

## Background

- The Treasury Laws Amendment (2020 Measures No. 6) Bill 2020 ([https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r6633](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6633)), was passed just before Christmas and the amendments to ss260 (relates to goods) & 268 (relates to services) of the ACL took effect on 18 December 2021.

(2) A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is also a **major failure** if:

(a) the failure is one of 2 or more failures to comply with a guarantee referred to in section 259(1)(b) that apply to the supply; and

(b) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of those failures, taken as a whole.

*Note:* The multiple failures do not need to relate to the same guarantee.

(3) Subsection (2) applies regardless of whether the consumer has taken action under section 259 in relation to any of the failures.

- The changes essentially extend the definition of a ‘major failure’ to also apply to goods/services if the failure is one of 2 [minor] failures to comply with the guarantees. The multiple failures do not need to relate to the same guarantee and applies regardless of whether the consumer has been provided with a remedy in relation to any of the failures.

## Regulatory Burden and Impact

- The practical effects of the amendments to s260 and s268 sets a very low threshold for what would constitute a ‘major failure’. One of 2 [minor and unrelated] failures over a product’s life particularly for complex products such as consumer electronics, motor vehicles etc are not unusual, not unacceptable and should not amount to a product being ‘written off’ as defective.
- **A major failure triggers consumer’s rights to seek a replacement or refund for the goods or services. As a consequence more consumers will opt for a new product rather than a repair, even if the fault is repairable and minor.**
- This has far reaching environmental and economic impacts and places a significant regulatory burden on industry because:
  - a) Repairable products will be discarded and replaced with new goods resulting in a **significant increase in e-waste as well as associated transportation and disposal costs**. The increase in e-waste (a side effect of increased ‘consumerism’) is already a serious environmental issue. The impact of the amendment to section 260 is wholly inconsistent with environmental and waste management initiatives aimed at reducing carbon footprints and e-waste.

- b) Manufacturing volumes will need to be increased to provide replacement products at manufacturers' costs and will further deplete natural resources.
- c) In our experience, most consumers will choose a new product instead of a repair. This will **significantly reduce the volume of repair work for service technicians** – the impacts of which would be devastating for a sector that is already struggling. It also cuts across other government initiatives like the right to repair, aimed at promoting a circular economy. Making the repair remedy a preferred option for consumers (not replacement or refunds) is a key component to the right to repair campaign.
- d) It is generally more cost effective to repair minor failures than provide a replacement which involves not only the cost of the goods, but delivery costs and disposal costs. Average cost to repair a minor issue with a refrigerator is \$300 versus \$3,000 to replace/refund. This imposes a significant cost impact on retailers and manufacturers.
- e) Minor failures are generally easy to repair and repairs would return the product to good working order. The nature of minor failures do not justify the need to replace goods or provide a refund because:
  - i. It is generally more cost effective to repair minor failures than provide a replacement or refund e.g. if a washer fails in a tap it would be more cost effective and easier to repair than replacing the tap.
  - ii. Minor failures usually impact secondary functions of a product e.g. an ice dispenser on a fridge and do not justify replacement of the entire refrigerator.