



Treasury Laws Amendment (Australian Consumer Law Review) Act 2018

No. 132, 2018

An Act to amend the law relating to consumer protections, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 132, 2018

An Act to amend the law relating to consumer protections, and for related purposes

[Assented to 25 October 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018*.

No. 132, 2018 *Treasury Laws Amendment (Australian Consumer Law Review) Act* 1
2018

2 Commencement

- (1) Each provision of this Act 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 Act	The day after this Act receives the Royal Assent.	26 October 2018

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Admissions of fact

Competition and Consumer Act 2010

1 Section 137H (heading)

Repeal the heading, substitute:

137H Findings and admissions of fact in proceedings to be evidence

2 Subsections 137H(1) and (2)

Repeal the subsections, substitute:

(1) In:

- (a) an action against a person under subsection 236(1) of the Australian Consumer Law; or
- (b) proceedings for an order against a person under subsection 237(1) or 239(1) of the Australian Consumer Law;

a finding of any fact made by a court, or an admission of any fact made by the person, is prima facie evidence of that fact if the finding or admission is made in proceedings to which subsection (3) of this section applies.

(2) The finding or admission may be proved by production of:

- (a) in any case—a document under the seal of the court from which the finding or admission appears; or
- (b) in the case of an admission—a document from which the admission appears that is filed in the court.

3 Subsection 137H(3)

Omit “a finding of a fact by a court that is made in”.

4 Application

The amendments made by this Schedule apply in relation to findings of fact, and admissions of fact, made on or after the commencement of this Schedule.

Schedule 2—Listed public companies

Australian Securities and Investments Commission Act 2001

1 Paragraphs 12CB(1)(a) and (b)

Omit “(other than a listed public company)”.

2 Subsection 12CB(5)

Repeal the subsection.

Competition and Consumer Act 2010

3 Subparagraphs 131(2)(a)(i) and (ii)

Omit “(other than a listed public company)”.

4 Subsection 2(1) of Schedule 2 (definition of *listed public company*)

Repeal the definition.

5 Paragraphs 21(1)(a) and (b) of Schedule 2

Omit “(other than a listed public company)”.

6 Application

The amendment made by item 3 of this Schedule applies in relation to acts or omissions on or after the day this Schedule commences.

Schedule 3—Unsolicited supplies

Competition and Consumer Act 2010

1 Subsection 2(1) of Schedule 2 (definition of *unsolicited services*)

Repeal the definition, substitute:

unsolicited services means:

- (a) services supplied to a person; or
 - (b) services purported to have been supplied to a person which have not been supplied;
- without any request made by the person or on his or her behalf.

2 Paragraph 40(3)(a) of Schedule 2

Omit “supplying”.

3 Section 42 of Schedule 2

After “supplies”, insert “, or purports to supply but does not supply,”.

4 Paragraph 42(b) of Schedule 2

After “supply”, insert “or purported supply”.

5 Paragraph 162(3)(a) of Schedule 2

Omit “supplying”.

Schedule 4—Unsolicited consumer agreements

Competition and Consumer Act 2010

1 After subsection 69(1) of Schedule 2

Insert:

(1AA) To avoid doubt, a place mentioned in subsection (1)(b)(i) may be a public place, and need not be a place the dealer cannot enter without the consumer's consent or invitation.

Note: This subsection was inserted as a response to the decision of the Federal Court of Australia in *Australian Competition and Consumer Commission v A.C.N. 099 814 749 Pty Ltd* [2016] FCA 403.

Schedule 5—Pricing

Competition and Consumer Act 2010

1 Paragraph 48(7)(a) of Schedule 2

Repeal the paragraph, substitute:

- (a) a charge of any description payable to the person making the representation by another person unless:
 - (i) the charge is payable at the option of the other person; and
 - (ii) at or before the time of the representation, the other person has either deselected the charge or not expressly requested that the charge be applied;

2 Subsection 48(7) of Schedule 2 (example 1)

Repeal the example, substitute:

Example 1: An airline advertises a flight for sale. Persons have the option of paying for a carbon offset. If the carbon offset is preselected on the airline's online booking system, the single price for the flight must include the carbon offset charge. This is because the person has not, at or before the time of the representation, deselected the charge on the online booking site. If the person deselects the optional carbon offset charge later in the online booking process, the single price does not need to include the carbon offset charge after the charge is deselected because of the exception provided by paragraphs (a)(i) and (ii).

Schedule 6—Disclosure notices relating to the safety of goods or services

Competition and Consumer Act 2010

1 Subsections 133D(1) and (2)

Repeal the subsections, substitute:

Consumer goods

- (1) The Commonwealth Minister or an inspector may give a disclosure notice to a person (the ***notice recipient***) if the person giving the notice has reason to believe:
 - (a) that the notice recipient is capable of giving information, producing documents or giving evidence in relation to the supply, or possible supply, in trade or commerce, of consumer goods of a particular kind as specified in the notice; and
 - (b) that:
 - (i) consumer goods of that kind will or may cause injury to any person; or
 - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.

Product related services

- (2) The Commonwealth Minister or an inspector may give a disclosure notice to a person (the ***notice recipient***) if the person giving the notice has reason to believe:
 - (a) that the notice recipient is capable of giving information, producing documents or giving evidence in relation to the supply, or possible supply, in trade or commerce, of product related services of a particular kind as specified in the notice; and
 - (b) that:

- (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
- (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

2 Subsection 133D(3)

Omit “supplier”, substitute “notice recipient”.

3 Paragraph 133D(3)(a)

Omit “supplier”, substitute “notice recipient”.

4 Application

The amendments made by this Schedule apply in relation to disclosure notices given on or after the commencement of this Schedule.

Schedule 7—Power to obtain information, documents and evidence

Australian Securities and Investments Commission Act 2001

1 At the end of section 13

Add:

- (7) If a consumer contract or a small business contract is:
- (a) a financial product; or
 - (b) a contract for the supply, or possible supply, of services that are financial services;
- ASIC may make such investigations as it thinks expedient into the terms of the contract for the purposes of determining whether or not to make an application to the Court under section 12GND.
- (8) Expressions used in subsection (7) that are defined in Division 2 of Part 2 have the same meaning as in that Division.

Competition and Consumer Act 2010

2 At the end of paragraph 155(2)(b)

Add:

- ; or (v) the Commission investigating or inquiring into the terms of a consumer contract or small business contract for the purposes of determining whether or not to make an application to the court under section 250 of the Australian Consumer Law.

3 Application

The amendment made by item 2 of this Schedule applies in relation to contracts entered into on or after the day this Schedule commences.

Schedule 8—Non-punitive orders

Competition and Consumer Act 2010

1 After paragraph 246(2)(a) of Schedule 2

Insert:

- (aa) an order requiring the person, at the person's expense, to engage:
 - (i) another person specified in the order; or
 - (ii) another person in a class of persons specified in the order;to perform a service that is specified in the order and that relates to the conduct, for the benefit of the community or a section of the community;

2 After subsection 246(2) of Schedule 2

Insert:

- (2A) An order under subsection (2)(aa) is not enforceable against a person mentioned in subsections (2)(aa)(i) and (ii).

Schedule 9—Guarantees relating to the supply of services

Competition and Consumer Act 2010

1 Section 63 of Schedule 2

Before “This Subdivision”, insert “(1)”.

2 At the end of section 63 of Schedule 2

Add:

- (2) To avoid doubt, subsection (1)(a) does not apply if the consignee of the goods is not carrying on or engaged in a business, trade, profession or occupation in relation to the goods.

Note: This subsection was inserted as a response to the decision of the High Court of Australia in *Wallis v Downard-Pickford (North Queensland) Pty Ltd* [1994] HCA 17.

Schedule 10—Consumer protection

Australian Securities and Investments Commission Act 2001

1 Subsection 12DC(1)

Omit “sale or grant, or the possible sale or grant”, substitute “supply, or the possible supply”.

2 After subsection 12DC(1)

Insert:

(1AA) Subsection (1) applies whether or not a representation is made before or after the financial product consists of, or includes, an interest in land.

3 Paragraph 12DC(2A)(b)

Omit “sale or grant, or the possible sale or grant”, substitute “supply, or the possible supply”.

4 After subsection 12DC(2A)

Insert:

(2B) Subsection (2A) applies whether or not a person uses physical force, undue harassment or coercion before or after the financial product consists of, or includes, an interest in land.

Schedule 11—Consumer protections in relation to financial products

Australian Securities and Investments Commission Act 2001

1 Subsection 12BA(1) (definition of *unsolicited financial products*)

Repeal the definition.

2 After subsection 12BAB(1)

Insert:

(1AA) Without limiting subsection (1), for the purposes of this Division, a financial product is a *financial service*.

3 Subparagraph 12BEA(1)(e)(iii)

Omit “or financial products”.

4 Subsection 12DM(1)

Omit “or unsolicited financial products”.

5 Paragraph 12DM(1AA)(a)

Omit “or unsolicited financial products”.

6 Section 12DMA

Omit “or unsolicited financial products”.

7 Subsection 12DMB(1)

Omit “or financial products”.

8 Paragraph 12DMB(2)(a)

Omit “or financial products”.

9 Subsection 12DMB(4)

Omit “or financial products”.

Schedule 12—Application provisions

Australian Securities and Investments Commission Act 2001

1 In the appropriate position

Insert:

Part 26—Application provisions relating to the Treasury Laws Amendment (Australian Consumer Law Review) Act 2018

315 Application—listed public companies

The amendments made by items 1 and 2 of Schedule 2 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

316 Application—power to obtain information, documents and evidence in relation to unfair contract terms

The amendment made by item 1 of Schedule 7 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* applies in relation to contracts entered into on or after the day that Schedule commences.

317 Application—consumer protection

The amendments made by Schedule 10 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

318 Application—financial products

The amendments made by Schedule 11 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in

relation to acts or omissions on or after the day that Schedule commences.

Competition and Consumer Act 2010

2 In the appropriate position in Chapter 6 of Schedule 2

Insert:

Part 4—Application provisions relating to the Treasury Laws Amendment (Australian Consumer Law Review) Act 2018

296 Application—listed public companies

The amendments made by items 4 and 5 of Schedule 2 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

297 Application—unsolicited supplies

The amendments made by Schedule 3 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to acts or omissions on or after the day that Schedule commences.

298 Application—unsolicited consumer agreements

The amendment made by Schedule 4 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* applies in relation to acts or omissions that relate to agreements entered into on or after the day that Schedule commences.

299 Application—single price

The amendments made by Schedule 5 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in

relation to acts or omissions on or after the day that is 12 months after the day that Schedule commences.

300 Application—non-punitive orders

The amendments made by Schedule 8 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to orders relating to acts or omissions on or after the day that Schedule commences.

301 Application—guarantees relating to the supply of services

The amendments made by Schedule 9 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* apply in relation to services supplied under a contract entered into on or after the day that Schedule commences.

*[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 13 August 2018]*

(78/18)
