST SUPPLIERS OF SERVICES

WHERE IT CAN BE REMEDIED

The consumer can require the supplier to remedy it within a reasonable time. If the supplier fails to do so the consumer may have it remedied elsewhere at the supplier's cost.

WHERE IT CANNOT BE REMEDIED OR IS OF A SUBSTANTIAL CHARACTER

- The consumer can cancel the contract
- The consumer can obtain damages in compensation for any reduction in the value of the product or service below the charged price

In addition, in any case, the consumer may recover damages for any consequential loss which is reasonably foreseeable.

Note: A supplier is not liable if the service fails to comply with a guarantee only because of:

- An act, default or omission or any representation made by any person other than the supplier.
- A cause independent of human control.

TERMS OF TRADE OR CONTRACTS WHICH RISK BREACHING THE CONSUMER GUARANTEES ACT

"Defective goods shall be repaired or replaced or the price refunded at the discretion of the seller"

If the fault is serious, then it is the customer who is entitled to choose between these three options.

"I understand that the goods to which this agreement relates are second-hand and that the seller does not promise that they are fit for any particular purpose"

The expectations of the reasonable customer will not be as high in relation to second-hand goods but the guarantees still apply.

"Any right to reject goods shall only be effective if the buyer notifies the seller within 30 days"

Any defect should be notified within a reasonable time. This will depend on the type of goods, how often they are used and the type of defect. In some cases, a reasonable time may be months or even years.

"Ownership of the goods remains with the seller until full payment"

This clause may be misleading unless all the other requirements under the guarantee of title are met.

"Contractor is not liable for any delay in installation"

This statement suggests the contractor has no responsibility to meet any time requirement. Unless a date has been agreed, the service must be provided within a reasonable time.

"The company's liability in the event of any claims will not exceed the sale price of the goods"

This would suggest that the company's liability was capped when in fact the consumer may in fact be able to claim for loss or for damages which were reasonably foreseeable as resulting from the failure by the company.

"The company will have no liability for any additional damage resulting from any cause whatsoever"

These statements are in direct conflict with the Act. Customers can claim additional damages for foreseeable consequential losses.

"The seller accepts no liability for any representations not expressly confirmed by the seller in writing"

The Act makes suppliers responsible for statements about suitability of goods for particular purposes. It does not require statements to be confirmed in writing.

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