

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*

Section 172 of the *Competition and Consumer Act 2010* (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.

The *Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018* (the Regulations) amend the *Competition and Consumer Regulations 2010* (CCA Regulations) to give effect to two proposals included in the *Australian Consumer Law Review – Final Report* (ACL 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. 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.

The ACL Review Final Report was released in April 2017, following significant public consultation and an examination of relevant overseas developments.

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, the Legislative and Governance Forum on Consumer Affairs agreed to the proposals in the Regulations.

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

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 commenced on the day after being registered on the Federal Register of Legislation.

Section 1 — Name

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

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 provides a technical provision to give operational effect to the amendments contained in the Schedules.

Schedule 1 — Unsolicited consumer agreements (technical amendment C)

1 Regulation 83

Items 1 and 2 amend Regulation 83 and remove the requirement for suppliers of services exempt from the cooling off period to disclose cooling off rights to consumers in relation to unsolicited consumer agreements.

Section 86 of the 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. Certain suppliers of services are exempted from the requirement to provide a cooling off period but Regulation 83 required that these suppliers disclose cooling off rights.

The effect of the amendment is that suppliers of services that do not require a cooling off period are no longer required to disclose cooling off rights to consumers in relation to unsolicited consumer agreements. For example, certain suppliers of electricity or gas services, suppliers of goods or services under an emergency repair contract, and the supply of goods to a consumer under an unsolicited consumer agreement that is \$500 or less, are exempted from the requirement to provide a cooling off period.

The effect of the amendment is that these suppliers are no longer required to disclose cooling off rights to consumers when they are not applicable.

2 Application provision

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

Schedule 2 — Warranties against defects (proposal 4)

1 Regulation 90

Item 1 amends Regulation 90 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 supply of goods and services.

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) prescribes that text. However, it currently only references goods and does not cover services or services bundled with goods.

Items 3 and 4 prescribe 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 retained.

Item 2 inserts an exemption for suppliers of recreational services from the mandatory text requirements, consistent with section 139A of the Act, permitting these suppliers to limit, modify or exclude the application of certain consumer guarantees following death or personal injury.

The effect is that the mandatory text for warranties against defects for the supply of goods, the supply of services, and the supply of goods and services is clearly prescribed, and suppliers of recreational services continue to be exempted from the requirement.

4 Application provision

Item 5 inserts a new application provision in the appropriate position in Part 8 of the 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.