

Topic 16 - ACL

CONSUMER GUARANTEES

Possible Breaches CHECK

GOODS (ss 51–59)

All supplies (including private sales):

- s 51 — title (right to sell)
- s 52 — undisturbed possession
- s 53 — freedom from undisclosed securities/charges

Trade or commerce only (not auction):

- s 54 — acceptable quality
- s 55 — fit for disclosed purpose
- s 56 — corresponds with description
- s 57 — corresponds with sample/demonstration model
- s 58 — repair facilities and spare parts available
- s 59 — compliance with express warranty

SERVICES (ss 60–62) — trade or commerce only (*excludes transport/storage of goods, insurance, and for s 61: architects/engineers*)

- s 60 — due care and skill
- s 61 — fit for disclosed purpose/result
- s 62 — supplied within a reasonable time

CHECKLIST - QUICK APPLICATION

☐ **Is the claimant a consumer?** (s 3) — objective test

Goods:

- s 3(1)(a): price ≤ \$100,000; OR
- s 3(1)(b): goods of a kind ordinarily acquired for PDHUC; OR
- s 3(1)(c): vehicle/trailer acquired principally for transport of goods on public roads
- If goods satisfied → check s 3(2) exclusions (resupply / manufacture / repair in trade or commerce)

Services:

- s 3(3)(a): price ≤ \$100,000; OR
- s 3(3)(b): services of a kind ordinarily acquired for PDHUC

☐ **Supply in trade or commerce?**

- Yes → most guarantees apply (ss 51–62)
- No → only ss 51–53 apply (goods only); no service guarantees apply

☐ **Exclusions?** (CGs do not apply)

- s 63(1)(a): transportation or storage of goods for business/trade/profession
- s 63(1)(b): insurance contracts
- s 131A CCA: financial products or services (regulated by ASIC Act instead)

☐ **Which guarantee(s) apply and have been breached?**

Goods — all supply (ss 51–53):

- s 51: title
- s 52: undisturbed possession
- s 53: freedom from securities/charges/encumbrances

Goods — trade or commerce only (ss 54–59):

- s 54: acceptable quality
- s 55: fit for disclosed purpose
- s 56: corresponds with description
- s 57: corresponds with sample/demonstration model
- s 58: repair facilities and spare parts available
- s 59: express warranties complied with

Services — trade or commerce only (ss 60–62):

- s 60: due care and skill
- s 61: fit for disclosed purpose/result (not architects/engineers)
- s 62: supplied within reasonable time

☐ **Effect of exclusion clauses?**

- s 64: clauses purporting to exclude/restrict/modify CGs → void
- s 64A: non-PDHUC goods/services → liability may be limited to repair/replacement (goods) or re-supply/costs (services)
- s 64A(3): limitation clause void if reliance would be unfair or unreasonable

☐ **Major or non-major failure?**

Goods → s 260:

- s 260(a): reasonable consumer would not have acquired the goods
- s 260(b): significant departure from description or sample
- s 260(c): substantially unfit for common purpose and cannot be remedied easily/within reasonable time
- s 260(d): unfit for disclosed purpose and cannot be remedied easily/within reasonable time
- s 260(e): unsafe

Services → s 268:

- s 268(1)(a): reasonable consumer would not have acquired the services
- s 268(1)(b): substantially unfit for common purpose and cannot be remedied
- s 268(1)(c): unfit for disclosed purpose and cannot be remedied
- s 268(1)(d): cannot achieve desired result made known to supplier and cannot be remedied
- s 268(1)(e): creates unsafe situation
- s 268(2): multiple non-major failures together = major failure

☐ Remedies — Goods (s 259)

Major failure (s 259(3)):

- Reject goods (s 259(3)(a)) → notify supplier → return goods (s 263) → refund or replace at consumer's election (s 263(4)) — no credit notes (s 263(5))
- Check s 262: consumer NOT entitled to reject if rejection period ended / goods lost/destroyed/disposed of / damaged after delivery / attached to other property
- OR recover compensation for reduction in value (s 259(3)(b))
- Consider s 265: terminate connected services contract

Non-major failure (s 259(2)):

- Require supplier to remedy within reasonable time (s 259(2)(a))
- If supplier fails → recover costs of remedying elsewhere (s 259(2)(b)(i)) OR reject goods (s 259(2)(b)(ii))

Damages (any failure) → s 259(4): reasonably foreseeable loss or damage

Gifts → s 266: recipient has same rights as original purchaser

☐ Remedies — Services (s 267)

Threshold: s 267(1)(c) exclusion — failure occurred only because of third party conduct or independent cause? If yes → no action under s 267 (note: does not apply to s 60 due care and skill)

Major failure (s 267(3)):

- Terminate contract (s 267(3)(a)) → refund to extent services unconsumed (s 269(3))
- Consider s 270: termination of connected goods contracts → deemed rejection → return goods → refund
- OR recover compensation for reduction in value (s 267(3)(b))

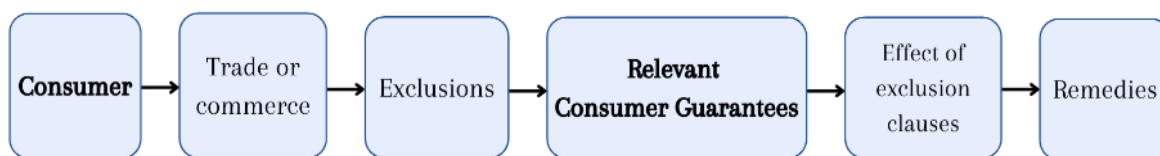
Non-major failure (s 267(2)):

- Require supplier to remedy within reasonable time (s 267(2)(a))
- If supplier fails → recover costs (s 267(2)(b)(i)) OR terminate (s 267(2)(b)(ii)) → refund unconsumed portion (s 269(3))

Damages (any failure) → s 267(4): reasonably foreseeable loss or damage — in addition to ss 267(2)–(3) remedies (s 267(5))

Exclusion of remedies → s 276: clauses excluding/restricting/modifying Part 5-4 remedies are void

Overview



Part 3-2, Division 1, ss51-68 ACL → Imposes statutory 'guarantee's as the quality of goods and services supplied to the consumer (CANNOT be excluded from consumer contracts)

- ☐ Only apply if there is an acquisition of goods or services by a consumer (s 3)
- ☐ Most of the consumer guarantees only apply if the supply was in trade or commerce
- ☐ There are a number of specific exclusions/ types of transactions to which the CGs DO NOT APPLY (s 63, s 131A)
- ☐ Need to identify which consumer guarantees apply.
- ☐ What is the effect of any exclusion clause? (ss 64, 64A)
- ☐ What remedies are available for a breach of a consumer guarantee? (ss 259-270, s2276)

!! CRITICAL DISTINCTION — READ FIRST !!

- **Consumer Guarantees (CGs):** "Consumer" test is **OBJECTIVE** — looks at the type of good, not the purchaser's subjective purpose (s 3 ACL).
- **Unfair Contract Terms (UCT):** "Consumer contract" test is **SUBJECTIVE** — looks at the individual's actual purpose of acquisition (s 23(3) ACL).

Introduction

The issue is whether [claimant] is entitled to [remedies] for [party]'s breach of consumer guarantees under the Australian Consumer Law (ACL).

Issue 1 - Is the Claimant a 'consumer' (s 3)? → Objective Test

Introduction

Firstly, in order for [claimant] to be entitled to consumer guarantees under the ACL, [he /she] must satisfy the definition of 'consumer' per s 3 ACL.

1. Must satisfy at least one limb under s 3(1) or s 3(3)

2. IF GOODS only -> Must not be acquired for the purposes of s 3(2)

Definitions:

*person per s 3 includes corporations (so covers the acquisition of goods or services by individuals AND businesses)

*services per s 3(3)

Limb 1 - Do the goods or services fall within the definitions of s 3(1) or s 3(3)?

GOODS - S 3(1)	S 3(1)(a) Price Threshold	<i>s 3(1)(a): Amount paid or payable does not exceed \$100,000.</i> OTF, [the good] was priced at [amount] which [does / does not] exceed \$100,000 satisfying s 3(1)(a).
	S 3(1)(b) PDHUC type	<i>s 3(1)(b): Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption (PDHUC).</i> -> Objective test: looks at the TYPE of good, NOT the purchaser's subjective intended use!!!! • 'Ordinarily' means regularly, not principally or predominantly • Goods ordinarily PDHUC: ○ Industrial Carpet ○ Ute ○ Alarm System • Goods NOT ordinarily PDHUC: ○ Photocopy machine ○ Prime-mover truck ○ Large farming tractor OTF, [the good] [is / is not] of a type ordinarily acquired for PDHUC because [insert facts]. Hence, s 3(1)(b) [is / is not] satisfied.
	S 3(1)(c) Vehicle/Trailer	<i>s 3(1)(c): The goods consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads</i> OTF, [vehicle / trailer] [was / was not] acquired for use principally in the transport of goods on public roads, as evidenced by [insert facts]. Hence, s 3(1)(c) [is / is not] satisfied.
SERVICES - S 3(3)	S 3(3)(a) Price Threshold	<i>s 3(3)(a): Amount paid or payable does not exceed \$100,000.</i> OTF, [the service] was priced at [amount] which [does / does not] exceed \$100,000 satisfying s 3(3)(a).
	S 3(3)(b) PDHUC type	<i>s 3(3)(b): Services were of a kind ordinarily acquired for personal, domestic or household use or consumption (PDHUC).</i>

		OTF, [the good] [is / is not] of a type ordinarily acquired for PDHUC because [insert facts]. Hence, s 3(3)(b) [is / is not] satisfied.
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Limb 2 - Goods Were not Acquired for the Purposes of s3(2)

ONLY FOR GOODS

S 3(2): Subsection (1) does not apply if the person acquired the goods:

(a) for the purpose of re-supply (or in the case of gift cards, re-supply specifically in trade or commerce); or

(b) for the purpose of using them up or transforming them, in trade or commerce, in the course of **(i)** production or manufacture; or **(ii)** repairing or treating other goods or fixtures on land.

Additionally, per s3(2), subsection 1 will not apply if [claimant] acquired the goods for the purposes of resupply, or using them up or transforming them, in trade or commerce.

OTF, [claimant] is buying [good] to [purpose e.g. resupply / manufacture / repair], thus [facts].

Hence, s 3(2)(insert subsection) [does / does not] apply.

- Make note if gift card -> resupply MUST be in trade of commerce

Example:

A bakery purchases flour from the supermarket (clearly a good for domestic use) + <\$100K
HOWEVER, this is not covered by the guarantee under s 3(2) because the baker is using it for manufacture (or even if they decide to sell ie. resupply, the flour)

Conclusion RE If Consumer

Therefore, claimant is [likely / unlikely] a consumer pursuant to s3 for the purposes of consumer guarantees.

Issue 2 - In trade or commerce?

Most CGs only apply to goods/services supplied in trade or commerce. However, ss 51–53 (title guarantees) apply to ALL supply of goods regardless of whether in trade or commerce.

- **Supplier in trade or commerce:** most guarantees (**ss 54–62**) apply.
- **Supplier NOT in trade or commerce:** significantly less guarantees apply (**only ss 51–53 for goods**); No service guarantees apply at all

Example:

A private sale of a car by a person who is not in the business of selling cars - significantly less guarantees apply

Most consumer guarantees only apply where the supply was made in trade or commerce.

OTF, [supplier] [is/is not] supplying [good/service] in trade or commerce as [he/she/it] [is/is not] doing so as part of a business undertaking.

This is because [insert e.g. D runs a registered business / this is a private sale by an individual not in business.]

Therefore [most guarantees / only ss 51–53 ACL] apply.

Issue 3 - Exclusions

(CGs DO NOT APPLY)

Additionally, [defendant] may argue that the consumer guarantees are not applicable as the contract is of a particular type excluded from the ACL.

S 63 ACL

Service
Exclusions

S 63(1)(a): *ACL does not apply to transportation or storage of goods contracts for the purposes of a business, trade or profession*

OTF, this is a [transportation and/or storage] of goods contract for the purpose of [business / trade / profession / occupation] as evidenced by [insert facts].

Hence, s 63(1)(a) exception applies and consumer guarantees under the ACL cannot be implied into the contract.

S 63(1)(b): *ACL does not apply to insurance contracts*

OTF, this is an insurance contract given [insert facts].

Hence, s 63(1)(b) exception applies and consumer guarantees under the ACL cannot be implied into the contract.

S 131A CCA

Financial
Products and
Services
Exclusion

S 131A CCA: *ACL does not apply to financial products and services which are regulated by the ASIC Act (e.g. bank loans, credit contracts).*

OTF, this is a contract regarding [financial products / financial services] which are regulated by the ASIC Act.

Hence, s 131A CCA exception applies and consumer guarantees under the ACL cannot be implied into the contract.

NOTE: The ASIC Act does not contain provisions reflecting the consumer guarantee provisions in the ACL, but does imply some specific warranties into contracts for the supply of financial services.

Issue 4 - Applicable Consumer Guarantees

Provided no exceptions apply, [Claimant] will argue that the consumer guarantee of [insert from below ss51-62] applies and has been breached by [defendant].

NOTE: *Guarantees under ss51-53 apply to ALL supply of goods (regardless of trade or commerce)*

Guarantees for ALL GOODS (regardless of whether in trade or commerce) ss 51-53

s 51 ACL

Guarantee as to title - seller has a right to dispose of the goods

S 52 ACL

Guarantee to undisturbed possession

S 53 ACL	Guarantee of freedom from securities, charges, encumbrances (only applies per s 53(1)(c)(i) where it was not disclosed to the consumer, in writing, before the consumer agrees to the supply OR (c)(ii) that was not created by or with the express consent of the consumer)
Guarantees for GOODS Supplied In Trade or Commerce ss 54-59	
S 54 ACL Acceptable Quality	Application: A guarantee that the goods are of acceptable quality (s 54 ACL). [Claimant] would argue that there was breach given that the good was not [insert from below]: -> including pre-contractual statements per s54(3)(d) -> only need to be in breach of one subsection (aka all of them need to be complied with by supplier) (a) Fit for all the purposes for which the goods of its type, namely [type of good] are commonly supplied (s 54(2)(a) ACL). (b) Acceptable in appearance and finish (s 54(2)(b) ACL). (c) Free from defects (s 54(2)(c) ACL). (d) Safe (s 54(2)(d) ACL). (e) Durable (s 54(2)(e) ACL). Furthermore, P would argue that the quality would not be considered acceptable to a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods) (s 54(2)) having regard to: (a) The nature of the goods, namely [nature], entails that [why unacceptable] (s 54(3)(a)). (b) The price of the goods, namely [price], entails that [why unacceptable] (s 54(3)(b)). (c) The statements made about the goods on the packaging or label, namely [statements], entail that [why unacceptable] (s 54(3)(c)). (d) The representation made about the goods by the [supplier or manufacturer], namely [representation], entails that [why unacceptable] (s 54(3)(d)). -> this is for PRE-CONTRACTUAL statements (e) The relevant circumstances of [circumstances], which entail [why unacceptable] (s 54(3)(e)). Exceptions: However, [Defendant] may counter that goods are still be of acceptable quality given: • The defect was specifically drawn to [buyer]'s attention prior to the purchase (s 54(4)-(5)). • The buyer caused the goods to become of unacceptable quality, by [action] (s 54(6)(a)). • The goods were damaged by abnormal use, by P [action] (s 54(6)(b)). • The buyer examined the goods prior to purchase and should have discovered the defect, as [reason eg. obvious] (s 54(7)).

	Conclusion: YES BREACH: Hence, it is likely [Defendant] has breached s 54 ACL. NO BREACH: Hence, it is unlikely [Defendant] has breached s 54 ACL given the exception under s 54(insert subsection) likely applies.
S 55 ACL Fit for any disclosed purpose	NOTE: this allows for pre-contractual guarantee S55: Guarantee as to fitness for any disclosed purpose • guarantee that goods are fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit • does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier Application [Claimant] will argue that . . .: • Disclosed purpose: they disclosed [purpose] to [defendant] and [good] was not reasonably fit for that purpose because [reason] • Represented purpose: [Defendant] represented the [goods] were reasonably fit for [purpose] but it was not because [reason] Exception: However, [defendant] will argue that this is not applicable in circumstances where the consumer doesn't rely on or it was unreasonable for the consumer to rely on, the skill or judgment of the supplier. OTF, [insert reasoning]. E.g. a non expert making a statement to an expert Conclusion: Hence, it is [unlikely / likely] [Defendant] has breached s 55 ACL.
S 56 ACL Goods Correspond with their description	Application: [Claimant] will argue that the goods do not correspond with the description provided by [supplier]. OTF, [goods] were described as [insert] but in reality were [insert description]. <i>NOTE: per s 56(2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer. Apply to s 57 too (per s 56(3))</i> Exception: However, per s 56(1)(b) the guarantee does not apply sing [good] was sold by way of auction. Conclusion Hence, it is [unlikely / likely] [Defendant] has breached s 56 ACL.

S 57 ACL Correspond with sample	Yes — you only need to establish that the goods fail to comply with one of (c), (d) or (e) for the guarantee to be breached. • Goods correspond with the sample/demonstration model in quality, state or condition (s 57(1)(c)) • Consumer has a reasonable opportunity to compare goods with the sample (s 57(1)(d)) • Goods are free from defects that: (i) would not be apparent on reasonable examination of the sample/demo model; AND (ii) would cause the goods to be of unacceptable quality (s 57(1)(e)) • If goods supplied by both sample AND description → both s 56 and s 57 apply (s 57(2)) • Does not apply to sales by auction (s 57(1)(b))
S 58 ACL Availability of repair facilities and spare parts	S58(1): there is a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied. S 58(2): This section does not apply if the manufacturer took reasonable action to ensure that the consumer would be given written notice, at or before the time when the consumer agrees to the supply of the goods, that: (a) facilities for the repair of the goods would not be available or would not be available after a specified period; or (b) parts for the goods would not be available or would not be available after a specified period. Rule = s58(1) reasonable availability of repair facilities and parts for the goods (for a reasonable period after the goods are supplied) Exception = s58(2) if reasonable action taken
S 59 ACL Guarantee as to Express Warranties	NOTE: this allows for pre-contractual guarantee IF MANUFACTURER - > S 59(1): there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods. IF SUPPLIER -> s 59(2): there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods. S2: “Express warranty”, in relation to goods, means an undertaking, assertion or representation (a) That relates to: (i) the quality, state, condition, performance or characteristics of the goods; or (ii) the provision of services that are or may at any time be required for the goods; or (iii) the supply of parts that are or may at any time be required for the goods; or (iv) 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; and

- (b) that is 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; and
- (c) the natural tendency of which is to induce persons to acquire the goods.

Step 1

[claimant] will argue that [defendant] made [an undertaking / assertion / representation] relating to:

- The [quality/state/condition / performance / characteristics] of the goods, namely that [representation] (s 2(a)(i)).
- The provision of services that may be required for the goods at some point in time, namely [services] (s 2(a)(ii)).
- The supply of parts that may be required for the goods at some point in time, namely [supply of parts] (s 2(a)(iii)).
- The future availability of identical goods or goods part of the set (s 2(a)(iv)).

Step 2:

[Claimant] would then argue that the [undertaking/assertion/ representation] was made in connection with the [supply or promotion] of the goods, as [reason] (s 2(b)).

Step 3

Finally, [claimant] would argue that the natural tendency of the [undertaking / assertion / representation] was to induce consumers to purchase the goods, as [reason] (s 2(c)).

Conclusion:

Therefore, it is [likely / unlikely] that s 59 guarantee applies.

Guarantees Regarding SERVICES (ss 60-62)

Guarantees in contracts for supply of services to consumer in trade or commerce:

S 60	services will be rendered with due care and skill
S 61	services will be fit for disclosed purpose / result EXCEPTION: (fit for disclosed purpose/result) does not apply to the supply of professional services by a qualified architect or engineer
S 62	services will be supplied within a reasonable time

Application

OTF, it is likely that [consumer] will be able to make a claim under [section] as [insert below]:

- the services were not rendered fit with due care and skill (**s60**). Specifically, [facts].
- the services were not fit for their disclosed purpose/result (**s61**). Specifically, [facts]
 - **Exception:** if supply of professional services by a qualified architect or engineer
- the services were not found to have been supplied within a reasonable time (**s62**). Specifically, [facts].

Conclusion

Therefore, it is [likely / unlikely] that s [60 / 61/ 62] guarantee applies.

Issue 5 - Effect of Exclusion Clauses

Under s 64 ACL, contractual clauses that purport to exclude, restrict or modify the consumer guarantees are void.

However, per s 64A, liability may be limited for non-PDHUC goods/services. This will not apply to any ss 51–53 guarantee, which cannot be limited by contract at all.

Note: such a clause may also be void as an unfair contract term under ss 23–28 ACL.

IF NON-PDHUC GOOD

OTF, as [good] is a non-PDHUC good, [supplier] may attempt to limit liability to replacement or repair (s 64A(1)).

IF NON-PDHUC SERVICE

OTF, as [service] is a non-PDHUC service, [supplier] may attempt to limit liability to supplying the service again or paying the costs of having the services supplied again (s 64A(2)).

Exception s 64A(3):

However, these exceptions do not apply if the consumer establishes that reliance on the limitation of liability clause is unfair or unreasonable (s 64A(3)).

Issue 6 - Remedies?

Subdivision A - Action Against Suppliers of GOODS

Introduction

The first issue is whether [loss/damage] constitutes a major or non-major failure under s 260, as this determines the remedies available to [consumer] under s 259 ACL.

Summary of steps:

1. Is it a Major Failure (s 260)
- 2A. IF MAJOR failure (s 259(3))
- 2B. IF NOT a Major Failure (s 259(2))
- ADDITIONALLY: Consider if the Good has since been gifted (s 266)
3. Damages (s 259(4))
4. Conclusion

Step 1 - Is it a Major Failure? (s 260)

Legislation:

A failure is a **major** failure under s 260 if:

- (a) The goods **would not have been acquired by a reasonable consumer** fully acquainted with the nature and extent of the failure (s 260(a))
- (b) **The goods depart in one or more significant respects** from:
 - (i) If they were supplied by description - from that description (s 260(b)(i)); OR
 - (ii) If they were supplied by reference to a sample or demonstration model - from that sample or demonstration model (s 260(b)(ii)); or

- (c) The goods are **substantially unfit for a purpose for which goods of the same kind are commonly supplied**, and **cannot, easily and within a reasonable time, be remedied** to make them fit for such a purpose (s 260(c)); or
- (d) The goods are **unfit for a disclosed purpose** made known to:
- (i) the supplier (s 260(d)(i)); or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made (s 260(d)(ii));
- AND they cannot, easily and within a reasonable time, be remedied** to make them fit for such a purpose (s 260(d)); or
- (e) The goods are not of acceptable quality because they are **unsafe** (s 260(e))

ASK: can the failure be remedied?

Application:

OTF, [insert applicable limbs under s 260 -> likely raise s 260(a) + others]

Conclusion

Therefore, [loss/damage] [will/will] not likely be found to be a major failure under s 260.

Step 2A - If it IS MAJOR Failure (s 259(3))

Application

Per s 259(3), [consumer] may either:

- **Reject** the goods (a); OR
- **Recover compensation** for the reduction in value of the goods below the price paid or payable by the consumer for the goods (b).

OTF, since this is a major failure [consumer] would likely opt to [reject / recover compensation] because [facts] (s 259(3)).

IF Consumer Recovers Compensation

S 259(3)(b)

Per s 259(3)(b), [consumer] may recover compensation for the reduction in value of the [good] below the price paid or payable by [consumer], being the difference between the value of the [good] as supplied and the price [consumer] paid/was payable, namely [\$X - \$Y = \$Z].

If Consumer Rejects the goods

S 259(3)(a)

Checklist:

1. Is the consumer NOT entitled to reject? S 262
2. Consumer rejects and notifies supplier of grounds - s 259(3)(a)
3. Consumer returns the goods to supplier - s 263(1) OR Supplier collects goods at own expense (ss 263(2)-(3))
4. Once goods are back with the supplier, the supplier must at the consumer's election either refund or replace (s 263(4))

Step 1 - IF Consumer Is NOT entitled to Reject per s 262

However, [supplier] may argue per s 262 that [consumer] **cannot exercise the right to reject** (s 259(3)(a)) because:

	• The rejection period has ended — the period from time of supply until when it would have been reasonable to expect the failure to have become apparent (ss 262(1)(a); and 262(2)); or • The goods have been lost, destroyed or disposed of (s 262(1)(b)) — the goods cannot be rejected if they cannot be returned; or • The goods were damaged after delivery (s 262(1)(c)); or • The goods have been attached to or incorporated into other property and cannot be isolated without damaging them (s 262(1)(d)). Step 2: Rejection and Notification of Grounds s 259(3)(a) [Consumer] notifies [supplier] that [consumer] rejects the [good] on the ground(s) that [insert ground(s) for rejection e.g. good fails to comply with the guarantee of acceptable quality under s 54 / is not fit for disclosed purpose under s 55 / etc] (s 259(3)(a)), subject to s 262. Step 3: Consumer Obligations to Return Rejected Goods s 263 Per s 263, [consumer] must return the goods to [supplier], unless they cannot be returned without significant cost — in which case [supplier] must collect them at their own expense (ss 263(2)–(3)). Step 4: Supplier Obligations Once Goods Returned Per s 263(4), [supplier] must then (once goods returned), at [consumer]'s election: • Provide a refund (which cannot be a credit note — s 263(5)); OR • Replace the [good].
Right to Terminate Contracts	S265 – Consumer may terminate contracts for the supply of services connected with rejected goods Per s 265, [consumer] may also terminate contracts for the supply of services connected with rejected goods. Hence, [consumer] may terminate the supply of services contract for [x service] as it was connected with the rejected goods [insert facts]. Example: if a consumer purchases a mobile phone with a bundled contract and the phone is rejected because of a defect, the consumer could also terminate the phone contract
Step 2B - If NOT a MAJOR Failure (s 259(2))	
OTF, since this is not a major failure per s 259(2)(a), [consumer] may require [supplier] to remedy the failure within a reasonable time (i.e. repair or fix the goods).	
Available Remedies S 261	Per s 261, [supplier] may remedy by: • Repairing the goods; • Replacing the goods; or • Providing a refund. OTF, [supplier] has [repaired / replaced / provided a refund for] the goods, which is a remedy available under s 261, thus satisfying the requirements

	under s 259(2).	
IF Supplier Fails to Remedy (or fails to remedy within a reasonable time) S 259(2)(b)	s259(2)(b): - Otherwise have the failure remedied and recover all reasonable costs incurred in doing so from [supplier] (s 259(2)(b)(i)); OR - Notify the [supplier] that [consumer] rejects the goods, stating the ground(s) for rejection, subject to s 262 (s 259(2)(b)(ii)).	
	Application: Failure to Comply with s 259(2) However, [supplier] [refused or failed to comply with the requirement OR failed to remedy the failure within a reasonable time] per s 259(2)(b).	
	Consumer Options	1. Recover Costs (s 259(2)(b)(i)) [Consumer] [insert how they otherwise remedied the failure e.g. engaged a third party repairer to fix the goods] at a cost of [\$]. Provided this cost was reasonable and incurred in the course of remedying the failure, [consumer] may recover that cost from [supplier] under s 259(2)(b)(i). 2. Reject Goods (s 259(2)(b)(ii)) Checklist: - Is the consumer NOT entitled to reject? S 262 - Consumer rejects and notifies supplier of grounds - s 259(2)(b)(ii) - Consumer returns the goods to supplier - s 263(1) OR Supplier collects goods at own expense (ss 263(2)-(3)) - Once goods are back with the supplier, the supplier must at the consumer's election either refund or replace (s 263(4)) Step 1: Supplier Argues Consumer NOT entitled to Reject per s 262 However, [supplier] may argue per s 262 that [consumer] cannot exercise the right to reject because: - The rejection period has ended — the period from time of supply until when it would have been reasonable to expect the failure to have become apparent (ss 262(1)(a); and 262(2)); or - The goods have been lost, destroyed or disposed of (s 262(1)(b)); or - The goods were damaged after delivery (s 262(1)(c)); or - The goods have been attached to or incorporated into other property and cannot be isolated without damaging them (s 262(1)(d)).

		Step 2: Rejection and Notification of Grounds [Consumer] notifies [supplier] that [consumer] rejects the [good] on the ground(s) that [insert ground(s) for rejection e.g. good fails to comply with the guarantee of acceptable quality under s 54 / is not fit for disclosed purpose under s 55 / etc] (s 259(2)(b)(ii)), subject to s 262. Step 3: Consumer Obligations to Return Rejected Goods (Consequences of Rejecting Goods s 263) Per s 263, [consumer] must return the [good] to [supplier], unless the [good] cannot be returned without significant cost — in which case [supplier] must collect it at their own expense (ss 263(2)–(3)). Step 4: Supplier Obligations Once Goods Returned Per s 263(4), [supplier] must then (once goods returned), at [consumer]'s election: • Provide a refund (which cannot be a credit note — s 263(5)); OR • Replace the [good].
Step 3 - Damages s 259(4)		
Per s 259(4), [consumer] may recover damages for any loss or damage suffered because of the failure to comply with the guarantee, provided it was reasonably foreseeable that [consumer] would suffer such loss or damage as a result of the failure. OTF, [consumer] may claim damages under s 259(4) for [loss/damage] as it was reasonably foreseeable that [facts]. Examples - a consumer might recover: • costs of water damage to a carpet caused by a faulty washing machine, or • the costs of alternative transport where a bicycle bought to ride to work proved to be defective. [PB 17.85]		
IF GIFTS - s 266 (Consider Rights of Gift Recipients)		
If goods are given as a gift, the recipient may exercise the same rights and remedies as the original purchaser (s 266). <i>Note: This is not a privity issue — we are not relying on contract law here.</i> OTF, [recipient] may therefore exercise the same rights and remedies as [purchaser] in respect of the [good].		
Step 4 - Conclusion		
Thus, it is likely that [consumer] [will/will not] be entitled to remedies and can [reject the good / recover compensation / claim damages / etc].		
Subdivision B - Action Against Suppliers of SERVICES		

Summary of steps:

0. Threshold: Does s 267(1)(c) exclusion apply? (s 267(1)(c))
1. Is it a Major Failure? (s 268)
- 2A. IF MAJOR failure (s 267(3))
- 2B. IF NOT a Major Failure (s 267(2))
3. Damages (s 267(4))
4. Conclusion

Step 0 - Threshold: Does the s 267(1)(c) Exclusion Apply?

Legislation:

Per s 267(1)(c), a consumer may only take action under s 267 if the failure to comply with the guarantee did not occur *only* because of:

- (i) an act, default, omission, or representation made by any person other than the supplier or their agent/employee; or
- (ii) a cause independent of human control that occurred after the services were supplied.

Note: This exclusion does **not** apply to the guarantee of due care and skill under **s 60** — only to fitness for a particular purpose (**s 61**) and supply within a reasonable time (**s 62**).

Application

OTF, [supplier] may argue that [consumer] cannot take action under s 267 because the failure occurred only because of [third party conduct (s 267(1)(c)(i)) / independent cause after service was supplied (s 267(1)(c)(ii))], not because of any act or omission of [supplier].

However, [consumer] may respond that [facts suggesting supplier's own conduct contributed to the failure], meaning the failure did not occur *only* because of a [third party/independent cause].

Conclusion

Therefore, the s 267(1)(c) exclusion [will/will not] likely apply, and [consumer] [can/cannot] proceed with an action under s 267.

Step 1 - Is It a MAJOR failure? (s 268)

NOTE: The key difference between a major and not major failure, is that for a major failure the consumer has a right to terminate the services contract.

Introduction

The first issue is whether [loss/damage] constitutes a major or non-major failure under s 268, as this determines the remedies available to [consumer] under s 267 ACL.

Legislation: A failure is a major failure under s 268 if:

- A reasonable consumer, fully acquainted with the nature and extent of the failure, **would not have acquired the services** (s 268(1)(a)); or
- The services are **substantially unfit for a purpose** for which services of the **same kind are commonly supplied**, and cannot, easily and within a reasonable time, be remedied

to make them fit for such a purpose (s 268(1)(b)); or

- The services (and any product resulting from them) **are unfit for a particular purpose made known to the supplier**, and cannot, easily and within a reasonable time, be remedied (s 268(1)(c)); or
- The services (and any product resulting from them) are **not** of such a nature, quality, state or condition that they **might reasonably be expected to achieve a result desired by the consumer that was made known to the supplier**, and cannot, easily and within a reasonable time, be remedied (s 268(1)(d)); or
- The supply of the services creates an **unsafe situation** (s 268(1)(e)).
- Alternatively, **where there are multiple failures** which, taken as a whole, mean a **reasonable consumer would not** have acquired the services (s 268(2)).
 - **Note:** the multiple failures do not need to be related to the same guarantee AND multiple NON-MAJOR failures may amount to a MAJOR failure

ASK: can the failure be remedied easily and within a reasonable time?

Application:

OTF, [insert applicable limbs under s 268 — likely raise s 268(1)(a) + others]

Conclusion:

Therefore, [loss/damage] [will/will not] likely be found to be a major failure under s 268.

Step 2A - YES MAJOR Failure (s 267(3))

Legislation:

Per s 267(3), [consumer] may either:

- Terminate the contract for the supply of the services (s 267(3)(a)); or
- Recover compensation for the reduction in value of the services below the price paid or payable (s 267(3)(b)).

Application

OTF, since this is a major failure, [consumer] would likely opt to [terminate / recover compensation] because [facts].

IF Consumer Terminates

S 269

Introduction

Per s 267(3)(a), [consumer] may terminate the contract for the supply of [services], with termination taking effect when communicated to [supplier] by words or conduct (s 269(2)).

Scenario A: No Services Consumed yet (or facts silent)

Per s 269(3)(a), [consumer] is entitled to a full refund of the [\$Z] paid for the [services], as [consumer] had not yet consumed any part of the services at the time of termination / the facts do not indicate any services had been consumed prior to termination.

Scenario B: Partially Consumed Services

Per s 269(3), [consumer] is entitled to a refund only to the extent the services

	had not yet been consumed at the time of termination. OTF, [consumer] had already [received X sessions / used X weeks of the service / had X portion of the work completed] by the time of termination. [Consumer] may therefore recover [\$Y i.e. the unconsumed portion of the contract price]. i.e. 269(3) means: The consumer is entitled to a refund to the extent that services paid for have not been consumed at the time of termination Example -> Partially Consumed Services: You can only recover a refund for the portion of the service not yet consumed. For example, if a 10-session personal training package is terminated after 4 sessions have been used, the consumer can recover the cost of the remaining 6 sessions, but not the 4 already received.
IF Consumer Recovers Compensation S 267(3)(b)	Per s 267(3)(b), [consumer] may recover compensation for the reduction in value of the [services] below the price paid or payable, being the difference between the value of the [services] as supplied and the price [consumer] paid/was payable, namely [\$X – \$Y = \$Z].
Right to Terminate Connected Goods Contracts S 270	Legislation: s 270(1) — sets out the whole chain: (a) consumer has terminated a services contract under s 267; AND (b) goods were supplied connected with those services; THEN automatically: (c) consumer is deemed to have rejected the goods (d) consumer must return the goods (or supplier collects if significant cost) (e) supplier must refund money paid + value of any other consideration for the goods s 270(2) — if s 270(1)(d)(ii) applies (return would involve significant cost), supplier must collect at their own expense. Step 1: Contract Termination per s 267/270 Per s 267(3)(a)/s 267(2)(b)(ii), [consumer] has terminated the contract for the supply of [services], with termination taking effect when communicated to [supplier] by words or conduct (s 269(2)(a)). Per s 270(1), since [consumer] has terminated the services contract under s 267, and [supplier] supplied [goods] to [consumer] connected with those services, the following consequences follow automatically: Step 2: Deemed rejection of goods (s 270(1)(c)) [Consumer] is taken to have rejected the [goods] at the time the termination took effect. Step 3: Return of goods (s 270(1)(d)) [Consumer] must return the [goods] to [supplier], unless the [goods] cannot be

	returned without significant cost to [consumer] — in which case [supplier] must collect them at their own expense (s 270(2)). OTF, [consumer] [must return the goods to [supplier] / need not return the goods as return would involve significant cost, and [supplier] must collect them at their own expense (s 270(2))]. Step 4: Refund (s 270(1)(e)) [Supplier] must refund any money paid by [consumer] for the [goods], and an amount equal to the value of any other consideration provided by [consumer] for the [goods]. Step 5: Conclusion OTF, [supplier] must therefore refund [\$X] paid by [consumer] for the [goods] / [+ value of other consideration].	
Step 2B - NON-MAJOR Failure (s 267(2))		
OTF, since this is not a major failure, per s 267(2)(a), [consumer] may require [supplier] to remedy the failure within a reasonable time.		
IF Supplier Remedies	[Supplier] has remedied the failure within a reasonable time by [facts], satisfying s 267(2)(a).	
IF Supplier FAILS to Remedy (or fails within a reasonable time) S 267(2)(b)	However, [supplier] [refused to comply with the requirement / failed to remedy the failure within a reasonable time] per s 267(2)(b). Per s 267(2)(b), [consumer] may then either: • Otherwise have the failure remedied and, by action against [supplier], recover all reasonable costs incurred in doing so (s 267(2)(b)(i)); or • Terminate the contract for the supply of the services (s 267(2)(b)(ii)).	
	Option 1: Recover Costs S 267(2)(b)(i)	[Consumer] [insert how they otherwise remedied the failure, e.g. engaged a third party to complete the services] at a cost of [\$X]. Provided this cost was reasonable and incurred in remedying the failure, [consumer] may recover that cost from [supplier] under s 267(2)(b)(i).
	Option 2: Terminate Contract S 267(2)(b)(ii)	Per s 267(2)(b)(ii), [consumer] may terminate the contract for the supply of [services]. Termination takes effect when made known to [supplier] by words or conduct (s 269(2)). Per s 269(3), [consumer] is entitled to recover a refund of any money paid, and an amount equal to the value of any other consideration provided, to the extent the services had not already been consumed at the time of termination.
Step 3 - Damages (s 267(4))		
Per s 267(4), [consumer] may recover damages for any loss or damage suffered because of the		

failure to comply with the guarantee, provided it was reasonably foreseeable that [consumer] would suffer such loss or damage as a result of the failure.

This applies in addition to the remedies under ss 267(2)–(3) (s 267(5)).

OTF, [consumer] may claim damages under s 267(4) for [loss/damage] as it was reasonably foreseeable that [facts].

Step 4 - Exclusion Clauses RE Remedies

Per s 276, any contractual term that excludes, restricts or modifies the remedies available under Part 5-4 for a failure to comply with a consumer guarantee is void.

OTF, [supplier]'s contract contains a clause purporting to [exclude [consumer]'s right to terminate / limit [consumer]'s remedy to [x] / restrict [consumer]'s ability to claim damages].

Per s 276, this clause is void and cannot be relied upon by [supplier] to defeat [consumer]'s remedies under s 267.

Step 5 - Conclusion

Thus, it is likely that [consumer] [will/will not] be entitled to remedies and can [terminate the services contract / recover compensation for reduced value / claim damages / etc].