

Article Information

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1 July consumer protection extension: what the increased 'consumer' threshold means for you and why you need to act now

The previously flagged changes to the definition of 'consumer' in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and *Australian Consumer Law* (ACL) come into effect on 1 July 2021.

Businesses need to update their compliance programmes and ensure that their staff understand that a wider range of goods and services will be captured by the Consumer Guarantee regime come 1 July 2021.

Consumer protection operation

The Australian Consumer Law requires businesses to provide consumer guarantees for most consumer goods and services they sell. For example, a supplier guarantees that goods are of acceptable quality, goods will match any description provided; any express warranties will be honoured and that goods are fit for any disclosed purpose. A supplier also guarantees the performance of services with due care and skill. These guarantees cannot be executed by contract.

In the case of breach of these guarantees, a business is required to provide a consumer with a remedy being either a repair, replacement or refund and compensation for any consequential loss, depending on the circumstances.

Next week, more consumers will be able to rely on the consumer guarantee protections in the Australian Consumer Law when the monetary threshold increases from \$40,000 to \$100,000 on 1 July 2021.

The ACL currently considers 'consumers' to whom the protections of the guarantees are afforded to be any person or business who acquires goods or services;

- for \$40 000 or less;
- which are ordinarily acquired for personal, domestic or household use or consumption; or
- consisting of a vehicle or trailer acquired principally for goods transport on public roads.

The ASIC Act has a similar definition using the threshold of \$40,000, and its provisions largely mirror the ACL but apply specifically to the provision of financial services.

The new legislation

The *Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020* (**Regulations**), which were passed at the beginning of July 2020, take effect as of 1 July 2021. The Regulations affect the ASIC Act and ACL.

The \$40,000 threshold in both the ACL and ASIC Act is set to be extended to any goods or services acquired for \$100 000 or less, regardless of the intended uses of the goods or services. The thresholds apply equally to the supply of goods and

services to businesses and individuals. The definition of 'consumer' in the ACL, however, specifically excludes goods acquired for re-supply or for the purpose of using up or transforming the goods.

Manufacturers' liability, misleading and deceptive conduct, unconscionable conduct, unfair contract terms, and product safety standards are unaffected.

The impact of the changes

From 1 July, all goods and services between \$40,000 and \$100,000 that are not ordinarily for personal, domestic or household use will begin to be covered by consumer protection laws where they previously were not. These laws include the consumer guarantees as well as regulation of referral selling, unsolicited consumer agreements, gift cards and lay-by agreements under the ACL. The scope of financial services protected by the ASIC Act will also be significantly increased under this changed threshold.

As the definition of 'consumer' goods and services expands from 1 July, businesses should assess their current offerings and consider the additional risks and compliance burdens that may arise from being subject to consumer protection legislation. Businesses should assess and update their compliance programs, and train their staff to ensure they understand that a wider range of goods and services will be captured.