

## The Consumer Guarantees Act 1993

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*The Consumer Guarantees Act 1993 places obligations on retailers, manufacturers and service providers. In many cases the obligations also fall on importers and distributors*

The Consumer Guarantees Act (CGA) sits alongside the Fair Trading Act and the Commerce Act. It displaced the elderly Sale of Goods Act for consumer transactions and sets out a number of guarantees which are to be implied into transactions involving the supply of goods or services.

### The Guarantees

A cornerstone of the CGA is the notion of acceptable quality. To be of acceptable quality goods must be:

- Fit for their common purpose;
- Of acceptable appearance and finish;
- Free from minor defects;
- Safe;
- Durable.

### There are further guarantees that:

- The supplier has the right to sell;
- Goods are free from undisclosed securities;
- The consumer will get undisturbed possession;
- The goods comply with any description given to them;
- The goods correspond with any sample;
- The price is reasonable;
- Spares and repairs are available for a reasonable period;
- Express guarantees will be honoured.

Services is widely defined. For example, it includes professional, financial, insurance and accommodation businesses, as well as the usual trades and other services such as plumbing or vehicle repair. Services must be:

- Given with due care and skill;
- Given within a reasonable time fit for their purpose;
- Provided for a reasonable price.

The reasonable price guarantee for both goods and services applies, unless price is set out specifically or by formula in the contract.

### Application

The key to application of the CGA is the definition of consumer, which means any person who acquires goods or services ordinarily acquired for personal, domestic or household use. Consumer does not include

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somebody acquiring either goods or services to re-supply, manufacture or repair in the course of trade.

It is not possible to exclude the CGA from true consumer transactions and there are potentially heavy penalties under the Fair Trading Act for businesses which attempt to do so.

However, it is possible to exclude the CGA if a consumer is in fact acquiring the goods or service for the purposes of a business, and the contracting out is acknowledged in writing. For the supplier, this is a very important provision.

The CGA requires a business to be accurate in disclosing the true nature and limitations of goods and services.

### Remedies & damages

The CGA emphasises resolving complaints quickly, directly and without involving the Court. Initial remedies against suppliers or manufacturers are:

- Fix or replace;
- Reject and refund or cancel and refund;
- Have someone else fix.

If initial remedies fail, the Courts or the Disputes Tribunal can award damages which can compensate not only for the reduction in value of the goods or services, but also for any consequential loss which was foreseeable.

### Reducing the risk

Although it is basically not possible to contract out of the Consumer Guarantees Act, there are steps which all suppliers should take in order to reduce the risk of claims. These include:

- Separate contract documents for consumer and non-consumer transactions;
- Written acknowledgements from consumers who purchase for business purposes and contract out of the CGA for such transactions;
- Specific prices;
- Clear statements if spares and repairs are not available;
- Ensuring that retention of title clauses are orally drawn to the customer's attention, and acknowledged in writing;
- Reviewing the adequacy of insurance;

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- Reviewing retailers' rights of redress against manufacturers, importers, wholesalers and distributors.

Most important of all, disclosing to consumers the true nature of goods or services.

For further information, contact a member of our Trade Practices team.

### CONTACT DETAILS

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