

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Housing and Assistant Treasurer**

*Australian Securities and Investments Commission Act 2001*  
*Competition and Consumer Act 2010*

*Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds)*  
*Regulations 2020*

The *Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020* (the Regulations) give effect to proposal 15 of the *Australian Consumer Law Review* (ACL Review) which recommended changing the monetary threshold in the definition of ‘consumer’ for the purposes of the Australian Consumer Law (ACL).

The ACL Review assessed the effectiveness of 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. Consumer affairs ministers, through the Legislative and Governance Forum on Consumer Affairs, agreed to increase the monetary threshold at their meeting in October 2018, to restore the real value of the monetary threshold that has remained unchanged since 1986.

The *Australian Securities and Investments Commission Act 2001* (the ASIC Act) provides for the Australian Securities and Investments Commission to administer the *Corporations Act 2001* (the Corporations Act) and other prescribed laws of the Commonwealth. The *Competition and Consumer Act 2010* (the CCA) promotes competition and fair trading and provides for consumer protection.

Section 251 of the ASIC Act and Section 172 of the CCA provide that the Governor-General may make regulations prescribing matters required or permitted by these Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to these Acts.

The Regulations amend the *Competition and Consumer Regulations 2010* (CC Regulations) to increase the monetary threshold in the definition of ‘consumer’ for the purposes of the Australian Consumer Law (ACL), which is Schedule 2 to the CCA. It also amends the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations) which contain mirror consumer protection provisions for financial products and services.

The ACL is a generic law applying to all sectors of the economy. However, separate laws dealing with financial products and services are necessary, due to constitutional issues relating to the States’ referral of those powers under the Corporations Agreement 2002. In this regard, the Intergovernmental Agreement for the ACL provides that the Commonwealth should enact changes to the consumer protection provisions of the ASIC Act to ensure that they are consistent with the ACL.

Section 12BC of the ASIC Act and section 3 of the ACL define a ‘consumer’ for the purposes of acquiring goods or services. A person is taken to have acquired particular goods or services as a consumer if they meet one of the three criteria listed in the definition, one of which includes a monetary threshold.

Item 1 and 3 of Schedule 1 of the Regulations insert new regulations 2DA into Part 1 of the ASIC Regulations and 77A into Part 6 of the CC Regulations respectively to prescribe a monetary threshold of \$100,000 in these Regulations, for the purpose of the definition of ‘consumer’. This is an increase from the original threshold prescribed in the primary legislation of \$40,000.

Increasing the monetary threshold in the definition of ‘consumer’ from \$40,000 to \$100,000 will ensure that it remains fit for purpose. A finding from the ACL Review was that the level of protection afforded to consumers (including small businesses) has been eroded due to inflation in the cost of goods and services over time. The decline in the real value of the threshold means that certain business purchases once covered under the ACL are no longer covered. The higher monetary threshold in the ‘consumer’ definition will assist in efficient economic transactions by restoring the level of coverage for business purchases in real terms, assuring minimum standards of protection for the goods and services purchased by business consumers. It would also capture ordinary consumer purchases of commercial products above the current threshold.

In addition to the consultation undertaken through the ACL Review, the Treasury consulted on the potential regulatory impacts of increasing the monetary threshold of the ‘consumer’ definition. The Decision Regulatory Impact Statement, ‘*Australian Consumer Law Review: Clarification, simplification and modernisation of the consumer guarantee framework*’, identified the change will impose minimal compliance burden on businesses, but provide greater benefit ensuring the ACL definition would remain fit for purpose [OBPR Ref #22023].

The Decision regulatory impact statement is available at:  
[https://ris.pmc.gov.au/sites/default/files/posts/2018/11/3\\_consumer\\_guarantee\\_framework\\_decision\\_ris.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2018/11/3_consumer_guarantee_framework_decision_ris.pdf).

State and territory consumer affairs officials, the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission were consulted on the draft instrument.

Under section 12 of *Legislation (Exemptions and Other Matters) Regulation 2015*, the Regulations are exempt from sunseting.

The Acts do not specify any 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 latter of the day after it is registered on the Federal Register of Legislation and 1 July 2021.

A Statement of Compatibility with Human Rights is in the [Attachment](#).

## **Statement of Compatibility with Human Rights**

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

### ***Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020***

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 Act.

#### **Overview of the Legislative Instrument**

The Regulations amends the *Competition and Consumer Regulations 2010* (CC Regulations) to increase the monetary threshold in the definition of ‘consumer’ for the purposes of the Australian Consumer Law (ACL), which is Schedule 2 to the *Competition and Consumer Act 2010*. It also amends the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations) which contain mirror consumer protection provisions for financial products and services.

The change to the monetary threshold was recommended in proposal 15 of the *Australian Consumer Law Review* (ACL Review) in March 2017. Consumer affairs ministers, through the Legislative and Governance Forum on Consumer Affairs, agreed to increase the monetary threshold at their meeting in October 2018, to restore the real value of the monetary threshold that has remained unchanged since 1986.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. Consideration has been given to the international conventions as set out in section 3 of the Human Rights Act.

This Legislative Instrument does not impose or amend penalty provisions, nor does it apply retrospectively or concern privacy rights of individuals or groups of people.

#### **Conclusion**

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