



# Damages for Breach of Contract – What the Courts Consider

Recently, the District Court of South Australia, in *Cehade & Sons Constructions Pty Ltd & Anor v Lawrdo Super Pty Ltd & Anor (No 2)* [2026] SADC 3, restated the core principles governing damages for breach of contract, including what damages are designed to achieve, the limits on recoverable loss, and when the Court might depart from the usual rule of assessing the damages as at the date of the breach.

In this article, we summarise those principles.

## **Damages are compensatory, not punitive**

The starting point is that damages for breach of contract are awarded to compensate the innocent party, not to punish the party in breach.

## **The “ruling principle”: put the innocent party in the position they would have been in if the contract was performed**

The foundational rule is that damages aim to place the injured party, so far as money can do it, in the same position they would have been in had the contract been performed. This is sometimes described as awarding “the benefit of the bargain”.

## **You can’t be overcompensated**

Damages should not put you in a better position than you would have been in, had the contract been performed.

As part of this, any benefit the innocent party has received must be taken into account in assessing the net loss.

### **Remoteness: the loss must be within the reasonable contemplation of the parties**

Not every loss that follows a breach of contract is recoverable.

The Court emphasised the remoteness principle: damages are limited to losses that can reasonably be regarded as being within the contemplation of the parties (at the time of contracting) as a probable result of breach, and losses that are too remote cannot be recovered.

### **The plaintiff bears the onus of proof, including proof of loss and quantification**

A breach alone does not automatically entitle a party to recover damages.

The Court reiterated that the innocent party bears the burden of proving:

- Actual loss;
- Causation (i.e. that the loss was caused by the breach);
- That the loss is not too remote; and
- The proper measure of damages.

This is why commercial disputes often turn on not only **who breached**, but on what can be **proven with evidence**.

### **Timing: damages are generally assessed as at the date of breach**

The general rule is that damages for breach of contract are assessed as at the date of the breach (or when the cause of action arises), and awarded on a “once and for all” basis.

In practical terms, the Court’s task is to determine “what is the value of the promised performance at the time the contract was broken?” rather than using hindsight.

### **The “date of breach” rule is not absolute**

Although the breach-date rule is the starting point, the Court confirmed that it is not absolute, and it may be departed from if applying it strictly would cause injustice. This matters most where the timing of performance (or replacement performance) is central to the true commercial loss suffered.

### **Lost profits and margin: courts can award expectation damages where the loss is proven with reliable evidence**

In many commercial contracts, the real loss is not a physical item. It is a lost opportunity to earn profit.

The Court’s analysis reinforces that where a contract would have generated profit (or margin), a court can award expectation damages reflecting that lost benefit, provided that the evidence supports it.

This type of damages assessment often involves, depending on the evidence:

- Identifying the contractual benefit;
- Identifying the revenue that performance of the contract would have generated; and
- Deducting the costs that would have been incurred in earning that revenue.

**Evidence is central: expert valuation or costing may be required in complex commercial disputes**

Where loss depends on costing, pricing, future margins, or project accounting, the Court's approach illustrates the importance of obtaining proper quantification evidence.

In practice, this may require expert assistance in:

- Construction costing;
- Valuation;
- Financial modelling;
- Profit calculation; or
- Project accounting

**Practical lessons for businesses**

Proving breach is only half the case. You must prove loss. Many plaintiffs succeed on breach but struggle with proving their loss. A strong legal claim still requires a coherent, evidence backed damages case.

Keep accurate and comprehensive records that allow your loss to be calculated, both prior to and after contracting. You should preserve documents that underpin:

- Income/revenue expectations;
- Project costs;
- Pricing and margin assumptions;
- Invoices; and
- Financial records.

The date of the breach matters, but fairness and commercial reality can also matter. While the default measure is that damages are assessed at the date of breach, courts can depart from the rule in appropriate cases to avoid unfairness and reach a commercially realistic result.

If you are considering (or defending) a breach of contract claim, the important takeaways are:

- Prove the loss, not just the breach;
- Keep records that allow the loss to be calculated; and
- Seek advice early on damages strategy, because quantum (the value of the claim) often drives settlement outcomes.

If you have questions about damages for breach of contract, or are considering bringing or defending a commercial claim, the Commercial Law team at **Andersons Solicitors** can assist. Our experienced lawyers can provide tailored advice based on your circumstances, and we encourage you to contact us to discuss your matter further.