
TREASURY LAWS AMENDMENT (AUSTRALIAN CONSUMER LAW REVIEW)
BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law; Schedule 2 to the <i>Competition and Consumer Act 2010</i>
ACL Review	Australian Consumer Law Review
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CCA	<i>Competition and Consumer Act 2010</i>

Chapter 1

Australian Consumer Law Review

Outline of chapter

1.1 This Bill amends the ASIC Act, ACL and CCA to give effect to a number of proposals suggested in the *Australian Consumer Law Review – Final Report* (ACL Review Final Report).

1.2 The amendments clarify and strengthen consumer protections relating to consumer guarantees, voluntary recalls, unsolicited consumer agreements, product safety, false billing, unconscionable conduct, pricing and unfair contract terms.

Context of amendments

1.3 On 12 June 2015, Commonwealth, State and Territory Consumer Affairs Ministers, through the Legislative and Governance Forum on Consumer Affairs, asked Consumer Affairs Australia and New Zealand to initiate a broad-reaching review of the ACL, the ‘ACL Review’.

1.4 The intent of the ACL Review was to assess the effectiveness of the 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. The Review was also tasked with considering the application of the ACL provisions that are mirrored in the ASIC Act.

1.5 The ACL Review Final Report was released in April 2017, following significant public consultation.

1.6 On 31 August 2017, the Legislative and Governance Forum on Consumer Affairs agreed to legislate the proposals reflected in this Bill.

1.7 The amendments strengthen and clarify the consumer protection regime to ensure that consumers are well-informed, provide that consumers and traders better understand their rights and obligations, and provide that the regime is future-proofed.

Summary of new law

1.8 This Bill amends the ASIC Act, ACL and CCA to give effect to a number of proposals recommended in the ACL Review Final Report.

1.9 The amendments:

- ease the evidentiary requirements so that a party bringing proceedings may rely on both admissions of fact and findings of fact made in other proceedings (see paragraphs 1.10 to 1.16);
- extend the unconscionable conduct protections to publicly listed companies (see paragraphs 1.17 to 1.22);
- ensure that the unsolicited services provisions operate as intended by including services that were not actually supplied (see paragraphs 1.23 to 1.28);
- clarify that an unsolicited consumer agreement may be entered into in a public place (see paragraphs 1.29 to 1.32);
- enhance price transparency by requiring that additional fees or charges associated with pre-selected options are included in the headline price (see paragraphs 1.33 to 1.38);
- strengthen the Minister's and regulator's powers to obtain information about product safety (see paragraphs 1.39 to 1.43);
- enable regulators to use investigative powers to better assess whether or not contract terms are unfair (see paragraphs 1.44 to 1.47);
- clarify the obligations on a person engaged in trade or commerce under a voluntary recall (see paragraphs 1.48 to 1.69);
- give courts the power to require a person in contravention of the ACL to engage a third party to give effect to a community service order (see paragraphs 1.70 to 1.73);
- clarify the scope of consumer guarantees where goods are transported or stored (see paragraphs 1.74 to 1.79);
- ensure that the terminology used in the consumer protection provisions in the ASIC Act relating to land are consistent with similar provisions in the ACL (see paragraphs 1.80 to 1.86); and
- clarify that the ACL-related consumer protections that apply to financial services also apply to financial products under the ASIC Act (see paragraphs 1.87 to 1.92).

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Evidentiary burden</i>	
Expanded ‘follow-on’ provisions allow private litigants to rely on admitted facts from earlier proceedings.	Findings of fact made by a court in certain proceedings against a person may be used in certain other proceedings against that person under the Act. Admitted or agreed facts by the person may not be relied on.
<i>Unconscionable conduct</i>	
Unconscionable conduct against a person is prohibited, including where the person is a publicly listed company.	Unconscionable conduct against a person is prohibited except where the person is a publicly listed company.
<i>Unsolicited consumer agreements</i>	
The operation of unsolicited consumer agreements in section 69 is clarified but not altered to make clear that an unsolicited consumer agreement applies where a dealer meets a consumer away from the supplier’s business or trade premises, including a public place.	Section 69 of the ACL defines unsolicited consumer agreements.
<i>Amounts included in the single price</i>	
Fees or charges associated with pre-selected options must be included in the single price.	The single price for the supply of a good or service must include charges payable by a person except a charge that is optional.
<i>Product Safety</i>	
A definition for ‘recall’ is included in the ACL to clarify when the notification obligations under a voluntary recall must be met.	A person who voluntarily recalls a consumer good must make certain notifications but recall is not defined.
The ACCC is able to require information about unsafe products, including from third parties.	The ACCC can only require a supplier to provide information about unsafe products.
<i>Unfair contract terms</i>	
ACCC and ASIC’s investigative powers allow for investigations of possible unfair contract terms.	ACCC and ASIC’s investigative powers do not allow for investigations of possible unfair contract terms.

<i>Penalties and remedies</i>	
The remedies available to a court are expanded to give the court the power to require the person in contravention of the ACL to engage a third party to perform the required community service.	Section 246 sets out the remedies available to a court where a person contravenes the ACL but does not specifically allow a court to direct a person to engage a third party to perform a required community service.
<i>Consumer guarantees</i>	
The exemption from the requirement to provide a consumer guarantee for the transport or storage of goods is clarified so that it only applies where both the consignor and consignee are a business. The exemption does not apply where the consignee is a consumer.	ACL includes an exemption from the requirement to provide a consumer guarantee for the transport or storage of goods in certain circumstances.
<i>Financial products</i>	
The ACL-related consumer protections in the ASIC Act are clarified to specifically apply to financial products as well as financial services.	The ACL-related consumer protections in the ASIC Act apply to financial services.
<i>Technical amendments</i>	
The definition of unsolicited services is amended to also include services which were unrequested and not actually supplied.	Unsolicited services is defined as services which were supplied but not requested by a person.
Section 12DC of the ASIC Act is amended to refer to the ‘supply or possible supply’ of a financial product that includes an interest in land. The provision also applies to a financial product that may subsequently include an interest in land.	Section 12DC of the ASIC Act refers to representations in connection with ‘the sale or grant, or the possible sale or grant’ of a financial product that includes an interest in land.

Detailed explanation of new law

Easing the evidentiary burden for litigants (Proposal 17 of the ACL Review)

1.10 Consumers harmed by a contravention of the consumer law can seek relief by commencing a private action before the Federal Court.

1.11 Existing section 137H of the CCA is intended to facilitate actions by private litigants by enabling findings of fact made against a person in one proceeding, typically brought by the ACCC, to be used as *prima facie* evidence against the person in another proceeding.

1.12 This mechanism helps to reduce the cost of private actions, as a person relying on a previous finding of fact as *prima facie* evidence does not need to establish that fact.

1.13 However, admissions of fact by a respondent cannot easily be relied on by a litigant in a subsequent action. The consequence of this is that essential issues that were relied upon by a court in finding a contravention in an earlier proceeding are not *prima facie* evidence of those matters in a subsequent action.

1.14 Typically, regulators will undertake enforcement action in the broader public interest and prioritise remedies which reflect this objective and deter future breaches of the law. However, private litigants pursuing their own remedies for a similar contravention must re-establish admissions made in an earlier proceeding because a ‘follow on’ provision, which allows these admissions to be *prima facie* evidence, does not exist.

1.15 Schedule 1 to the Bill amends section 137H to extend the ‘follow-on’ provisions in the consumer law context to enable private litigants and regulators to rely on admissions made by the respondent as well as facts established in earlier proceedings as evidence in their own case. Agreed facts from earlier proceedings will remain available to litigants. [Schedule 1, items 1 to 3, section 137H of CCA]

1.16 The amendments apply in relation to findings of fact and admissions of fact made on or after the commencement of the Bill. [Schedule 1, item 4]

Extending unconscionable conduct protections to publicly-listed companies (Proposal 9 in the ACL Review)

1.17 Existing section 12CB of the ASIC Act currently prohibits unconscionable conduct by a person in trade or commerce in connection with the supply or possible supply of financial services to a person, or acquisition or possible acquisition of financial services from a person.

1.18 Similarly, section 21 of the ACL prohibits unconscionable conduct by a person in trade or commerce in connection with the supply or possible supply of goods or services to a person, or acquisition or possible acquisition of goods or services from a person.

1.19 However, the unconscionable conduct provisions do not currently extend the statutory protections to publicly-listed companies.

1.20 Schedule 2 to the Bill amends section 12CB of the ASIC Act, section 131 of the CCA and section 21 of the ACL to extend statutory

unconscionable conduct protections to publicly-listed companies.
[Schedule 2, items 1, 4 and 6, paragraphs 12CB(1)(a) and 12CB(1)(b) of the ASIC Act, subparagraphs 131(2)(a)(i) and 131(2)(a)(ii) of the CCA and paragraphs 21(1)(a) and 21(1)(b) of the ACL]

1.21 As a result, the definition of ‘listed public company’ is no longer required and is repealed from the ASIC Act and ACL. *[Schedule 2, items 2 and 5, subsection 12CB(5) of the ASIC Act and subsection 2(1) of the ACL]*

1.22 The amendments apply to acts or omissions that occur on or after the Bill commences. *[Schedule 2, items 3 and 7]*

Clarifying the definition of ‘unsolicited services’ (Technical Amendment A in the ACL Review)

1.23 Currently, subsection 40(2) of the ACL prohibits a person in trade or commerce asserting a right to payment for unsolicited services unless the person has reasonable cause to believe there is a right to the payment.

1.24 Subsection 40(3) of the ACL and associated regulations also currently prohibit a person in trade or commerce from sending an invoice that:

- states the amount of a payment, or sets out the charge, for supplying unsolicited services; and
- does not contain a warning statement ‘This is not a bill. You are not required to pay any money’.

unless the person has reasonable cause to believe that there is a right to the payment or charge.

1.25 The existing definition of unsolicited services at subsection 2(1) of the ACL is limited to services supplied to a person without the person requesting the services.

1.26 Schedule 3 to the Bill amends the definition of ‘unsolicited services’ so it also includes unrequested services which are purported to have been supplied but have not been supplied. *[Schedule 3, item 1, subsection 2(1) of the ACL]*

Example 1.1

LIMPEZ Pty Ltd approaches Jason requesting payment for gutter cleaning services that it says it supplied to Jason one day while he was at work. Jason did not ask for the services to be supplied. Furthermore, LIMPEZ Pty Ltd did not actually clean Jason’s gutters.

The services LIMPEZ Pty Ltd is claiming to have supplied meet the definition of unsolicited services.

LIMPEZ Pty Ltd has contravened the false billing prohibition and may be subject to a pecuniary penalty, as well as civil proceedings for damages, other remedial orders or an injunction.

1.27 This allows for better enforcement of the false billing provisions under sections 40 and 162 of the ACL. *[Schedule 3, items 2, 3, 4 and 5, paragraph 40(3)(a), section 42, paragraphs 42(b) and 162(3)(a) of the ACL]*

1.28 The revised definition of ‘unsolicited services’ applies to acts or omissions that occur on or after the Bill commences. *[Schedule 3, item 6]*

Clarifying the operation of unsolicited consumer agreements in public places (Proposal 12 in the ACL Review)

1.29 Part 4 of Schedule 1 to the Bill amends the unsolicited consumer agreement provisions at section 69 of the ACL to clarify when an agreement should be covered by that section.

1.30 Currently, paragraph 69(1)(b) provides that an agreement which is the result of negotiations between a consumer and dealer at a *place* other than the supplier’s place of business would be an unsolicited consumer agreement. Certain other conditions need to be met including that the consumer did not invite the dealer to come to that *place*.

1.31 Schedule 4 to the Bill clarifies that such a place could be a public place, even though a consumer’s invitation is not required for the dealer to enter a public place. *[Schedule 4, item 1, subsection 69(1) of the ACL]*

Example 1.2

Ruth and Anna meet to walk around the local lake. Ruth operates a small business supplying mobile phone accessories. During their walk Anna agrees to purchase \$800 worth of mobile phone charges, screen protectors and cases for her teenage children, as a result of negotiations with Ruth.

Ruth was not invited to the lake by Anna for the purposes of entering negotiations. Although the lake is a public place and Ruth does not need an invitation to enter, the agreement is an unsolicited consumer agreement.

1.32 The amendments apply in relation to acts or omissions that relate to agreements entered into on or after the Bill commences. *[Schedule 4, item 2]*

Ensuring all pre-selected options are included in the single price (Proposal 13 in the ACL Review)

1.33 Currently, paragraph 48(7)(a) of the ACL provides that a charge of any description payable to a person making a representation by another person is included in the single price or ‘headline price’. However, there is

an exception for optional charges. That is, an optional charge does not need to be included in the headline price.

1.34 This has meant that the headline price for a good or service has not always represented the total price of the good or service where the person offering the good or service has pre-selected 'options'. This has been a particular issue for online sales.

1.35 If a consumer does not specifically de-select the pre-selected options they will be paying a higher price than the single price. It can be difficult for some consumers to identify all the pre-selected options in a transaction. As the pre-selected charges are 'optional', the pre-selected charges do not need to be included in the headline price.

Example 1.3

Alex is looking for an airline ticket.

He finds a ticket advertised by Viagem Airlines for \$500. However, Viagem Airlines pre-selects an option for carbon offsetting, priced at \$5.

As soon as Alex clicks through to the Viagem Airlines website the ticket that he thought was \$500 becomes \$505.

1.36 Schedule 5 to the Bill amends the provisions relating to a single price so that the headline price must include charges automatically applied by the 'seller', even though during the transaction the 'buyer' may deselect these options. *[Schedule 5, items 1 and 2, paragraph 48(7)(a) and subsection 48(7) of the ACL]*

1.37 The seller must include in the headline price a charge payable by the buyer unless, before the seller made the representation, the buyer had deselected the charge, or not asked that the charge be applied.

Example 1.4

The amendments included in this Bill have now taken effect.

Alex is looking to purchase an airline ticket.

He again finds a ticket with Viagem Airlines. The ticket is priced at \$505. This includes a carbon offset of \$5 which has been pre-selected by the airline.

He clicks through to the Viagem Airlines' website. This time the price remains \$505 as the price for the carbon offset is included in the advertised price.

When buying the ticket, Alex de-selects the carbon offset. The price is reduced to \$500, which is the amount Alex pays for his ticket.

Example 1.5

Taube Airlines is a discount airline. It offers a number of options for its customers to select when purchasing a ticket, including additional baggage, inflight movies and meals.

None of these options are pre-selected.

Taube Airlines does not need to include the prices for these options in the headline price as the options are not pre-selected. As a passenger selects the additional services and options, the cost would be added to the overall charge for the airline ticket.

1.38 The amendments apply in relation to acts or omissions which occur on or after the day the Bill commences. *[Schedule 5, item 3]*

Strengthening the ACCC's powers to obtain information (Proposal 8 in the ACL Review)

1.39 Existing section 133D of the CCA gives the Commonwealth Minister or an ACCC appointed inspector the power to issue disclosure notices to obtain information about the safety of goods or services. However, disclosure notices can only be issued to a supplier who, in trade or commerce, supplies consumer goods or product related services.

1.40 This restriction has prevented disclosure notices being issued to other parties who may possess relevant information, documents or evidence, about the safety of goods and services. These other parties could include:

- other traders;
- test laboratories;
- safety consultants;
- consumers who have purchased or been injured by a hazardous product; or
- a person injured by a hazardous product.

1.41 Schedule 6 to the Bill broadens the Minister and an inspector's powers to allow the Minister or inspector to give a disclosure notice to a third party. *[Schedule 6, items 1, 2 and 3, section 133D of the CCA]*

1.42 The Minister or inspector may give a notice if he or she has reason to believe that the person is capable of giving information, producing documents or giving evidence in relation to the safety of those consumer goods or product related services.

1.43 The amendments apply in relation to disclosure notices given on or after the commencement of the Bill. *[Schedule 6, item 4]*

Enabling regulators to use investigative powers to assess unfair contract terms (Proposal 11 in the ACL Review)

1.44 Currently, the ACCC and ASIC are restricted in their ability to investigate compliance and take enforcement action with respect to unfair

contract terms. This is because their investigative powers are triggered by ‘contraventions’ or ‘possible contraventions’ of the law.

1.45 As the use of unfair contract terms is not prohibited by the law it is not possible to breach or contravene these provisions in the law.

1.46 Schedule 7 to the Bill amends section 12GND of the ASIC Act and 155 of the CCA to extend ASIC and the ACCC’s respective investigative powers to enable those regulators to undertake investigations to determine if a term in a contract may be unfair. *[Schedule 7, items 1 and 3, section 12GND of the ASIC Act and paragraph 155(2)(b) of the CCA]*

1.47 The amendments apply in relation to contracts entered into on or after the Bill commences. *[Schedule 7, items 2 and 4]*

Strengthening the voluntary recall requirements (Proposal 7 in the ACL Review)

1.48 Currently section 128 of the ACL sets out the voluntary recall provisions and obligations that apply to a person who voluntarily takes action to recall consumer goods on safety grounds.

1.49 The provisions require a person engaged in trade or commerce to notify the Commonwealth Minister of a recall. This assists in the coordination and wide distribution of the recall information.

1.50 However, the current absence of a definition of ‘recall’ means that a person engaged in trade or commerce has flexibility in determining whether remedial action should be considered a recall and whether the actions required for a recall are triggered.

1.51 Schedule 8 to this Bill amends the ACL to enhance and clarify the product safety framework by inserting a definition of recall into the ACL. This will assist traders understand how and when the existing provisions apply. *[Schedule 8, items 1 and 2, subsections 2(1) and 128(1) of the ACL]*

1.52 The definition only applies to voluntary recalls. Under the new definition, a voluntary recall is corrective action taken by a person engaged in trade or commerce to mitigate a consumer safety risk. *[Schedule 8, item 3, subsection 128(1) of the ACL]*

1.53 The types of action which could be taken include, but are not limited to:

- withdrawing faulty products from sale at any level of the supply chain;
- modifying a product so that it is no longer faulty; or
- notifying customers of the fault.

Example 1.6

Nell Pty Ltd (Nell) manufactures and supplies bicycles in Australia. After Nell commences supplying a particular new bicycle, Nell receives reports that a manufacturing flaw in a batch of bicycles has led to several bicycle rear wheels detaching.

The flaw is easily fixed by replacing a single screw. Nell immediately replaces the screws in the defective bicycles it has in stock. As the action Nell has taken is to 'mitigate a consumer safety risk' Nell has undertaken a voluntary recall.

Nell must notify the Commonwealth Minister of the recall within 2 days of replacing the screws, and as soon as possible notify anyone based overseas that has been supplied a bicycle, explaining the fault and dangerous nature of the goods.

1.54 Schedule 8 to this Bill also increases the existing penalties that may apply where a person engaged in trade or commerce fails to meet its voluntary recall notification requirements.

1.55 It is important that the penalties imposed under the ACL are set to deter breaches so that a contravention or offence is not simply viewed as a cost of doing business.

1.56 This is consistent with the findings of the ACL Review Final Report. The ACL Review Final Report considered that the current penalties were set too low to provide a sufficient incentive to notify of a recall, as the penalties were likely to be less than the benefit gained of not notifying of a recall.

1.57 A recall may lead to negative publicity and unwanted attention for a trader. For this reason a person may choose not to notify the Minister of a recall as required. By not alerting consumers to a recall a person may gain a substantial benefit but consumers may be put at the risk of significant harm.

Civil contraventions

Body corporate

1.58 The new maximum civil pecuniary penalty for a body corporate which contravenes the voluntary recall provisions includes two possible penalty amounts taking into account the benefit gained from the act or omission.

1.59 If the court can determine the value of the benefit obtained from the act or omission then the new maximum ACL civil pecuniary penalty is the greater of:

- \$165,000; or
- three times the value of the benefit obtained or attributable to the body corporate and any related bodies corporate as a result of the act or omission.

[Schedule 8, items 6 and 7, subsections 224(3) and 224(4) of the ACL]

1.60 If the court cannot determine the value of the benefit obtained from the act or omission then the new maximum civil pecuniary penalty is \$165,000. *[Schedule 8, items 6 and 7, subsections 224(3) and 224(4) of the ACL]*

Person not a body corporate

1.61 Where a person is not a body corporate, the new maximum civil pecuniary penalty is \$33,000. *[Schedule 8, items 6 and 7, subsections 224(3) and 224(4) of the ACL]*

Criminal offences

Body corporate

1.62 The new maximum penalties for a body corporate which may be imposed if the body corporate commits an offence under the voluntary recall provisions include two possible penalty amounts taking into account the benefit gained from committing the offence.

1.63 If the court can determine the value of the benefit obtained by committing the offence, then the new maximum penalty is the greater of:

- \$165,000; or
- three times the value of the benefit obtained or attributable to the body corporate and any related bodies corporate as a result of committing the offence.

[Schedule 8, items 4 and 5, subsections 201(1) and 201(2) of the ACL]

1.64 If the court cannot determine the value of the benefit obtained as a result of committing the offence then the new maximum penalty is \$165,000. *[Schedule 8, items 4 and 5, subsections 201(1) and 201(2) of the ACL]*

Person not a body corporate

1.65 Where a person is not a body corporate, the new maximum penalty is \$33,000. *[Schedule 8, items 4 and 5, subsections 201(1) and 201(2) of the ACL]*

1.66 The increased criminal penalties remain strict liability offences. It is considered appropriate to retain the penalties as strict liability offences to create a sufficient deterrent to support the regulatory regime

and compliance with the recall provisions. The voluntary recall provisions are an important consumer protection.

1.67 The new definition of recall means that it is clear to a trader when they have undertaken a recall and need to notify the Minister. A decision by a trader to not notify the Minister, which means that the recall information will not be publicised, may put consumers across the economy at significant risk of harm.

1.68 Strict liability offences are considered a key element of the regulator's enforcement toolbox and send a strong signal about the importance of compliance with the recall notification requirements.

1.69 The amendments apply in relation to acts or omissions that occur on or after the Bill commences. [*Schedule 8, item 8*]

Requiring third parties to give effect to a community service order (Proposal 19 in the ACL Review)

1.70 Existing paragraph 246(2)(a) of the ACL allows regulators to apply to the court for a community service order as a remedy where a person has contravened, or has been involved in a contravention of, the ACL.

1.71 Schedule 9 to this Bill amends section 246 to clarify that a court may issue a community service order requiring the person to engage a third party, at the person's expense, to perform the service required in the order. [*Schedule 9, items 1 and 2, paragraphs 246(2)(a) and subsection 246(2) of the ACL*]

1.72 A court may consider using this remedy when the person in breach is not qualified or trusted to give effect to an order. For example, a court may consider that it is not appropriate for a person who has caused financial harm to low-income or vulnerable people to provide financial counselling to those people.

1.73 The amendments apply to acts or omissions which occur on or after the day the Bill commences. [*Schedule 9, item 3*]

Clarifying the scope of the exemption from the consumer guarantees for the transport or storage of goods (Proposal 5 in the ACL Review)

1.74 Part 3-2, Division 1 of the ACL contains the consumer guarantees regime. The regime sets out a number of statutory guarantees that apply to all consumer transactions. Subdivision A relates to the supply of goods, while Subdivision B relates to the supply of services.

1.75 In relation to the supply of services, the consumer guarantees include a requirement that services must be provided with due care and skill (section 60), fit for a particular purpose (section 61) and supplied within a reasonable amount of time (section 62).

1.76 Section 63 of the ACL outlines services to which the guarantees regime does not apply (exemptions).

1.77 Paragraph 63(a) currently provides that the consumer guarantees do not apply to services that are supplied under ‘a contract for or in relation to the transportation and storage of goods for the purpose of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported’.

1.78 Schedule 10 to the Bill clarifies this exemption so that it applies where the consumer is a business but does not apply where the consumer is not a business. [*Schedule 10, items 1 and 2, section 63 of the ACL*]

Example 1.7

Nik is an artist who works from home.

Nik purchases a set of paint brushes which he will use to paint art for sale. On the following day Nik purchases a tracksuit to wear when exercising. Nik pays to have both items delivered to his home.

As Nik purchased the paint brushes to use in his occupation as an artist he will not be able to rely on the consumer guarantees if the paintbrushes are damaged in transit and he wishes to pursue a complaint against the courier.

However, as Nik purchased the tracksuit for personal use he will be able to rely on the consumer protections if the tracksuit is damaged in transit and he pursues a complaint against the courier.

1.79 The amendments apply to services which are supplied under a contract entered into on or after the day the Bill commences. [*Schedule 10, item 3*]

Correcting inconsistent terminology in the ASIC Act for financial products that involve interests in land (Technical Amendment B in the ACL Review)

1.80 Part 2, Division 2, Subdivision D of the ASIC Act sets out consumer protections for financial services and mirrors a number of provisions in the ACL including by importing the language used in the ACL.

1.81 Schedule 11 of the Bill amends section 12DC of the ASIC Act to replace references to ‘the sale or grant’ or the ‘possible sale or grant’ of a financial product that consists of, or includes, an interest in land with the ‘supply or possible supply’ of a financial product that consists of, or includes, an interest in land. [*Schedule 11, items 1 to 4, section 12DC of the ASIC Act*]

1.82 The amendments are not intended to alter or amend the current operation of that provision.

1.83 Schedule 11 of the Bill also amends the ASIC Act to clarify that the consumer protections that apply in connection to a financial product that consists of, or includes an interest in land also apply where the representation occurred prior to the acquisition of the land. [*Schedule 11, items 2 and 4, subsections 12DC(1) and 12DC(2A)*]

1.84 For example, the consumer protections apply to the promotion of a registered or unregistered managed investment scheme that will invest in property, or where a person recommends an investment in real property using a self-managed super fund structure where no fund is yet established.

1.85 There are other provisions in Part 2, Division 2 Subdivision D of the ASIC Act which are not amended by this Bill and which also refer to ‘the sale or grant’ or the ‘possible sale or grant’ of a financial product that consists of, or includes, an interest in land. These provisions were not considered as part of the ACL Review. It is not intended that these provisions operate differently to the amended provision.

1.86 The amendments apply to acts or omissions which occur on or after the Bill commences. [*Schedule 11, item 5*]

Clarifying that the consumer protections in the ASIC Act that apply to financial services also apply to financial products (Proposal 16 in the ACL Review)

1.87 Certain provisions in the ASIC Act are intended to mirror certain provisions in the ACL, including the protections against unconscionable conduct, misleading or deceptive conduct, and harassment and coercion.

1.88 However, the existing provisions in the ASIC Act do not refer to financial products as the definition of financial services is intended to have a broad definition, which includes financial products.

1.89 Schedule 12 of the Bill amends the ASIC Act to clarify that the consumer protections that already apply to financial services also apply to financial products.

1.90 The definition of financial service is amended to include a financial product. [*Schedule 12, items 1 and 2, subsection 12BA(1) and 12BAB(1)*]

1.91 The terms ‘unsolicited financial products’ and ‘financial products’ are removed from certain provisions where the provision also refers to financial services. This is because the amended definition of financial services already includes a financial product. [*Schedule 12, items 3 to 9, subparagraph 12BEA(1)(e)(iii), subsection 12DM(1), paragraph 12DM(1AA)(a), section 12DMA, subsection 12DMB(1), paragraph 12DMB(2)(a) and subsection 12DMB(4) of the ASIC Act*]

1.92 The amendments apply in relation to acts or omissions which occur on or after the day that the Bill commences. *[Schedule 12, item 10]*