

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
consumer protections, and for related purposes**

**EXPOSURE DRAFT**



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# EXPOSURE DRAFT

1

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**Commencement information**

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**Column 1**

**Column 2**

**Column 3**

**Provisions**

**Commencement**

**Date/Details**

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1. The whole of this Act	The day after this Act receives the Royal Assent.	
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2

Note: This table relates only to the provisions of this Act as originally enacted.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.

3

4

5

(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.

6

7

8

### 3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

11

12

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2

*Treasury Laws Amendment (Australian Consumer Law Review) Bill*

No. , 2018

2018

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# EXPOSURE DRAFT

Admissions of fact (proposal 17) **Schedule 1**

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## Schedule 1—Admissions of fact (proposal 17)

### *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 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) 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.

# EXPOSURE DRAFT

Schedule 2 Listed public companies (proposal 9)

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1 **Schedule 2—Listed public companies**  
2 **(proposal 9)**  
3

4 *Australian Securities and Investments Commission Act 2001*

5 **1 Paragraphs 12CB(1)(a) and (b)**

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

7 **2 Subsection 12CB(5)**

8 Repeal the subsection.

9 **3 In the appropriate position**

10 Insert:

11 **Part 25—Application provisions relating to the**  
12 **Treasury Laws Amendment (Australian**  
13 **Consumer Law Review) Act 2018**  
14

15 **309 Application**

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

20 *Competition and Consumer Act 2010*

21 **4 Subparagraphs 131(2)(a)(i) and (ii)**

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

23 **5 Subsection 2(1) of Schedule 2 (definition of *listed public***  
24 ***company*)**

25 Repeal the definition.



# EXPOSURE DRAFT

Listed public companies (proposal 9) **Schedule 2**

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1 **6 Paragraphs 21(1)(a) and (b) of Schedule 2**

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

3 **7 In the appropriate position in Chapter 6 of Schedule 2**

4 Insert:

5 **Part 4—Application provisions relating to the**  
6 **Treasury Laws Amendment (Australian**  
7 **Consumer Law Review) Act 2018**  
8

9 **296 Application—listed public companies**

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

# EXPOSURE DRAFT

## Schedule 3 Unsolicited supplies (technical amendment A)

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1 **Schedule 3—Unsolicited supplies (technical**  
2 **amendment A)**  
3

4 *Competition and Consumer Act 2010*

5 **1 Subsection 2(1) of Schedule 2 (definition of *unsolicited***  
6 ***services*)**

7 Repeal the definition, substitute:

8 *unsolicited services* means:

9 (a) services supplied to a person; or

10 (b) services purported to have been supplied to a person which  
11 have not been supplied;

12 without any request made by the person or on his or her behalf.

13 **2 Paragraph 40(3)(a) of Schedule 2**

14 Omit “supplying”.

15 **3 Section 42 of Schedule 2**

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

17 **4 Paragraph 42(b) of Schedule 2**

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

19 **5 Paragraph 162(3)(a) of Schedule 2**

20 Omit “supplying”.

21 **6 In the appropriate position in Chapter 6 of Schedule 2**

22 Insert:

23 **297 Application—unsolicited supplies**

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

# EXPOSURE DRAFT

Unsolicited consumer agreements (proposal 12) **Schedule 4**

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1 **Schedule 4—Unsolicited consumer**  
2 **agreements (proposal 12)**  
3

4 ***Competition and Consumer Act 2010***

5 **1 After subsection 69(1) of Schedule 2**

6 Insert:

7 (1AA) To avoid doubt, a place mentioned in subsection (1)(b) may be a  
8 public place, and need not be a place the dealer cannot enter  
9 without the consumer’s consent or invitation.

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

13 **2 In the appropriate position in Chapter 6 of Schedule 2**

14 Insert:

15 **298 Application—unsolicited consumer agreements**

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

# EXPOSURE DRAFT

Schedule 5 Pricing (proposal 13)

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1 **Schedule 5—Pricing (proposal 13)**  
2

3 *Competition and Consumer Act 2010*

4 **1 Paragraph 48(7)(a) of Schedule 2**

5 Repeal the paragraph, substitute:

6 (a) a charge of any description payable to the person making the  
7 representation by another person unless:

8 (i) the charge is payable at the option of the other person;  
9 and

10 (ii) at or before the time of the representation, the other  
11 person has either deselected the charge or not expressly  
12 requested that the charge be applied;

13 **2 Subsection 48(7) of Schedule 2 (example 1)**

14 Repeal the example, substitute:

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

24 **3 In the appropriate position in Chapter 6 of Schedule 2**

25 Insert:

26 **299 Application—single price**

27 The amendments made by Schedule 5 to the *Treasury Laws*  
28 *Amendment (Australian Consumer Law Review) Act 2018* apply in  
29 relation to acts or omissions on or after the day that Schedule  
30 commences.

# EXPOSURE DRAFT

Disclosure notices relating to the safety of goods or services (proposal 8) **Schedule 6**

---

1 **Schedule 6—Disclosure notices relating to the**  
2 **safety of goods or services (proposal**  
3 **8)**  
4

5 *Competition and Consumer Act 2010*

6 **1 Subsections 133D(1) and (2)**

7 Repeal the subsections, substitute:

8 *Consumer goods*

9 (1) The Commonwealth Minister or an inspector may give a disclosure  
10 notice to a person (the *notice recipient*) if the person giving the  
11 notice has reason to believe:

12 (a) that the notice recipient is capable of giving information,  
13 producing documents or giving evidence in relation to the  
14 supply, or possible supply, in trade or commerce, of  
15 consumer goods of a particular kind as specified in the  
16 notice; and

17 (b) that:

18 (i) consumer goods of that kind will or may cause injury to  
19 any person; or

20 (ii) a reasonably foreseeable use (including a misuse) of  
21 consumer goods of that kind will or may cause injury to  
22 any person.

23 *Product related services*

24 (2) The Commonwealth Minister or an inspector may give a disclosure  
25 notice to a person (the *notice recipient*) if the person giving the  
26 notice has reason to believe:

27 (a) that the notice recipient is capable of giving information,  
28 producing documents or giving evidence in relation to the  
29 supply, or possible supply, in trade or commerce, of product  
30 related services of a particular kind as specified in the notice;  
31 and

32 (b) that:

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# EXPOSURE DRAFT

**Schedule 6** Disclosure notices relating to the safety of goods or services (proposal 8)

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

8 **2 Subsection 133D(3)**

9 Omit “supplier”, substitute “notice recipient”.

10 **3 Paragraph 133D(3)(a)**

11 Omit “supplier”, substitute “notice recipient”.

12 **4 Application**

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

# EXPOSURE DRAFT

Power to obtain information, documents and evidence (proposal 11) **Schedule 7**

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1 **Schedule 7—Power to obtain information,**  
2 **documents and evidence (proposal 11)**  
3

4 *Australian Securities and Investments Commission Act 2001*

5 **1 At the end of section 12GND**

6 Add:

7 (6) If a consumer contract or a small business contract is:

8 (a) a financial product; or

9 (b) a contract for the supply, or possible supply, of services that  
10 are financial services;

11 ASIC may make such investigations or inquiries as it thinks  
12 appropriate into the terms of the contract for the purposes of  
13 determining whether or not to make an application to the Court  
14 under this section.

15 **2 In the appropriate position in Part 25**

16 Insert:

17 **310 Application—power to obtain information, documents and**  
18 **evidence in relation to unfair contract terms**

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

23 *Competition and Consumer Act 2010*

24 **3 At the end of paragraph 155(2)(b)**

25 Add:

26 ; or (v) the Commission investigating or inquiring into the  
27 terms of a consumer contract or small business contract  
28 for the purposes of determining whether or not to make

# EXPOSURE DRAFT

Schedule 7 Power to obtain information, documents and evidence (proposal 11)

---

1 an application to the court under section 250 of the  
2 Australian Consumer Law.

3 **4 In the appropriate position in Chapter 6 of Schedule 2**

4 Insert:

5 **300 Application—power to obtain information, documents and**  
6 **evidence in relation to unfair contract terms**

7 Subparagraph 155(2)(b)(v) as inserted by item 3 of Schedule 7 to  
8 the *Treasury Laws Amendment (Australian Consumer Law Review)*  
9 *Act 2018* applies in relation to contracts entered into on or after the  
10 day that Schedule commences.

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12 *Treasury Laws Amendment (Australian Consumer Law Review) Bill* No. , 2018  
2018

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# EXPOSURE DRAFT

Recall of consumer goods (proposal 7) **Schedule 8**

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1 **Schedule 8—Recall of consumer goods**  
2 **(proposal 7)**  
3

4 *Competition and Consumer Act 2010*

5 **1 Subsection 2(1) of Schedule 2**

6 Insert:

7 *recall*, in relation to action mentioned in section 128(1), means any  
8 corrective action of a kind mentioned in section 128(1A).

9 **2 Subsection 128(1) of Schedule 2**

10 Omit “takes action to recall”, substitute “takes corrective action of a  
11 kind mentioned in subsection (1A) in relation to”.

12 **3 After subsection 128(1) of Schedule 2**

13 Insert:

14 (1A) The corrective action is any corrective action taken by a person  
15 engaged in trade or commerce to mitigate safety risks of the  
16 consumer goods, which may include action taken to remove the  
17 consumer goods from distribution, sale or consumption.

18 **4 Subsection 201(1) of Schedule 2 (penalty)**

19 Repeal the penalty, substitute:

20 Penalty:

21 (a) if the person is not a body corporate—\$33,000; or

22 (b) if the person is a body corporate—the greater of the  
23 following:

24 (i) \$165,000;

25 (ii) if the court can determine the total value of the benefit  
26 that the body corporate, and any body corporate related  
27 to the body corporate, have obtained directly or  
28 indirectly and that is reasonably attributable to the  
29 commission of the offence—3 times the total value of  
30 that benefit.

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# EXPOSURE DRAFT

Schedule 8 Recall of consumer goods (proposal 7)

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1 **5 Subsection 201(2) of Schedule 2 (penalty)**

2 Repeal the penalty, substitute:

3 Penalty:

- 4 (a) if the person is not a body corporate—\$33,000; or  
5 (b) if the person is a body corporate—the greater of the  
6 following:  
7 (i) \$165,000;  
8 (ii) if the court can determine the total value of the benefit  
9 that the body corporate, and any body corporate related  
10 to the body corporate, have obtained directly or  
11 indirectly and that is reasonably attributable to the  
12 commission of the offence—3 times the total value of  
13 that benefit.

14 **6 Subsection 224(3) of Schedule 2 (table item 12)**

15 Repeal the item, substitute:

12	section 128(2) or (6)	(a) if the person is a body corporate—the greater of the amounts mentioned in subsection (3B); or (b) if the person is not a body corporate—\$33,000.
12A	section 131(1) or 132(1)	(a) if the person is a body corporate—\$16,500; or (b) if the person is not a body corporate—\$3,300.

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16 **7 Before subsection 224(4) of Schedule 2**

17 Insert:

- 18 (3B) For the purposes of item 12 of the table in subsection (3), the  
19 amounts are as follows:  
20 (a) \$165,000;  
21 (b) if the court can determine the total value of the benefit that  
22 the body corporate, and any body corporate related to the  
23 body corporate, have obtained directly or indirectly and that
-

# EXPOSURE DRAFT

Recall of consumer goods (proposal 7) **Schedule 8**

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1 is reasonably attributable to the commission of the offence—  
2 3 times the total value of that benefit.

3 **8 In the appropriate position in Chapter 6 of Schedule 2**

4 Insert:

5 **301 Application—recall of consumer goods**

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

**EXPOSURE DRAFT**

# EXPOSURE DRAFT

Schedule 9 Non-punitive orders (proposal 19)

---

1 **Schedule 9—Non-punitive orders (proposal**  
2 **19)**  
3

4 ***Competition and Consumer Act 2010***

5 **1 After paragraph 246(2)(a) of Schedule 2**

6 Insert:

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

15 **2 After subsection 246(2) of Schedule 2**

16 Insert:

- 17 (2A) An order under subsection (2)(aa) is not enforceable against a  
18 person mentioned in subsection (2)(aa)(i) and (ii).

19 **3 In the appropriate position in Chapter 6 of Schedule 2**

20 Insert:

21 **302 Application—non-punitive orders**

22 The amendments made by Schedule 9 to the *Treasury Laws*  
23 *Amendment (Australian Consumer Law Review) Act 2018* apply in  
24 relation to orders relating to acts or omissions on or after the day  
25 that Schedule commences.

# EXPOSURE DRAFT

Guarantees relating to the supply of services (proposal 5) **Schedule 10**

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1 **Schedule 10—Guarantees relating to the**  
2 **supply of services (proposal 5)**  
3

4 *Competition and Consumer Act 2010*

5 **1 Section 63 of Schedule 2**

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

7 **2 At the end of section 63 of Schedule 2**

8 Add:

- 9 (2) To avoid doubt, subsection (1)(a) does not apply if the consumer  
10 for whose benefit the goods are transported or stored is not  
11 carrying on or engaged in a business, trade, profession or  
12 occupation in relation to those goods.

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

16 **3 In the appropriate position in Chapter 6 of Schedule 2**

17 Insert:

18 **303 Application—guarantees relating to the supply of services**

19 The amendments made by Schedule 10 to the *Treasury Laws*  
20 *Amendment (Australian Consumer Law Review) Act 2018* apply in  
21 relation to services supplied under a contract entered into on or  
22 after the day that Schedule commences.

# EXPOSURE DRAFT

Schedule 11 Consumer protection (technical amendment B)

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1 **Schedule 11—Consumer protection (technical**  
2 **amendment B)**  
3

4 *Australian Securities and Investments Commission Act 2001*

5 **1 Subsection 12DC(1)**

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

8 **2 After subsection 12DC(1)**

9 Insert:

10 (1AA) Subsection (1) applies whether or not a representation is made  
11 before or after the financial product consists of, or includes, an  
12 interest in land.

13 **3 Paragraph 12DC(2A)(b)**

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

16 **4 After subsection 12DC(2A)**

17 Insert:

18 (2B) Subsection (2A) applies whether or not a person uses physical  
19 force, undue harassment or coercion before or after the financial  
20 product consists of, or includes, an interest in land.

21 **5 In the appropriate position in Part 25**

22 Insert:

23 **311 Application—consumer protection**

24 The amendments made by Schedule 11 to the *Treasury Laws*  
25 *Amendment (Australian Consumer Law Review) Act 2018* apply in  
26 relation to acts or omissions on or after the day that Schedule  
27 commences.

# EXPOSURE DRAFT

Consumer protections in relation to financial products (proposal 16) **Schedule 12**

---

1 **Schedule 12—Consumer protections in**  
2 **relation to financial products (proposal**  
3 **16)**  
4

5 *Australian Securities and Investments Commission Act 2001*

6 **1 Subsection 12BA(1) (definition of *unsolicited financial***  
7 ***products*)**

8 Repeal the definition.

9 **2 After subsection 12BAB(1)**

10 Insert:

11 (1AA) Without limiting subsection (1), for the purposes of this Division, a  
12 financial product is a *financial service*.

13 **3 Subparagraph 12BEA(1)(e)(iii)**

14 Omit “or financial products”.

15 **4 Subsection 12DM(1)**

16 Omit “or unsolicited financial products”.

17 **5 Paragraph 12DM(1AA)(a)**

18 Omit “or unsolicited financial products”.

19 **6 Section 12DMA**

20 Omit “or unsolicited financial products”.

21 **7 Subsection 12DMB(1)**

22 Omit “or financial products”.

23 **8 Paragraph 12DMB(2)(a)**

24 Omit “or financial products”.

# EXPOSURE DRAFT

Schedule 12 Consumer protections in relation to financial products (proposal 16)

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1 **9 Subsection 12DMB(4)**

2 Omit “or financial products”.

3 **10 In the appropriate position in Part 25**

4 Insert:

5 **312 Application—financial products**

6 The amendments made by Schedule 12 to the *Treasury Laws*  
7 *Amendment (Australian Consumer Law Review) Act 2018* apply in  
8 relation to acts or omissions on or after the day that Schedule  
9 commences.