

Consumer Guarantees Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Consumer Law Reform Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Fair Trading Amendment Bill comprising clauses 1 and 2, subpart 1 of Part 1, and Schedule 1
- this bill comprising subpart 2 of Part 1, and Schedule 2
- Weights and Measures Amendment Bill comprising subpart 3 of Part 1
- Secondhand Dealers and Pawnbrokers Amendment Bill comprising subpart 4 of Part 1
- Carriage of Goods Amendment Bill comprising subpart 5 of Part 1
- Auctioneers Bill comprising Part 2 and Schedule 3.

Consumer Guarantees Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Craig Foss

Consumer Guarantees Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
	• • • • •	
32	Principal Act amended	3
	<i>Purpose</i>	
33	Long Title repealed	3
34	New section 1A inserted	3
	1A Purpose	3
	<i>Gas and electricity, and auctioneers</i>	
35	Interpretation	4
	<i>Delivery of goods</i>	
35A	New section 5A inserted	5
	5A Guarantee as to delivery	5
35B	Meaning of acceptable quality	6
	<i>Gas and electricity</i>	
36	New sections 7A and 7B inserted	6
	7A Guarantee of acceptable quality in supply of gas and electricity	6
	7B Relationship of section 7A with rest of Act	8

	<i>Collateral credit agreements</i>	
37	New section 23A inserted	8
	23A Goods subject to collateral credit agreement	8
37A	New section 39A inserted	9
	39A Services subject to collateral credit agreement	9
	<i>Auctioneers</i>	
39	Exceptions	10
	<i>Contracting out for business transactions</i>	
40A	No contracting out except for business transactions	10
	<i>Gas and electricity</i>	
41	New section 46A inserted	11
	46A Indemnification of gas and electricity retailers	11
	<i>Jurisdiction</i>	
42	Jurisdiction	13
	<i>Gas and electricity</i>	
43	Consequential amendments in Schedule 2	13
	
	Schedule 2	14
	Consequential amendments relating to gas and electricity arising from amendments to Consumer Guarantees Act 1993	
	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Consumer Guarantees Amendment Act **2013**.

2 Commencement

- (1) This Act, except the provisions specified in **subsection (2)**, 5
comes into force on the day after the date on which it receives
the Royal assent.

- (2) **Sections 35, 35A, 35B, 36, 39, 40A, 41, and 43** come into force on the day that is 6 months after the date on which this Act receives the Royal assent.

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- 32 Principal Act amended**
 This **subpart** amends the Consumer Guarantees Act 1993. 5

Purpose

- 33 Long Title repealed**
 The Long Title is repealed.

- 34 New section 1A inserted**
 The following section is inserted after section 1: 10

“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 15
 - “(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 20
 - “(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.” 25

*Gas and electricity, and auctioneers***35 Interpretation**

- (1) Paragraph (b) of the definition of **goods** in section 2(1) is amended by repealing subparagraph (v) and substituting the following subparagraph: 5
- “(v) non-reticulated gas:”.
- (1A) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**line function services** has,—
- “(a) in relation to gas, the meaning set out in section 2(1) of the Gas Act 1992; and 10
- “(b) in relation to electricity, the meaning set out in section 2(1) of the Electricity Act 1992”.
- (2) Paragraph (b) of the definition of **services** in section 2(1) is amended by repealing subparagraph (vi) and substituting the following subparagraphs: 15
- “(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” 20
- (3) Paragraph (b) of the definition of **supplier** in section 2(1) is amended by repealing subparagraph (iv) and substituting the following subparagraph: 25
- “(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”.
- (4) Paragraph (c) of the definition of **supplier** in section 2(1) is repealed. 30
- (5) Section 2 is amended by adding the following subsection:
- “(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.”

*Delivery of goods***35A New section 5A inserted**

The following section is inserted after section 5:

~~“5A Guarantee as to delivery~~

- ~~“(1) Where a supplier is responsible for delivering, or for arranging the delivery of, goods to a consumer there is a guarantee that the goods will be received by the consumer either—~~ 5
- ~~“(a) at a time, or within a period, agreed between the supplier and the consumer; or~~
- ~~“(b) if no delivery time has been agreed, within a reasonable time.~~ 10
- ~~“(2) Part 2 (as modified by this section) gives the consumer a right of redress against the supplier where the delivery of the goods fails to comply with the guarantee under this section.~~
- ~~“(3) Where a consumer has a right of redress, the consumer may,—~~ 15
- ~~“(a) if, and only if, the failure is of a substantial character, reject the goods under section 18(3); and~~
- ~~“(b) in all cases, 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.~~ 20
- ~~“(4) For the purposes of section 20(1)(b), an agent of the supplier includes a carrier of the goods referred to in this section.~~
- ~~“(5) Except as provided for in **subsection (3)**, a consumer has no rights of redress under Part 2 in relation to the guarantee under this section.~~ 25

“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— 30
- “(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 35

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).**”

35B Meaning of acceptable quality

Section 7 is amended by inserting the following paragraph after paragraph (h):

“(ha) the nature of the supplier and the context in which the supplier supplies the goods:”.

Gas and electricity

36 New sections 7A and 7B inserted

The following sections are inserted after section 7:

“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— 5
- “(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 10
- “(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 15
- “(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. 20
- “(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 25
- “(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,— 30
- “(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 35
- “(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. 5
- “**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. 10
- “(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. 15
- “(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. 20
- “(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.”
- Collateral credit agreements* 25
- 37 New section 23A inserted**
 The following section is inserted after section 23:
- “**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 30
- “(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 35
 under this Act.

- “(2) A court or a 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.”

37A New section 39A inserted

The following section is inserted after section 39:

- “**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 a 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.” 10

Auctioneers

39 Exceptions

Section 41 is amended by repealing subsection (3).

Contracting out for business transactions

40A No contracting out except for business transactions 15

Section 43 is amended by repealing subsection (2) and substituting the following subsections:

“(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— 20

“(a) the agreement is in writing; and

“(b) ~~the goods or services are both supplied and acquired in trade; 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 25

“(c) all parties to the agreement—

“(i) are in trade; and

“(ii) agree to contract out of the provisions of this Act; and 30

“(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 35

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 or services~~ goods, services, gas, or electricity (as relevant); and 5
- “(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 10 reject the agreement on the terms and conditions presented by ~~the other~~ 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 15 the negotiations leading to the agreement or at any other relevant time.”

Gas and electricity

41 New section 46A inserted

The following section is inserted after section 46:

- “46A Indemnification of gas and electricity retailers 20**
- “(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 25
 - “(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 30 2010 (as the case requires); or
 - “(iii) by a court or a Disputes Tribunal (if a court or a Disputes Tribunal makes a determination on the issue); and
 - “(b) the failure of acceptable quality was wholly or partly the 35 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
- “(ca) the failure was not a result of action taken by Transpower in its capacity as system operator under the Electricity Industry Act 2010; and
- “(d) the consumer obtains a remedy under Part 2 in relation to the failure against the gas or electricity retailer; and
- “(e) 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 allocation of liability~~ 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; 5
 - and
 - “(b) in the case of electricity, in section 95 of the Electricity Industry Act 2010.”

Jurisdiction

- 42 Jurisdiction** 10
- (1) Section 47(1) is amended by inserting “established under section 4 of the Disputes Tribunals Act 1988 and” after “Disputes Tribunal”.
 - (2) Section 47 is amended by omitting “section 39” in each place where it appears and substituting in each case “**section 23A** or 39” 15

Gas and electricity

- 43 Consequential amendments in Schedule 2**
- The enactments specified in **Schedule 2** are consequentially amended as set out in that schedule. 20

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Schedule 2

s 43

**Consequential amendments relating to gas
and electricity arising from amendments
to Consumer Guarantees Act 1993**

Electricity Industry Act 2010 (2010 No 116)	5
Insert after section 95:	
“ 95A Indemnity disputes	
The dispute resolution scheme may resolve disputes between members of the dispute resolution scheme concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993 (an indemnity dispute).”	10
Section 96(4): add “, and the person is unlikely to be involved in indemnity disputes”.	
Section 97(2): omit “either or both” and substitute “any”.	
Section 97(2): add:	15
“(c) comply with a binding settlement determined by the scheme in an indemnity dispute.”	
Clause 1 of Schedule 4: insert after paragraph (a):	
“(aa) members have a mechanism for resolving indemnity disputes; and”.	20
Clause 2 of Schedule 4: insert in its appropriate alphabetical order:	
“ indemnity dispute means a dispute, referred to in section 95A of this Act and section 43EAA of the Gas Act 1992, concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993”.	25
Clause 9(3) of Schedule 4: insert after paragraph (c):	
“(ca) the scheme is not, or is no longer, capable of resolving indemnity disputes:”.	
Clause 13(1) of Schedule 4: insert “with respect only to its function of dealing with complaints made under section 95 of this Act or section 43E of the Gas Act 1992,” after “or set out,”.	30
Clause 13 of Schedule 4: insert after subclause (1):	
“(1A) The rules of the approved scheme must provide for, or set out, rules and procedures for dealing with indemnity disputes.”	

Gas Act 1992 (1992 No 124)

Insert after section 43E:

“43EAA Indemnity disputes

The dispute resolution scheme may resolve disputes between members of the dispute resolution scheme concerning the application of the indemnity in **section 46A** of the Consumer Guarantees Act 1993 (an **indemnity dispute**).”

Section 43EA(4): add “, and the person is unlikely to be involved in indemnity disputes”.

Section 43B(2): omit “either or both” and substitute “any”. 10

Section 43EB(2): add:

“(c) comply with a binding settlement determined by the scheme in an indemnity dispute.”

Section 43G(2)(i): add “, other than indemnity disputes (as defined in **section 43EAA**)”. 15

Legislative history

3 December 2013

Divided from Consumer Law Reform Bill
(Bill 287–2) by committee of the whole House as
Bill 287–3B
