

# ACL Under Review: What to Expect if the Changes go Through?

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The Australian Consumer Law (**ACL**) was introduced in 2011, creating a unified code of consumer rights and obligations across Australia. In June 2015, Consumer Affairs Australia and New Zealand undertook a review of the ACL, issuing an interim report in October 2016 which identified options to improve the effectiveness of the regime.

A final report was released in March 2017. Here's a summary of some of the key recommendations in the final report:

## What are the proposed changes?

- Substantially increased penalties for breaches of the ACL – meaning that large companies will be less likely to escape small sanctions that have little impact;
- Move to make the sale of unsafe goods expressly prohibited (bringing the ACL in line with current UK, EU and Canadian consumer laws);
- Increased transparency regarding extended warranties by requiring agreements for

- extended warranties be in writing, requiring additional information about what the ACL can offer instead, and requiring a cooling-off period of 10 working days (or an unlimited time if the supplier has not met their disclosure obligations) which must be disclosed in writing and orally;
- Obligatory text requirements for warranties against defects (particularly for services and services bundled with goods);
  - Clarification regarding the scope of the exemption from the consumer guarantees for the transport or storage of goods where those goods are damaged or lost in transit;
  - *Clarity around consumers' entitlement to remedies where goods fail to meet consumer guarantees;*
  - Consumers to have the option of choosing a refund, replacement or repair where goods don't not comply with consumer guarantees within a short period of time (30 days after purchase or delivery). This is intended to exclude perishable foods and goods that can be 'used up' such as cosmetics;
  - The concept of a "major failure" (entitling the consumer to a refund or replacement) to be proved through a series of minor failures rather than solely one major failure;
  - Online buyers to have increased price transparency, due a proposed requirement that additional fees or charges associated with pre-selected options be included in the headline price;
  - The threshold definition of a consumer to be increased from \$40,000 to \$100,000;
  - Extend the operation of the ACL to publicly listed companies, and apply unfair contract terms protections to contracts regulated by the *Insurance Contracts Act 1984*; and
  - Ease evidentiary requirements for private litigants by enabling them to rely on admitted facts from earlier proceedings.

Additionally, the final report contains valuable insight into priority areas which Consumer Affairs considers ought best to be developed when the law has matured, public understanding has developed, and further work is required to assess how they would operate in Australia to promote greater certainty and clarity.

Consumer Affairs ministers are due to respond to the final report this August.