

➤ First round of proposed changes to Australian Consumer Law released

In brief: The Federal Government has released exposure draft legislation and regulations that implement 14 recommendations from the final report of the Australian Consumer Law Review. Submissions on the draft reforms are due 28 February 2018. We look at the key reforms to the ACL and the ASIC Act below, and the implications for business. Other recommendations have also been accepted by government, subject to further analysis and consultation, and we can expect a further round of changes to the ACL in due course. We will keep you informed.

	PROPOSED CHANGE	IMPLICATIONS
UNCONSCIONABLE CONDUCT	The exception for listed public companies will be removed from the unconscionable conduct provisions in the ACL and the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) (the ASIC Act).	<ul style="list-style-type: none"> ➤ All classes of consumers, including well-resourced publicly listed companies, will be able to rely on the unconscionable conduct protections.
PRODUCT SAFETY	<p>A definition of 'voluntary recall' will be introduced, so that the recall notification obligations apply where a trader has undertaken any corrective action to mitigate safety risks of a consumer good, including removing the goods from distribution or sale.</p> <p>The penalties for failing to notify a voluntary recall will also be increased.</p>	<ul style="list-style-type: none"> ➤ A broader range of conduct will trigger the requirement to notify a recall, including withdrawing faulty products from sale at any level of the supply chain, modifying a product so it is no longer faulty or notifying customers of the fault. ➤ Penalties for failing to notify a recall will increase to \$33,000 (for individuals) and the greater of \$165,000 or three times the benefit obtained (for companies).
UNSOLICITED CONSUMER AGREEMENTS	<p>The unsolicited selling protections will be amended to clarify that they apply where:</p> <ul style="list-style-type: none"> • the unsolicited sale occurs in a public place; or • the dealer could have entered the place without the consumer's invitation. 	<ul style="list-style-type: none"> ➤ Unsolicited sales that occur in public places, such as city squares, public streets and shopping malls, will be subject to the unsolicited selling provisions. ➤ Dealers operating in public places will need to comply with the ACL requirements regarding permitted calling hours, disclosure and consent.
FALSE BILLING	It is currently illegal to send a bill for completing services that were unsolicited. The definition of 'unsolicited services' will be expanded so that these protections apply where the unsolicited services have not been provided.	<ul style="list-style-type: none"> ➤ Extends the false billing protections to unsolicited services not provided, or where payment is sought before the unsolicited service is provided.
SINGLE PRICE AND PRE-SELECTED OPTIONS	Section 48 of the ACL will be amended so that the single price for goods or services must include any optional fees or charges that are pre-selected or not de-selected before the relevant representation.	<ul style="list-style-type: none"> ➤ A product's single price must include any additional fees or charges once options are pre-selected or have not been de-selected on a purchase form (eg insurance or a carbon offset). ➤ The amendment responds to recent concerns relating to drip-pricing and pricing transparency for online consumers.
CONSUMER GUARANTEES	There is an exemption to the consumer guarantee of due care and skill for service contracts relating to the transportation or storage of goods 'where the person for whom the goods are transported or stored is acting for business purposes'. Courts had interpreted the exemption broadly so that it applied where either the buyer or the seller was acting for business purposes. The exemption will be amended to clarify that it only applies where the buyer is purchasing the goods for a business purpose.	<ul style="list-style-type: none"> ➤ Ensures consumers purchasing online have remedies against the transporter. ➤ Transporters will need to review their practices to ensure that they meet the consumer guarantee of due care and skill.

PROPOSED CHANGE	IMPLICATIONS
<p>INFORMATION GATHERING POWERS</p> <p>The ACCC's information gathering powers regarding product safety will be expanded so that third parties can be compelled to provide information or documents about potentially unsafe goods or services supplied by a trader.</p> <p>The ACCC and ASIC will be able to use their compulsory information gathering powers to investigate possible unfair contract terms.</p>	<ul style="list-style-type: none"> Third parties, such as test laboratories, safety consultants and consumers, can be compelled to produce information or documents regarding potentially unsafe goods. Broadens the information gathering powers of the ACCC and ASIC to investigate potentially unfair contract terms.
<p>PRIVATE ACTIONS</p> <p>The 'follow on' provisions will be expanded so that private litigants can rely on admitted facts (as well as findings of fact) from earlier proceedings.</p>	<ul style="list-style-type: none"> Eases the evidentiary requirements for private litigants. Brings the ACL into line with recent changes to the competition provisions in the <i>Competition and Consumer Act 2010</i> (Cth).
<p>FINANCIAL PRODUCTS</p> <p>The consumer protection provisions of the ASIC Act will be amended so that the definition of 'financial services' includes 'financial products'.</p>	<ul style="list-style-type: none"> All consumer protections that already apply to financial services will apply to financial products. Achieves greater consistency across the ASIC Act and the ACL by ensuring consumer protections under either Act apply to both goods and services.
<p>WARRANTIES AGAINST DEFECTS</p> <p>The prescribed mandatory text for warranties against defects in regulation 90 will be amended to take into account the differences between the supply of goods, the supply of services and the supply of goods and services.</p>	<ul style="list-style-type: none"> Clarifies mandatory text in regulation 90 that did not refer to services.

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