

How does the Consumer Guarantees Act affect you?

This information is intended as a guideline only - refer to the Consumer Guarantees Act for further information.

Your rights under the Consumer Guarantees Act

The Consumer Guarantees Act says that any work done for a consumer must meet four guarantees.

- The work will be carried out with reasonable care and skill.
- The work will be fit for any particular purpose that you have told the contractor about.
- If the time for completing the work has not been agreed, the work will be carried out within a reasonable time.
- If the price for the work has not been agreed, the price charged will be a reasonable price for the work done.



Guarantee 1 - reasonable care and skill

Reasonable care and skill is the care and skill other competent contractors doing the same work would use. Your contractor should have the skills and use the same care to complete the job and achieve the purpose desired by you without causing damage.

E.g. If a painter paints over flaking paint and six months later the new paint starts to flake, this would be judged a lack of care and skill.

Guarantee 2 - work will be fit for purpose

Work is fit for purpose when it achieves the specific result/s you have specified. If the contractor cannot achieve the specific result/s desired, they must tell you before they start the job.

If the purpose you want to achieve is normal then you do not have to specifically state it. Where the result wanted is less ordinary you must let the contractor know exactly what you want.

E.g. You decide to obtain prices for new wallpapers for your home and really like feature borders and dado effects. Even though the unit prices for wallpapers are similar, you must tell the contractor exactly what you want.

We recommend you ask the contractor to write down exactly what they have agreed to do in a written quote or contract to avoid any debate later.

If they don't have the skills required to do the job successfully, they must make sure you know this. It pays to hire the right person for the job - if a contractor tells you they do not have the skills to do the job required, find someone who does have the right skills.

E.g. You ask a contractor to apply a feature metallic coating on your home. They have no experience and advise you to hire a specialist coatings applicator. You ask them to do the work anyway. As they have told you that they may not have the specialist skills needed, you will not be able to claim that the work was not fit for the purpose.

If you ask the contractor to use the cheapest option, such as applying one topcoat in place of two, the result won't be as good as if you were prepared to pay for the full two topcoats. The contractor must still guarantee the quality of the work they do complete but there will be a lower expectation on the work. You cannot expect a one topcoat system to last as long as the recommended two topcoat system would.

E.g. You ask the contractor to put only one topcoat on your house as you plan to sell it. The contractor will probably get your agreement in writing that they have applied one topcoat as requested but in their opinion the paint system needs a second topcoat to be fit for purpose. This protects them when the paint does not last as long as two topcoats would have.

Guarantee 3 - work must be completed in a reasonable time

If you haven't specifically agreed with the contractor when the job will be completed the Consumer Guarantees Act says that the work must be finished within a reasonable time - i.e. the average time that would be taken by other competent contractors doing the same job. If you have discussed when the work will be done or written it into the quote or contract then that is your agreement.

E.g. You engage a painter to repaint your house over summer, but two months after starting, other jobs seem more urgent and autumn is fast approaching. You can ask for urgency as the work is clearly not being undertaken in a reasonable time.

Guarantee 4 - work must be completed for a reasonable price

If you have agreed on price via a quote, estimate or hourly rate, then that is your agreement on the price. If not, the contractor must charge a reasonable price - i.e. a price about the same as the price most other competent contractors would charge for the same work. As the customer you can refuse to pay more than a reasonable price.

E.g. You hire a contractor to get your front door painted. The cost of the job is not discussed. The painter applies two coats and charges \$150 for labour, but you ring three other painters who say they would charge \$70 - \$90. You may tell the painter you are only going to pay \$90 for the painting, as that is a reasonable price.

The Consumer Guarantees Act offers you protection if things go wrong

If things go wrong, your rights depend on how serious the problem is. Generally you can claim for:

- Problems that can be fixed;
- Serious problems or problems that can't be fixed;
- Damage and loss caused by the problem.

Give the contractor a chance to fix the problem

You must give the contractor a chance to fix the problem in a 'reasonable time' unless it is a serious problem. A 'reasonable time' will depend on the nature of the problem. If the new room extensions are leaking, a 'reasonable time' will be a few hours. In contrast, if you have difficulty opening a freshly painted window, a 'reasonable time' may be a few days.

If the contractor refuses to fix it or takes an unreasonably long time, you can ask someone else to fix the problem and ask the contractor to pay the reasonable cost of the repair job. You do not have to provide quotes before getting it fixed. If the contractor believes the repair cost is unreasonable, they need to prove this.

If you do not give the contractor the opportunity to fix the problem first, they do not have to pay the cost of repairs done by someone else. If the contractor is too busy to do the work, they can arrange for someone else to complete it on their behalf.

Cancelling the contract should be a last resort

If the problem is serious or can't be fixed you can cancel the contract and refuse to pay for the work or pay less than the agreed price (if you have already paid you can claim all or some of your money back); or you can claim compensation because the work completed is not worth the price you have paid for it. If you cancel the contract, advise the contractor in writing. A letter posted to their address is considered reasonable notification.

Once the contract is cancelled the contractor will cease work, regardless of whether the job is complete. You will have the right to keep any materials supplied but will normally need to pay the cost of these materials. If you refuse, the contractor can take a case to the Disputes Tribunal or to Court to claim the cost of the materials. Similarly if you have paid for the complete job and the contractor refuses to refund you any money you can go to the Disputes Tribunal or to Court to claim back the labour cost for the job.

Contractors may have a Romalpa clause that they have written into their contract that allows them to keep ownership of parts or materials until you have paid in full for the work done. Romalpa clauses are only effective where the work is problem-free and you, the customer, refuse to pay. If you cancel the contract because the work has failed to meet one of the guarantees in the Consumer Guarantees Act the contractor cannot invoke the Romalpa Clause and repossess any parts or materials until the dispute over the work done is settled.

To use a Romalpa clause the contractor must clearly advise you that the goods can be repossessed, get you to acknowledge this in writing, and give you a copy of the repossession clause.

If only a portion of the work is sub-standard, the contractor and customer will need to reach an agreement that the customer will pay for the work that was done properly.

E.g. If a painter paints your house and shed and the house painting is fine but paint is flaking off the shed within a fortnight, you will be expected to pay for the house painting, but would not need to pay for the shed painting until the job is completed properly. The contractor could take you to the Disputes Tribunal if you refuse to pay for the house painting.

If the problem is serious or can't be fixed you have the choice of claiming compensation or cancelling the contract and paying less for the work done.

The contractor is responsible for paying for any foreseeable damage or other losses that they cause. They are also responsible for any additional costs you may face that are directly related to a problem the contractor has caused. Responsibility is limited to damage that is foreseeable.

E.g. If the painter spills paint on your car, you can ask the painter to pay for the car to be fixed and for transport costs while the car is being fixed.

The Consumer Guarantees Act provides protection against poor workmanship, products and services. You can also protect yourself by ensuring all agreements are in writing. It is best to try to resolve all problems as soon as they occur, rather than allowing the problem to fester and grow. Generally, most problems can be resolved through open and honest discussions between both parties. It is in no-one's interest to let the problem grow to the point it must be resolved in court.

While most reputable professional contractors will generally have public liability insurance, it is well worth checking before you hire anyone that they have appropriate insurance should things go wrong.



For ideas, inspiration and instructions:

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In New Zealand: Call 0800 RESENE (737 363), visit www.resene.co.nz or email us at advice@resene.co.nz