



Breach of consumer guarantees: allocation of liability between retailers and manufacturers

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Winter in Australia is fun. You pack up your snow gear and off you go to the winter wonderland. You are having the time of your life; sashaying down the slope with your new gear has made you temporarily forget about your problems and worries. Then comes the sound of nightmare; your snowboard somehow breaks in half and so do your hopes and dreams.

You might be clumsy and not the best snowboarder but surely the snowboard should not just break in half after a couple of normal uses?

As a consumer, you are outraged but on whose door will you be knocking furiously? The retailer or the manufacturer?

How is responsibility allocated between suppliers and manufacturers?

You should know that your snowboard comes with 9 consumer guarantees (see *Fig. 1*) under the Australian Consumer Law (**ACL**). When there is a breach of a consumer guarantee under the ACL, the allocation of the liability between the supplier (normally the retailer, from where you purchased your gear) and the manufacturer, essentially depends on the nature of the guarantee that has been breached and the particular remedy that has been sought; for example, is it a quality issue, is it a manufacturer's express warranty issue (e.g. the product comes with an express warranty from the manufacturer that specifically says, you can do all sorts of 360 degree flips and slides and jumps and breakdances with the snowboard without breaking it)?

Consumers normally purchase products directly from a retailer other than the manufacturer. This means that you would not normally pursue a manufacturer (who may be located overseas) and the retailers are most likely to be the primary source of remedies. From the retailer's perspective, it would not be fair for them to wear all the risk and liabilities if the manufacturer is liable under the ACL for the breach. As such, in certain circumstances, when a retailer incurs costs in the course of providing remedies to a consumer, the ACL gives the retailer the right to be indemnified (i.e. "reimbursed") by its manufacturer.

We have set out in *Fig. 1* a general diagram showing the relevant persons from whom you, as a consumer, can seek direct redress in the event of a breach of a particular guarantee and the allocation of responsibility.

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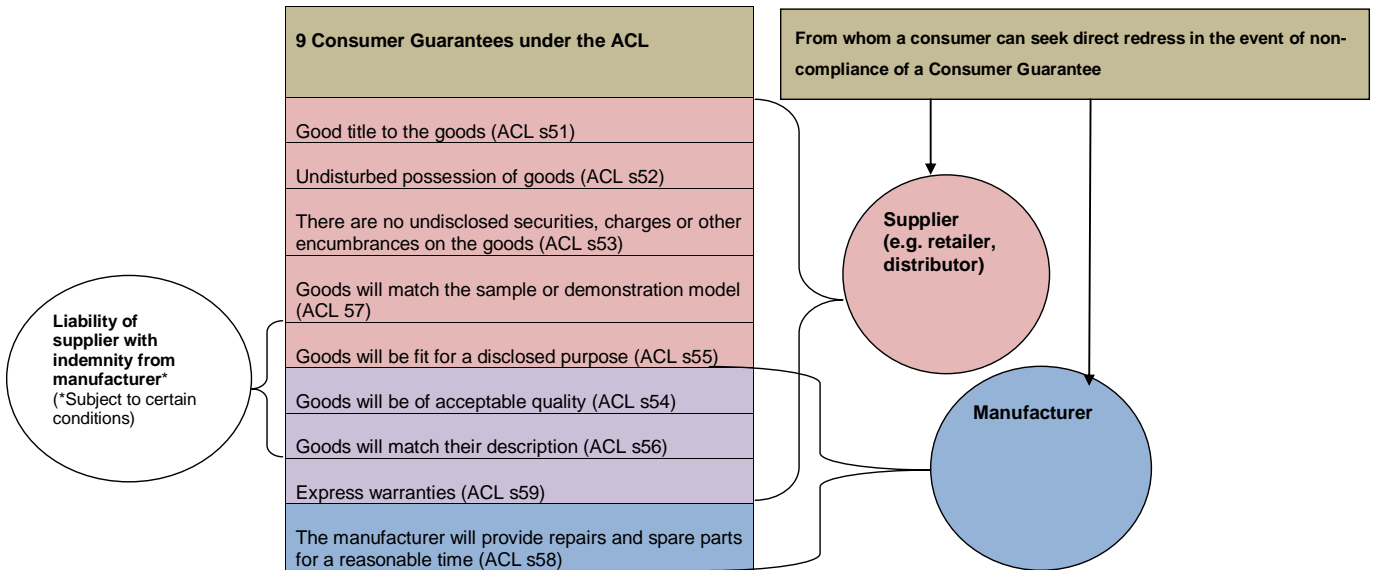


Fig. 1

When can remedies be sought against the manufacturer?

Whilst typically retailers would be approached by angry consumers to repair, replace or refund in relation to defective products, a consumer can also take action directly against the manufacturer to recover damages in the event of non-compliance with any of the four particular guarantees as shown in the diagram above. For example, when your snowboard breaks in half (provided that you didn't jump off a cliff), it is most likely a quality issue and you could potentially seek redress directly from the manufacturer. It is important to note that when you approach your retailer with your broken snowboard, they cannot just simply brush you off and tell you to go to the manufacturer directly, without investigating what the issues are first. As set out in the diagram below, under the ACL, the direct supplier is responsible for various consumer guarantees.

However, a manufacturer will not be liable for damages in respect of non-compliance with the guarantees for "acceptable quality" or "matching description", to the extent the non-compliance was caused by any act or default of a person other than the manufacturer. There are further similar exceptions, such as, the "acceptable quality" guarantee will not be breached if the consumer causes the goods to become of unacceptable quality, or has used the goods in an abnormal manner (e.g. you did, in fact, smash the snowboard against a rock 100 times out of frustration after face planting too many times).

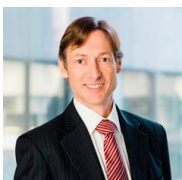
Indemnifications of supplier by manufacturer

Without getting too deep into the nitty gritty of the ACL maze, as indicated in the diagram above, in certain circumstances, the retailer can recover costs via a statutory indemnity imposed on manufacturers under the ACL. The statutory indemnity arises and will apply if the retailer is liable to pay damages to the consumer, and the manufacturer is, or would be, liable to pay damages to the consumer for the same loss or damage. This means, the retailer, after being yelled at by you, could go back to their manufacturer and demand payments (subject to some conditions, which we will not elaborate here, in such a short and sweet article but call us if you want more information!).

Conclusion

This is only the tip of the ACL-consumer-guarantee iceberg. Ultimately, whether you are the consumer, retailer or manufacturer, it is important to know where you stand when it comes to consumer guarantees under the ACL. Give us a call and we can help you work out the best way to manage risks posed by this ACL maze.

For more information, please contact:



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