

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister to the Treasurer**

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018*

The *Competition and Consumer Act 2010* (the Act) relates to competition, fair trading and consumer protection.

Section 172 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Consumer Affairs Australian and New Zealand (CAANZ) provided consumer affairs ministers, through the Legislative and Governance Forum on Consumer Affairs (CAF), with the *Australian Consumer Law Review – Final Report* in March 2017 (the ACL Review). The intent of the review was to assess the effectiveness of the Australian Consumer Law (ACL) provisions, including the ACL's flexibility to respond to new and emerging issues and the extent to which the national consumer policy framework had met the objectives set by the Council of Australian Governments.

On 31 August 2017, CAF agreed to the proposals in the ACL Review. The *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018* (the Regulations) amend the *Competition and Consumer Regulations 2010* (CC Regulations) to give effect to two of those proposals:

- clarify that disclosure requirements for unsolicited consumer agreements do not apply to certain exempt agreements; and
- clarify the mandatory text requirements for warranties against defects by developing text specific to services and services bundled with goods.

Draft Regulations were released for public consultation from 31 January 2018 to 28 February 2018. Four submissions addressing the Regulations were received. Direct consultation with the relevant state and territory bodies, Australian Competition and Consumer Commission and the Australian Securities and Investments Commission took place at the same time.

Details of the Regulations are set out in [Attachment A](#).

The Statement of Compatibility is set out in [Attachment B](#).

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered on the Federal Register of Legislation.

Section 1 — Name

This section provides that the title of the Regulations is the *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018*.

Section 2 — Commencement

The Regulations commence on the day after being registered on the Federal Register of Legislation.

Section 3 — Authority

This section provides that the Regulations are made under the *Competition and Consumer Act 2010*.

Section 4 — Schedules

This section is a technical provision to give operational effect to the amendments contained in the Schedules.

**Schedule 1 — Unsolicited consumer agreements (technical amendment C in the ACL Review Final Report)**

Items 1 and 2 - Regulation 83

Section 86 of Schedule 2 to the Act, which is the Australian Consumer Law (ACL), prohibits the supply of goods or services under an unsolicited consumer agreement, or accepting or requiring payment for those goods or services for 10 business days. This is known as the “cooling off period”.

Section 76 of the ACL requires the disclosure of cooling off rights to consumers.

Currently, the effect of existing section 76 of the ACL and regulation 83 in the *Competition and Consumer Regulations 2010* (the CC Regulations) is that dealers must advise a consumer of their right to a cooling off period as provided by section 86 of the ACL.

However, the following supplies are exempted from the requirement to provide a cooling off period:

- certain supplies of electricity or gas services (regulation 89);
- goods or services under an emergency repair contract (regulation 88); and
- the supply of goods to a consumer under an unsolicited consumer agreement that is \$500 or less (regulation 95).

Items 1 and 2 amend regulation 83 to remove the requirement for suppliers of services exempt from the cooling off period to disclose cooling off rights to those consumers.

New subregulation 83(2) means that suppliers of services that are not required to provide a cooling off period for an unsolicited consumer agreement are no longer required to disclose cooling off rights to consumers.

### Item 3 - Application provision

Item 3 inserts a new application provision into Part 8 of the CC Regulations. The amendments apply in relation to agreements entered into on or after commencement of the Regulations.

## **Schedule 2 — Warranties against defects (proposal 4 in the ACL Review Final Report)**

### Item 1 to 4 - Regulation 90

Subsection 102(1) of the ACL allows the regulations to prescribe requirements for warranties against defects. One requirement relates to the inclusion of a mandatory statement with all warranty documentation. Subregulation 90(2) of the CC Regulations prescribes that text. However, it currently only references goods and does not cover services or services bundled with goods.

Items 1 to 4 amend regulation 90 in the CC Regulations to update the prescribed mandatory text for warranties against defects. The revised text takes into account the differences between the supply of goods, the supply of services, and the bundled supply of goods and services.

Item 1 repeals and replaces existing paragraph 90(1)(c) of the CC Regulations to direct the reader to the relevant new mandatory text.

Item 4 prescribes the new mandatory text for the supply of services and the supply of goods and services. The prescribed mandatory text for the supply of goods in subregulation 90(2) is unchanged.

Item 2 inserts an exemption from providing the mandatory text where the services are those described in:

- section 63 of the ACL – services supplied under a contract in relation to transport or storage of goods related to a consignee’s business or a contract of insurance; or
- section 65 of the ACL – the supply of gas, electricity or a telecommunications service, or of a kind specified in the regulations.

Item 3 makes related changes to cross referencing.

### Item 5 - Application provision

Item 5 inserts a new application provision into Part 8 of the CC Regulations. The amendments apply in relation to warranties against defects issued on or after 12 months from commencement of the Regulations.

The 12 month timeframe gives suppliers time to update their existing warranty information.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Competition and Consumer Amendment (Australian Consumer Law Review)  
Regulations 2018***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Regulations give effect to two proposals included in the *Australian Consumer Law Review – Final Report*.

The Regulations prescribe alternative mandatory text to be included in warranty documents for the supply of services and services bundled with goods and include exemptions when the text is not required when the warranty will not apply.

The Regulations also remove the requirement for suppliers of services to disclose cooling off rights to consumers where these rights do not apply to those services.

**Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.