

CONSUMERS' FEDERATION OF AUSTRALIA

CAANZ Review of Australian Consumer Law

Tracking calendar

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Overarching recommendation	Update September 2017	Update January 2018	Update April 2018	Update July 2018
<b>Looking to the future</b> <b>Australian Consumer Law Survey</b>	Commission a third Australian Consumer Survey in 2021 to assist with regular monitoring and review of the ACL. Supported by Ministers for CAF Forward Agenda	To be commenced 2021	N/a	N/a
<b>Recommendations relating to consumer guarantees</b>	Update September 2017 Supported by Ministers for further analysis	Update January 2018 Consultation Regulatory Impact Assessment to be published in early 2018	Update April 2018 Regulatory Impact Assessment expected Feb/March 2018	Update July 2018 Part of a "Super RIS" consultation Consultation RIS released in March 2018
<b>Proposal 1</b> <b>Right to refund &amp; replacements</b>	Specify that where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to the remedies of a refund or replacement without needing to prove a 'major failure'.	Consultation Regulatory Impact Assessment to be published in early 2018	Regulatory Impact Assessment expected Feb/March 2018	Part of a "Super RIS" consultation Consultation RIS released in March 2018
<b>Proposal 2</b> <b>Multiple non-major failures</b>	Clarify that multiple non-major failures can amount to a major failure.	Consultation Regulatory Impact Assessment to be published in early 2018	Regulatory Impact Assessment expected Feb/March 2018	Part of a "Super RIS" consultation Consultation RIS released in March 2018
<b>Proposal 3</b> <b>Extended warranties</b>	Enhance disclosure in relation to extended warranties by requiring: - agreements for extended warranties to be clear and in writing - additional information about what the ACL offers in comparison - a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed orally and in writing	Consultation Regulatory Impact Assessment to be published in early 2018	Regulatory Impact Assessment expected Feb/March 2018	Part of a "Super RIS" consultation Consultation RIS released in March 2018
<b>Proposal 4</b> <b>Warranties against defects</b>	Clarify the mandatory text requirements for warranties against defects by developing text specific to services and services bundled with goods.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info <a href="#">Schedule 2 of Exposure Draft Regulations released in February 2018</a>
<b>Proposal 5</b> <b>Goods damaged or lost in transit</b>	Clarify 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.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info <a href="#">Schedule 10 of Exposure Draft Legislation released in February 2018</a>
<b>Regulator action</b> <b>Guidance on 'unsafe' and 'reasonable durability'</b>	Regulators will work with stakeholders (including tribunals) to provide more specific guidance on both 'unsafe' goods and 'reasonable durability'	Noted by Ministers	To be developed in 2018	No further info
<b>Looking to the future</b> <b>Fit-for-purpose consumer guarantees</b>	Examine whether the current consumer guarantees are fit-for-purpose for purely digital products, certain market practices and emerging technologies.	Supported by Ministers for CAF Forward Agenda	To be commenced in 2018-19	No further info
<b>Proposals relating to product safety</b>	Update September 2017 Supported by Ministers for further analysis	Update January 2018 Consultation Regulatory Impact Assessment to be published - date unspecified	Update April 2018 Treasury has undertaken some targeted consultation in November 2018	Update July 2018 CFA is aware of Treasury's targeted consultation, but RIS not yet published
<b>Proposal 6</b> <b>General safety provision</b>	Introduce a general safety provision that would require traders to ensure the safety of a product before it enters the market	Expected to be legislated in mid-2018 (no further RIS).	No further info	No further info <a href="#">Schedule 8 of Exposure Draft Legislation released February 2018</a>
<b>Proposal 7</b> <b>Voluntary recalls</b>	Clarify and strengthen voluntary recall requirements by: - introducing a statutory definition of 'voluntary recall' - increasing penalties for failure or refusal to notify a voluntary recall, proportionate to other ACL penalties.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info <a href="#">Schedule 6 of Exposure Draft Legislation released February 2018</a>
<b>Proposal 8</b> <b>Powers to obtain information</b>	Strengthen ACCC powers to obtain information about product safety, by broadening the power to apply to any person (including a consumer) likely to have relevant information, rather than just the supplier.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info <a href="#">Schedule 4 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Regulator action</b> <b>Mandatory reporting</b>	Regulators will issue guidance clarifying traders' mandatory reporting obligations.	Noted by Ministers	To be developed in 2018	No further info
<b>Regulator Action</b> <b>Product bans and recalls</b>	Regulators will explore options to streamline processes for implementing product bans and mandatory recalls, taking into account findings of the Productivity Commission's study of Consumer Law Enforcement and Administration.	Noted by Ministers	To be considered further in 2018	No further info
<b>Looking to the future</b> <b>Product safety data</b>	Promote enhanced collection and dissemination of product safety data, taking into account findings of the Productivity Commission's study of Consumer Law Enforcement and Administration and initiatives undertaken by other regulatory regimes	Supported by Ministers for CAF Forward Agenda	To be commenced in 2017-18	No further info - supposed to commence 2017/18
<b>Recommendations relating to unconscionable conduct</b>	Update September 2017	Update January 2018	Update April 2018	Update July 2018
<b>Proposal 9</b> <b>Publicly-listed companies</b>	Extend the ACL (and ASIC Act) unconscionable conduct protections to publicly-listed companies.	Agreed to by Ministers	Expected to be legislated in mid-2018 with respect to ACL. Not clear with respect to ASIC Act. The Chair of CAF will write to the Commonwealth Minister responsible for the ASIC Act to seek their agreement to the amendment.	No further info <a href="#">Schedule 2 of Exposure Draft Legislation released February 2018</a>
<b>Looking to the future</b> <b>Unfair trading</b>	Explore how an unfair trading prohibition could be adopted within the Australian context to address potentially unfair business practices.	Supported by Ministers for CAF Forward Agenda	To be commenced in 2018-19	No further info <a href="#">Schedule 2 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Recommendations relating to unfair contract terms</b>	Update September 2017	Update January 2018	Update April 2018	Update July 2018
<b>Proposal 10</b> <b>Insurance contracts</b>	Apply unfair contract term protections to contracts regulated by the Insurance Contracts Act 1984 (Cth)	Supported by Ministers for further analysis	Consultation Regulatory Impact Assessment to be published - date unspecified (to be led by Commonwealth, not CAF)	No further consultation as yet CFA understand Treasury will consult on options to extend unfair contract terms to insurance in May 2018 <a href="#">Treasury released proposals paper on 27 June 2018, submissions due 24 August 2018</a>

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Overarching recommendation	Update September 2017	Update January 2018	Update April 2018	Update July 2018	
<b>Looking to the future</b> <b>Australian Consumer Law Survey</b> Commission a third Australian Consumer Survey in 2021 to assist with regular monitoring and review of the ACL.	Supported by Ministers for CAF Forward Agenda	To be commenced 2021	N/a	N/a	
<b>Proposal 11</b> <b>Powers to obtain information</b> Enable regulators to use existing investigative powers to better assess whether or not a term may be unfair.	Agreed to by Ministers	Consultation Regulatory Impact Assessment for ACL to be published - date unspecified. The Chair of CAF will write to the Commonwealth Minister responsible for the ASIC Act to seek their agreement to the amendment (i.e. not yet agreed).	No further info	<a href="#">Schedule 7 of Exposure Draft Legislation released in February 2018</a>	<a href="#">Schedule 7 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Recommendations relating to unsolicited consumer agreements</b> <b>Proposal 12</b> <b>Threshold requirements for unsolicited consumer agreements</b> Ensure that the unsolicited selling provisions operate as intended by clarifying that the provisions: - can apply in public places - capture suppliers in their negotiations with consumers where the suppliers obtain, from a third party (sometimes referred to as a 'lead generator'), a consumer's contact details or permission to be contacted	Update September 2017 Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	Update January 2018 No further info	Update April 2018 <a href="#">Schedule 4 to Exposure Draft Legislation released February 2018</a>	Update July 2018 <a href="#">Schedule 4 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Looking to the future</b> <b>Unsolicited selling</b> Undertake an economy-wide study to examine the role, nature and impact of unsolicited selling in the Australian economy, to inform future policy development.	Supported by Ministers for CAF Forward Agenda	To be commenced in 2018-19	No further info	No further info - supposed to commence 2017/18	No further info
<b>Recommendations relating to purchasing online</b> <b>Proposal 13</b> <b>Pre-selected options</b> Enhance price transparency in online shopping by requiring that any additional fees or charges associated with pre-selected options are included in the headline price.	Update September 2017 Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	Update January 2018 No further info	Update April 2018 <a href="#">Schedule 5 of Exposure Draft Legislation released February 2018</a>	Update July 2018 <a href="#">Schedule 5 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Proposal 14</b> Modernise the 'sale by auction' exemption with regard to consumer guarantees by ensuring the consumer guarantees apply to all online auctions.	Supported by Ministers for further analysis	Consultation Regulatory Impact Assessment to be published in early 2018	Regulatory Impact Assessment expected Feb/March 2018	Part of a "Super RIS" consultation <a href="#">Consultation RIS released in March 2018</a>	<a href="#">42 submission on consultation RIS have been published</a>
<b>Recommendations relating to scope of the ACL</b> <b>Proposal 15</b> Increase the \$40,000 threshold in the definition of 'consumers' to \$100,000	Update September 2017 Supported by Ministers for further analysis	Consultation Regulatory Impact Assessment to be published in early 2018	Update January 2018 Regulatory Impact Assessment expected Feb/March 2018	Part of a "Super RIS" consultation <a href="#">Consultation RIS released in March 2018</a>	<a href="#">42 submission on consultation RIS have been published</a>
<b>Proposal 16</b> <b>Financial products</b> Amend the ASIC Act to clarify that all ACL-related consumer protections that already apply to financial services also apply to financial products.	Agreed to by Ministers	Expect to be legislated mid-2018, but the Chair of CAF will write to the Commonwealth Minister responsible for the ASIC Act to seek their agreement to the amendment (i.e. not yet agreed).	No further info	<a href="#">Schedule 12 of Exposure Draft Legislation released in February 2018</a>	<a href="#">Schedule 11 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Regulator action</b> <b>Charities, not-for-profit organisations and fundraisers</b> Clarify through regulator guidance the current application of the ACL to the activities of charities, not-for-profit entities and fundraisers.	Noted by Ministers	To be developed in 2017	<a href="#">CAANZ released guidance in December 2017</a>		
<b>Looking to the future</b> <b>Charities, not-for-profit organisations and fundraisers</b> Assess the effectiveness of the proposed guidance on not-for-profit fundraising, further regulator actions, and whether any amendment to the ACL is necessary	Supported by Ministers for CAF Forward Agenda	To be commenced in 2018-19	No further info	No further info	No further info
<b>Looking to the future</b> <b>Review of exemptions under the ACL</b> Review current exemptions, with a view to removing those that are no longer in the public interest	Ongoing as priorities arise		No further info	No further info	No further info
<b>Other technical amendments of ACL</b> <b>Amendment A</b> Amend the definition of 'unsolicited services' in section 2 of the ACL to allow the false billing provisions (sections 40 and 162) to apply to false bills for services not provided.	Update September 2017 Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	Update January 2018 No further info	Update April 2018 <a href="#">Schedule 3 of Exposure Draft Legislation released in February 2018</a>	Update July 2018 <a href="#">Schedule 3 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Amendment B</b> Amend section 12DC of the ASIC Act to address terminology that is inconsistent with other consumer protection provisions in the ASIC Act and that may unintentionally narrow the scope of the provision.	Agreed to by Ministers	Expect to be legislated mid-2018, but the Chair of CAF will write to the Commonwealth Minister responsible for the ASIC Act to seek their agreement to the amendment (i.e. not yet agreed).	No further info	<a href="#">Schedule 13 of Exposure Draft Legislation released in February 2018</a>	<a href="#">Schedule 10 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Amendment C</b> Amend section 76 of the ACL (or the regulations) to clarify that disclosure requirements for unsolicited consumer agreements do not apply to certain exempt agreements.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info	<a href="#">Schedule 1 of Exposure Draft Regulations released in February 2018</a>	No further info
<b>The ACL in practice</b> <b>Proposal 17</b> <b>Private action</b> Ease evidentiary requirements for private litigants through an expanded 'follow-on' provision enabling them to rely on admitted facts from earlier proceedings.	Update September 2017 Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	Update January 2018 No further info	Update April 2018 <a href="#">Schedule 1 of Exposure Draft Legislation released in February 2018 (only applies to C&amp;CA not ASIC Act)</a>	Update July 2018 <a href="#">Schedule 1 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018 passed House of Representatives on 28 June 2018. Not yet before Senate.</a>
<b>Penalties and remedies</b>	Update September 2017		Update January 2018	Update April 2018	Update July 2018

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Overarching recommendation		Update September 2017	Update January 2018	Update April 2018	Update July 2018
<b>Looking to the future</b>	Commission a third Australian Consumer Survey in 2021 to assist with regular monitoring and review of the ACL.	Supported by Ministers for CAF Forward Agenda	To be commenced 2021	N/a	N/a
<b>Australian Consumer Law Survey</b>					
<b>Proposal 18</b>	Increase maximum financial penalties available under the ACL by aligning them with the penalty regime under the competition provisions of the Competition and Consumer Act 2010: - for companies, the greater of: - the maximum penalty (of \$10 million), or - three times the value of the benefit the company received from the act or omission, or - if the benefit cannot be determined, 10 per cent of annual turnover in the preceeding 12 months. - for individuals, \$500,000.	Agreed to by Ministers	Expected to be legislated in 2017 (no further RIS).	Legislation not yet introduced to Federal Parliament	<a href="#">Treasury Laws Amendment (2018 Measures No. 3) Bill 2018, introduced on 15 February 2018</a>
<b>Maximum financial penalties</b>					<a href="#">Treasury Laws Amendment (2018 Measures No. 3) Bill 2018, passed House of Representatives 27 June 2018 and introduced to Senate the same day.</a>
<b>Proposal 19</b>	Allow third parties to give effect to a community service order under the ACL.	Agreed to by Ministers	Expected to be legislated in mid-2018 (no further RIS).	No further info	<a href="#">Schedule 9 to Exposure Draft Legislation, released in February 2018</a>
<b>Community service orders</b>					<a href="#">Schedule 8 of Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018, passed House of Representatives on 28 June 2018. Not yet before Senate.</a>

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**Overarching recommendation**

**Looking to the future** Commission a third Australian Consumer Survey in 2021 to assist with regular monitoring and review of the ACL.  
**Australian Consumer Law Survey**

Update September 2017

Supported by Ministers for CAF Forward Agenda To be commenced 2021

Update January 2018

N/a

Update April 2018

N/a

Update July 2018

N/a

**CONSUMERS' FEDERATION OF AUSTRALIA**

**Productivity Commission Report on ACL Administration and Enforcement**

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<b>Multi-regulator model</b>				
<b>Recommendation 4.1</b> <b>Product bans</b>	The state and ACT governments should relinquish their powers to impose compulsory recalls or interim bans. This would signal that it is the commonwealth's responsibility to immediately respond to all product safety issues that warrant a compulsory recall or ban.	This has not been accepted by Ministers	N/a	N/a
	In parallel with any such change in responsibilities, there should be a mechanism for state and territory governments to raise and provide input on product safety matters to the Australian Competition and Consumer Commission (ACCC) that they consider would warrant a compulsory recall or ban.	It is unclear whether this recommendation is accepted	No further info	No further info
<b>Finding 4.1</b> <b>Alleviating RISs for product bans</b>	The commonwealth government's regulation impact assessment requirements can impede the timely implementation of national interim product bans. There would be merit in exempting interim product bans from the requirements. Permanent product bans should continue to be subject to the existing regulatory impact assessment requirements.	It is unclear whether any further work will proceed on the basis of this finding	No further info	No further info
<b>Databases on consumer complaints and incidents</b>				
<b>Finding 4.2</b> <b>Database on consumer complaints and product safety incidents</b>	A national database of consumer complaints and product safety incidents for use by consumer regulators has merit. It would enable better identification and analysis of consumer hazards and risks, and help focus ACL regulators' compliance and enforcement activity. CAANZ could be tasked to examine the impediments to establishing such a database, its likely benefits and costs, and, subject to the findings of that analysis, develop a plan to implement such a system.	Supported by Ministers To be commenced in 2017-18	No further info	No further info
<b>Finding 4.3</b> <b>Making complaints public</b>	There are grounds for making data on consumer complaints public, but this should be done in a careful and comprehensive way to ensure its usefulness to consumers and minimise unwarranted effects on businesses. Ideally, any public register of consumer complaints and incidents should incorporate: - appropriate vetting of complaints before publication - detailed information about the complaint or incident - information on the resolution or outcome of the complaint - where feasible, a mechanism to place complaints and incidents in context.	This does not appear to have been accepted by Ministers	No further info	No further info
<b>Enforcement tools and penalties</b>				
<b>Finding 4.4</b> <b>Improving infringement notices</b>	There is scope to improve consistency in infringement notice powers and other remedies that the states and territories have introduced to augment the ACL 'toolkit'	This does not appear to have been accepted by Ministers	No further info	No further info
<b>Interaction between ACL and specialist regulators</b>				
<b>Finding 5.1</b> <b>Interaction between ACL and specialist regulators</b>	While interaction between ACL and specialist safety regulators generally works well, some changes are warranted. Options to improve the response to product safety concerns currently dealt with by joint ACL and specialist regulators' actions include: - instituting formal arrangements to guide cooperation and coordination between building regulators and ACL regulators, and between the ACCC and some national specialist safety regulators - expanding the regulatory tools and remedies available to specialist safety regulators - introducing greater consistency in legislation underpinning the specialist safety regime for electrical goods.	It is unclear whether any further work will proceed on the basis of this finding	No further info	No further info
<b>Industry specific consumer-regulation</b>				
<b>Finding 6.1</b> <b>Transfer responsibilities to commonwealth</b>	The Productivity Commission's 2008 Review of Australia's Consumer Policy Framework called for a process to review and reform industry specific consumer regulation that would, among other things, identify unnecessary divergences in state and territory regulation and consider the case for transferring policy and enforcement responsibilities to the commonwealth government. While there has been some progress in implementing this recommendation, reform has been limited or has stalled in some important areas, including the safety regimes for building and construction and for electrical goods.	It is unclear whether any further work will proceed on the basis of this finding	No further info	No further info
<b>Recommendation 6.1</b> <b>Consistent electrical goods safety laws</b>	State and territory governments should move to agree on nationally consistent laws on electrical goods safety.	It is unclear whether this recommendation is accepted	No further info	No further info
<b>Consumer redress</b>				

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**Productivity Commission Report on ACL Administration and Enforcement**

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<p><b>Recommendation 6.2</b>  <b>Independent review of alternative dispute resolution</b></p> <p>Australian governments should establish an independent review of consumer alternative dispute resolution (ADR) mechanisms. Among other things, the review should:</p> <ul style="list-style-type: none"> <li>- assess the nature and structure of current arrangements, areas of unmet need and the appropriate institutions to deliver services</li> <li>- take account of differences in jurisdictions' legal systems for the design of ADR mechanisms</li> <li>- have regard to recommendation 9.2 from the Productivity Commission's 2008 Review of Australia's Consumer Policy Framework regarding the need for effective and properly resourced ADR mechanisms to deal consistently with consumer complaints not covered by industry based ombudsmen</li> <li>- where state and territory ACL regulators are to continue to provide ADR services, consider options for expanding the ACL regulators' powers, including the authority to compel businesses to cooperate with the dispute resolution process.</li> </ul>	This does not appear to have been accepted by Ministers	No further info	No further info	No further info
<p><b>Consumer policy and research</b></p> <p><b>Finding 6.2</b>  <b>Fund consumer research and advocacy</b></p> <p>In its 2008 Review of Australia's Consumer Policy Framework, the Commission identified material gaps in consumer input in policy processes. As such gaps remain and can hamper sound policy decision making, there are grounds to revisit recommendation 11.3 from the 2008 report - that the commonwealth government should provide additional public funding to support consumer research and advocacy.</p>	This does not appear to have been accepted by Ministers	No further info	No further info	No further info
<p><b>Finding 6.3</b>  <b>Super-complaints</b></p> <p>There are grounds for enabling designated consumer bodies to lodge 'super complaints', on behalf of classes of consumers, with such complaints to be fast tracked by the relevant regulator. Instituting sound operational principles - including the criteria for designating consumer bodies, evidentiary requirements to support a complaint, and the process by which a regulator should respond - is an important prerequisite for an efficient super complaints process.</p>	This does not appear to have been accepted by Ministers	No further info	No further info	No further info

