

EXPOSURE DRAFT



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

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Minister to the Treasurer
Parliamentary Secretary to the Treasurer

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1 Name

This instrument is the *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Unsolicited consumer agreements (technical amendment C) **Schedule 1**

Schedule 1—Unsolicited consumer agreements (technical amendment C)

Competition and Consumer Regulations 2010

1 Regulation 83

Before “For”, insert “(1)”.

2 At the end of regulation 83

Add:

- (2) However, subregulation (1) does not apply if section 86 of the Australian Consumer Law does not apply to, or in relation to, the unsolicited consumer agreement.

Note: Section 86 of the Australian Consumer Law may not apply to an unsolicited consumer agreement because of regulations made under section 94 of the Australian Consumer Law. For example, section 86 of the Australian Consumer Law does not apply to, or in relation to, agreements of a kind specified in regulation 89 and circumstances of a kind specified in regulations 88 and 95 of these Regulations.

3 In the appropriate position in Part 8

Insert:

Division 2—Application of amendments made by the Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018

98 Application—unsolicited consumer agreements

The amendments made by Schedule 1 to the *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018* apply in relation to agreements entered into on or after the commencement of that Schedule.

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Schedule 2 Warranties against defects (proposal 4)

Schedule 2—Warranties against defects (proposal 4)

Competition and Consumer Regulations 2010

1 Paragraph 90(1)(c)

Repeal the paragraph, substitute:

(c) a warranty against defects must include:

- (i) in relation to the supply of goods only—the text mentioned in subregulation (2); or
- (ii) in relation to the supply of services only—the text mentioned in subregulation (3); or
- (iii) in relation to the supply of goods and services—the text mentioned in subregulation (4);

2 After subregulation 90(1)

Insert:

- (1A) Subparagraph (1)(c)(ii) does not apply, in relation to the supply of services, if the services are recreational services (within the meaning of subsection 139A(2) of the Act).
- (1B) Subparagraph (1)(c)(iii) does not apply, and subparagraph (1)(c)(i) applies instead, in relation to the supply of goods and services, if the services are recreational services (within the meaning of subsection 139A(2) of the Act).

3 Subregulation 90(2)

Omit “paragraph (1)(c)”, substitute “subparagraph (1)(c)(i)”.

4 After subregulation 90(2)

Insert:

- (3) For subparagraph (1)(c)(ii), the text is ‘Our services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to cancel your contract with us and to either a refund for the unused portion of this contract or to compensation for its reduced value in the case of major failures. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract’.
- (4) For subparagraph (1)(c)(iii), the text is ‘Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to cancel your service contract or be compensated for its reduced value for major failures with the service. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, we must still rectify the failure in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.

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Warranties against defects (proposal 4) **Schedule 2**

You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service’.

5 In the appropriate position in Part 8

Insert:

99 Application—warranties against defects

The amendments made by Schedule 2 to the *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018* apply in relation to warranties against defects issued on or after the day that is 12 months after the day that Schedule commences.

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