

**CONSULTATION REGULATION IMPACT STATEMENT**

**CHAPTER ONE**

**Australian Consumer Law Review:  
Increasing the threshold in the  
definition of ‘consumer’ from \$40,000  
to \$100,000**

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Consumer Affairs Australia and New Zealand  
2018

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# EXECUTIVE SUMMARY

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The Australian Consumer Law (ACL) contains a number of definitions of who is and is not a 'consumer' for the purposes of the legislation, each of which is independent from the other. The application of many (but not all) ACL consumer protection provisions is contingent upon a claimant establishing that they are a 'consumer' as defined by the ACL.

One of the definitions states that a person is a 'consumer' if they acquire goods or services that do not exceed the monetary threshold of \$40,000.

In 2017, the ACL Review Final Report (the Review) found that the extent of consumer and small business protection provided by the ACL had eroded over time, as the real value of the monetary threshold of \$40,000 in the ACL's definition of 'consumer' declined. As a result, the scope of purchases protected by the ACL has diminished, and the definition is no longer fit for purpose. The Review proposed that the \$40,000 threshold be increased to \$100,000 to broadly account for inflation since the threshold was set in 1986.

This chapter is a consultation regulatory impact statement (RIS) on three options which aim to ensure that the monetary threshold remains fit for purpose, and that eligible consumers, including small businesses, remain protected by the ACL regime. The Review's proposal to increase the threshold is one of these options (Option 2). The remaining options are to maintain the status quo (Option 1) or to increase the threshold from \$40,000 to \$100,000 and apply indexation (Option 3).

Views are sought on these options – including whether they would address the problem, how effective they would be and what impacts they would have. Consumer Affairs Australia and New Zealand also welcomes views on any alternative options for ensuring that the ACL's definition of 'consumer' remains fit for purpose.

# INTRODUCTION

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## THE EXISTING LEGISLATIVE FRAMEWORK

1. Section 3(1) of the ACL defines a consumer as someone who acquires goods in any of the three circumstances set out below.
2. The first situation, which is the focus of this RIS chapter, involves a person acquiring goods or services that do not exceed the monetary threshold of \$40,000. Section 3(3)(a) adopts a similar definition for a consumer acquiring services. The inclusion of the monetary threshold was intended to broaden the group of consumers who were protected under the regime, with specific emphasis on protecting small businesses. This situation also covers purchases of commercial products not exceeding \$40,000 for personal use by a consumer.
3. The second situation involves a person acquiring goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. There is no monetary threshold set for this situation.
4. The third situation involves a person acquiring a vehicle or trailer for transporting goods on public roads.
5. Under subsection 3(2), in order to fall within the definition of 'consumer', the goods or services acquired must not be used for any of the following purposes:
  - a. Resupply; or
  - b. Using them up or transforming them, in trade or commerce: in the course of production or manufacture, or in the course of repairing or treating other goods or fixtures on land.
6. For example, a small business acquires an excavator for \$30,000 for the purpose of on-sale (as opposed to using in the course of its business). Although the purchase is under the \$40,000 threshold and so appears to fall within the definition of 'consumer', because the excavator was purchased for the purpose of re-supply, the transaction is excluded from the definition of 'consumer'.
7. As the consumer guarantees are key and commonly used rights, it is important that the definition of 'consumer' continues to be fit for purpose so individual and small business consumers continue to receive the protection that they are entitled to.

## THE AUSTRALIAN CONSUMER LAW REVIEW

8. The Review noted that the monetary threshold of \$40,000 in the definition of 'consumer' has not changed since the threshold was increased from \$15,000 in 1986. The decline in the real value of the threshold means that certain purchases not ordinarily made for personal, domestic or household use that were once within the ACL's protection are no longer so protected. The Review proposed that the \$40,000 threshold be increased to \$100,000 to broadly account for inflation on the cost of goods and services since 1986.

9. The Review involved two stages of public consultation. In both stages, the majority of responses that referenced the \$40,000 threshold in the definition of 'consumer' supported increasing the monetary amount.

# THE PROBLEM

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## OVERVIEW

The level of protection provided by the \$40,000 threshold in the definition of 'consumer' has eroded since it was set in 1986. The decline in the real value of the threshold means that certain purchases not ordinarily made for personal, domestic or household use that were once covered under the ACL are no longer covered. The existing threshold may no longer be fit for purpose.

## THE DEVELOPMENT OF THE MONETARY THRESHOLD: PROTECTING SMALL BUSINESSES

10. The history and development of the monetary threshold in this definition of 'consumer' demonstrates that lawmakers were conscious of the need to extend protection to small business consumers.<sup>1</sup>
11. The 1976 Trade Practices Act Review Committee Report (the *Swanson Report*) was 'strongly of the view' that consumer protections should extend to 'a range of business transactions, particularly purchases by small businesses.'<sup>2</sup> In their view, this would address one of the functions of consumer protection laws, being 'to redress, between supplier and customer, inequalities in the technical expertise required to recognise, and the bargaining power to negotiate, a fair bargain.'<sup>3</sup>
12. The *Trade Practices Amendment Act 1977* first introduced a monetary threshold of \$15,000. According to the explanatory memorandum, the introduction of this threshold was to 'permit parties to contract for a **minimum limitation on liability**...in relation to goods or services not ordinarily acquired for personal, domestic or household use or consumption.' The Bill Digest noted that the definition was broadened for the benefit of 'small businessmen'.
13. In 1986, the *Trade Practices Revision Act 1986* (Cth) increased this threshold amount to the current value of \$40,000. The Explanatory Memorandum to the Bill explained that:

*As a result of inflation over the past 8 years, the real value of the \$15,000 monetary limit ... has been significant eroded, and an adjustment to the monetary limit is needed to restore the protection given by the Act to consumers and small businesses.*<sup>4</sup>

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1 However, larger businesses are not precluded from claiming protection under the ACL. In *Qantas Airways Ltd v Aravco Ltd* (1996) 185 CLR 43, Aravco made a successful claim against Qantas for failure to render services worth around \$5,000 with due care and skill under the section 74 of the *Trade Practices Act 1974* (Cth).

2 Swanson Committee, Trade Practices Act Review Committee Report 1976, [9.40].

3 Swanson Committee, Trade Practices Act Review Committee Report 1976, [9.40].

4 Parliament of the Commonwealth of Australia, Trade Practices Revision Bill 1986 – Explanatory Memorandum, [13].

14. A specific example of how small business owners may benefit under the statutory regime providing for simplified avenues of redress as a ‘consumer’ is outlined below (**Case study 1**).

## CASE STUDY 1 – PROTECTING SMALL BUSINESS TRUCK OWNER-OPERATORS

15. The original 1986 amendments considered increasing the monetary threshold from \$15,000 to \$200,000. Speaking in this context, the *National Road Freight Industry Inquiry Report* (September 1984) ‘wholeheartedly’ endorsed the proposed increase of the monetary threshold as it would extend the *Trade Practices Act 1974* implied warranties regime to protect truck owner-operators. The Inquiry found that the then existing consumer protection arrangements available for truck owner-operators was complex, and that the ‘iterant owner-driver finds it very difficult to quickly establish his rights without involving legal advice with its attendant costs.’
16. Consistent with inflation, the monetary threshold was eventually increased to \$40,000 in the 1986 amendments. In response to the Inquiry’s finding, the 1986 amendments also provided that all purchases of commercial road vehicles would be deemed to be consumer purchases. Addressing the Inquiry’s concerns, the 1986 amendments ensured that ‘truck owner-operators who purchase a truck for use in their business are afforded the protection offered’ by the implied warranties regime.<sup>5</sup>
17. In 2010, when the ACL was being developed, the removal of the monetary threshold part of the definition of ‘consumer’ was considered. However, the threshold amount of \$40,000 was retained in the final version of the ACL. The Second Reading speech for the Trade Practices Amendment (Australian Consumer Law) Bill (No 2) justified retaining the threshold on the basis of ensuring that ‘small businesses continue to be protected’ under the new regime.
18. From this history, it appears that a key rationale behind the 1977 introduction of the monetary threshold, the 1986 increased threshold amount and the 2010 retention of the threshold was to ensure that small businesses consumers were afforded legal protections that were similar to those afforded to individual consumers under *the Trade Practices Act 1974* (Cth) and State and Territory consumer law regimes. However, while the threshold was developed with small businesses in mind, there was no intention to exclude businesses, large or small, from the protections in the ACL.

### Small businesses require the same protection as consumers

19. Small businesses play a key role in driving growth and creating jobs in the Australian economy. In 2017, the Australian Bureau of Statistics announced an annual 2.4 percent increase in business numbers (in the 2015-16 financial year), primarily driven by growth in small businesses.<sup>6</sup>

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5 Parliament of the Commonwealth of Australia, *Trade Practices Revision Bill 1986 – Explanatory Memorandum*, [13]-[14].

6 ABS Media Release, *Business numbers up 2.4% from June 2015* <http://www.abs.gov.au/ausstats/abs@.nsf/media/releasesbytitle/950EC94DB899312ECA2573B00017B8F4>.

20. In the *Review of Australia's Consumer Policy Framework: Inquiry Report*, the Productivity Commission acknowledged the unique dual role of small businesses: 'as well as being suppliers of goods and services, they are consumers in their own right.'<sup>7</sup> The Productivity Commission continued:

*Indeed, in their dealings with larger businesses, small businesses can face many of the same issues as individual consumers, particularly relating to unequal bargaining power and the lack of resources to effectively negotiate contracts.*

21. From this perspective, the ACL simultaneously confers both protections and obligations on businesses of all sizes.
22. Freilich and Webb highlight that the general presumptions about businesses being on equal footing and not requiring protection does not reflect the reality of small businesses.<sup>8</sup>

*Small-business persons come from a variety of backgrounds, levels of business and personal experience, financial liquidity, education and literacy. Moreover, small businesses feature a significant proportion of persons who are, in many circumstances, marginalised from the wider workforce, such as women and migrants. Also, being a good business person with regard to one's own trade or profession does not automatically mean that a person is well versed in business and the law. In most cases, the future of a small business rests on the managerial expertise of an individual or small group of owners. ... [M]any small businesses simply cannot afford the accounting, financial and legal advice which larger concerns take for granted.<sup>9</sup>*

23. Like individual consumers, small businesses are often in a weaker bargaining position and should be afforded comparable legal protection.

### **Many small business consumers are denied access to the ACL solely due to the decline in the real value of the monetary threshold**

24. With the decline in the real value of the threshold which has occurred since 1986, certain small business purchases that were once protected by the ACL regime are no longer so protected. The Review cited client record systems, certain farm and agricultural equipment, air-conditioning units for industrial buildings, water tanks and some vehicle purchases as examples.
25. Using producer price index (PPI) analysis, the NSW Department of Finance, Services and Innovation (NSW DFSI) provided a case study (see **Case study 2**) of a particular small business purchase that would have satisfied the definition of 'consumer' in 1986, but no longer did in 2011, solely due to the decline in the real value of the monetary threshold.

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7 Productivity Commission Inquiry Report, *Review of Australia's Consumer Policy Framework*, 2008, page 318.

8 Aviva Freilich and Eileen Webb, 'Small Business: Forgotten and in need of protection from unfairness?' (2013) 37 *University of Western Australia Law Review* 134, 138.

9 Aviva Freilich and Eileen Webb, 'Small Business: Forgotten and in need of protection from unfairness?' (2013) 37 *University of Western Australia Law Review* 134, 138-139.

## CASE STUDY 2 – COMPLAINT ABOUT AN AGRICULTURAL EXCAVATOR

26. An agricultural business owner lodged a complaint about his agricultural excavator, which he purchased in 2011 for \$54,000. The agricultural business owner needed to repair the excavator after it broke down. However, neither the manufacturer nor the dealer were able to provide the spare part. As an excavator is not likely to be considered something that is normally used for domestic or household use and costs more than \$40,000, the agricultural business owner was advised that he was not able to seek a remedy under the ACL.
27. According to the producer price index, the prices of agricultural machinery and equipment in 2011 were 33 index points or 41 percentage points higher than the prices in 1986. This means the price paid for the excavator in 2011 (\$54,000) would have been \$38,297 if purchased in 1986 and therefore would have been covered by the ACL's \$40,000 threshold.
28. NSW DFSI also provided examples of other types of machinery that would be covered by the ACL if the threshold was raised to \$100,000:
- Trucks ranging from \$40,000 to \$100,000
  - Portable compressors – average price \$45,000
  - Forklifts – average price \$40,000 to \$55,000
  - Diesel powered pumps – average price \$85,000
  - Tanks for trucks – average price \$90,000
  - Excavators – average price \$85,000
29. Since 1986, there will also have been a *decline* in the relative prices of some goods and services as a result of significant technological advancement and improvements, for example, computer equipment. In these cases, the decline in the relative price of such goods and services offsets the impact of the decline in the real value of the monetary threshold, so that these goods and services continue to be covered by the ACL.

### FOCUS QUESTION

#### For everyone

- In your sale and purchase of goods experiences, what purchases of goods or services would have formerly met the requirements of the definition of 'consumer', but are now excluded from this definition due to the decline in the real value of the monetary threshold? Please describe how you have reached this conclusion.

## Small businesses suffer a commercial impact

30. All consumers are, to varying degrees, adversely affected by the purchase of a good or service which fails to comply with a particular standard or guarantee. Particularly from a small business perspective, faulty or defective goods or services could result in lost productivity or profits. An example of this was provided by NSW DFSI and is outlined below (see Case study 3).

### CASE STUDY 3 – A SMALL BUSINESS DISPUTE ABOUT A WATER TANK

A small business owner paid \$70,000 for a water tank to be installed on his truck by the supplier. After installation, the water tank began to crack. The small business owner believed that the manufacturer had used inferior plastic to construct the tank. The small business owner lost four jobs as a result of the faulty water tank, causing financial loss. The manufacturer of the water tank declared bankruptcy and the supplier refused to provide a refund. The supplier refused to participate in mediation to resolve the dispute, forcing the small business owner to take the matter to Court.

#### FOCUS QUESTION

##### For businesses

- If you have been excluded from making a claim under the ACL due to the decline in the real value of the monetary threshold, how has this exclusion impacted or affected your business? Please explain the circumstances.

## Consumer purchases of commercial products should be entitled to protection

31. The Review observed that a flow-on benefit of increasing the threshold was that consumer purchases of commercial products which are above the current \$40,000 threshold would also be protected.<sup>10</sup>
32. An example is where an individual consumer purchases commercial glass for installation in a home. If the cost exceeds \$40,000, it is likely that the consumer would not be protected under the ACL, as commercial glass is likely not ordinarily acquired for personal, domestic or household use of consumption and the purchase does not fall within the threshold.<sup>11</sup>

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10 Consumer Affairs Australia and New Zealand, *Australian Consumer Law Review Final Report*, March 2017, page 74.

11 Australian case law on the interpretation of when a good or service is 'ordinarily acquired for personal, domestic or household use or consumption' is currently unsettled on this point. In a key consumer guarantees case from New Zealand, *Nesbit v Porter* [2000] 2 NZLR 465, the Court of Appeal confirmed the view that goods and services could be acquired for both personal and commercial use.

## FOCUS QUESTION

### For businesses

- In your experience as a business, how often have consumers bought goods or services which could be used in both a domestic and commercial setting? Can you provide some common examples?

### For consumers

- Please describe your experiences as a consumer when you have acquired a good or service that would not ordinarily be acquired for personal, domestic or household use? Why did you make this choice?

## EXCLUSION FROM THE ACL: LIMITED ALTERNATIVE RECOURSE

33. The previous discussion suggests that but for the decline in the real value of the monetary threshold, more small businesses purchases would be protected by the ACL. The ACL was never intended to offer blanket protection coverage for all business purchases. However, the failure to recognise inflation does mean some consumers, including small businesses, have been unjustifiably excluded from the regime over time.
34. Under the current law, where the cost of a good or service exceeds the monetary threshold of \$40,000 (and the nature of the transaction does not satisfy other definitions of 'consumer'), the purchaser would not be able to take advantage of certain protections offered by ACL provisions, including the consumer guarantees. The effect of such exclusion is that they would be required to rely upon alternative legal avenues, such as claims based on contract law or negligence.
35. However, many small businesses (like ordinary consumers) may not be able to negotiate contract terms or establish a duty of care from their supplier to support a claim under negligence. In contrast, the consumer guarantees cannot be excluded by contract, nor is it necessary to establish any duty of care.
36. In the absence of ACL protections, in particular the consumer guarantee provisions, consumers and small businesses will need to seek non-ACL based recourse. As the nature and extent of contractual warranties outside of the ACL's consumer guarantees vary between suppliers and manufacturers, a small business consumer may need to invest in locating a supplier who is able to provide adequate warranties. However, small businesses may (like ordinary consumers) lack bargaining power as well as the time, skill and expertise to assess the quality of products and the adequacy of any warranties provided. Where a good or service is faulty, the consumer will need to consider alternative, non-ACL legal redress or compensation, including commencing court proceedings. The process for resolution of a dispute for claims under contract and negligence can be complex, slow and resource-consuming, and may require professional legal advice.

## **FOCUS QUESTIONS**

### **For consumers**

- If you have experienced exclusion from the ACL's protective regime due to the monetary threshold, please outline your experience in obtaining redress and remedy. What alternative legal recourse/s did you rely on? What was the cost associated with obtaining this redress?
- What means have you adopted to protect your rights as a consumer? Please discuss costs, resources required and experiences in negotiating and dealing with suppliers (if applicable).

# POLICY OBJECTIVE

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## OVERVIEW

The policy objective behind the proposal to increase the monetary threshold in the definition of 'consumer' is to ensure that the ACL continues to be fit for purpose in protecting individual and small business consumers when purchasing goods or services not ordinarily acquired for personal, domestic or household use or consumption.

37. The policy objective acknowledges that small businesses, like individual consumers, often face information asymmetries and are time and resource poor. It remains unchanged from when it was first introduced in 1977. In light of the changes in prices since 1986, the increase to \$100,000 would broadly reinstate the original purchasing power of the \$40,000 threshold, ensuring the ACL remains fit for purpose in this context.

# OPTIONS AND IMPACT ANALYSIS

## OVERVIEW

In achieving the policy objective, it is important that the benefit should exceed the costs. The options addressing the problem should provide certainty to manufacturers and suppliers, and not increase their regulatory burden or compliance costs unnecessarily.

To address the defined problem, this RIS chapter explores three options:

- **Option 1:** maintain the status quo.
- **Option 2:** increase the threshold from \$40,000 to \$100,000 in the definition of 'consumer'.
- **Option 3:** increase the threshold from \$40,000 to \$100,000 in the definition of 'consumer' and apply indexation.

## OPTION 1: MAINTAIN THE STATUS QUO

38. If the status quo is maintained, current laws would continue to operate. All purchases of goods or services ordinarily acquired for domestic, personal or household use will remain covered. A purchase will be outside the definition of 'consumer' when that purchase is 'not ordinarily for domestic, personal or household use' and in excess of the monetary threshold amount of \$40,000, and will not be covered by the ACL consumer guarantee protections.

### Impact analysis

39. A benefit to both businesses and consumers if the status quo is maintained is that it offers legal certainty as there is no change to the existing law, contractual arrangements or warranties. Businesses would not have to take any action to reflect an increased monetary threshold amount in their transactions.

40. As outlined in the 'Problem' section, consumers would continue to be excluded from the ACL protections which rely on the definition of 'consumer' where their purchase of commercial products exceeds the \$40,000 monetary threshold amount. These consumers would need to consider alternative, non-ACL legal redress or compensation.

41. There may also be issues about whether the threshold remains fit for purpose into the future as the price of goods and services continues to change over time.

### BENEFITS

- Certainty for businesses and consumers as the law maintains the status quo.
- Businesses do not need to adjust compliance mechanisms.

### COSTS

- Consumers are not able to access the ACL's protective regime if their purchase of a commercial product exceeds the \$40,000 monetary threshold.
- Consumers would need to consider protection or legal redress outside the ACL's consumer guarantee regime.

## FOCUS QUESTIONS

### For everyone

- Is the current monetary threshold a barrier to consumer access to the ACL regime?
- Are there any other benefits associated with maintaining the status quo?
- What are other potential costs to industry, consumers and businesses if the status quo was maintained?
- How many purchases have you made for a commercial product costing above \$40,000?
- If you have been excluded from the ACL's regime as a result of the current monetary threshold amount, what means have you adopted to protect or enforce your rights? Please discuss costs, resources required and experiences in this context.

## OPTION 2: INCREASE THE THRESHOLD IN THE DEFINITION OF CONSUMER FROM \$40,000 TO \$100,000

42. This option would increase the monetary threshold in the definition of 'consumer' from \$40,000 to \$100,000, thus restoring the real value of the threshold and achieving parity in protection available when the current threshold was established in 1986. An amendment would be made to the ACL to increase the threshold.

### Impact analysis

43. This option ensures that the definition of 'consumer' is fit for purpose and consistent with the original policy intent for ACL protections to extend to consumers, including small businesses. The real value of commercial purchases would be more accurately reflected, providing individual and small business consumers with the confidence that their purchases will be protected under the ACL regime so long as they fall under the \$100,000 threshold amount and are not otherwise excluded (for example, by being for the purpose of resupply). Search costs may also be reduced as consumers will not need to expend further cost and effort in seeking non-ACL forms of protection or redress, including reliance upon common law actions grounded in contracts or tort law, which are unclear in operation and uncertain in outcome.
44. This option is not without potential compliance costs to suppliers of such goods. Such suppliers may need to invest in updating record keeping mechanisms to ensure that future sales of goods or services reflect the new threshold amount, and ensure they meet any consequential obligations. Further training of staff to assist them in understanding updated legal obligations may also be necessary. On the other hand, the ACL regime has been in operation for almost seven years. If only the threshold *amount* is increased, but the law is otherwise unaffected, the costs associated with compliance and education initiatives may be minimal.
45. While businesses of all sizes would benefit from increased protections when purchasing goods and services, there is also the potential financial loss faced by businesses in the supply of goods and services for commercial use due to the wider range of purchases protected by the ACL. Such costs could result from increased claims, compensation and other forms of redress and insurance premiums.

46. It is also acknowledged that the real value of the threshold will decrease in value as the costs of certain goods increase over time and may need to be updated again.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>The real value of the threshold is maintained.</li> </ul>	<ul style="list-style-type: none"> <li>Compliance costs to ensure and maintain updated record keeping.</li> </ul>
<ul style="list-style-type: none"> <li>The original policy intent of the monetary threshold within the definition of consumer is maintained in protecting small business consumers, and reducing search costs for businesses of all sizes.</li> </ul>	<ul style="list-style-type: none"> <li>For businesses: training costs to understand and comply with legal obligations under the increased monetary threshold.</li> </ul>
<ul style="list-style-type: none"> <li>Small businesses receive maintained protection under the ACL.</li> </ul>	<ul style="list-style-type: none"> <li>Potential for increased financial loss due to the wider range of products covered by the ACL.</li> </ul>
<ul style="list-style-type: none"> <li>ACL protection may lead to increased small business demand because of increased purchasing confidence.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

## FOCUS QUESTIONS

### For everyone

- To what extent would consumers and businesses, especially small businesses, be better protected under the ACL if the threshold amount was increased to \$100,000?
- Does increasing the threshold also result in increasing the potential class or categories of products that would not have been covered by the ACL regime under previous thresholds?

### For businesses

- Would your costs for compliance and training purposes increase if the threshold amount was increased to \$100,000? By how much?
- What are other potential costs (such as compensation and insurance coverage) to businesses if the monetary threshold was increased from \$40,000 to \$100,000?
- Are there other benefits, costs or difficulties for your business if the monetary threshold was increased from \$40,000 to \$100,000 that should be considered?

## OPTION 3: INCREASE THE THRESHOLD IN THE DEFINITION OF CONSUMER FROM \$40,000 TO \$100,000 AND APPLY INDEXATION

47. This option builds upon Option 2 by initially increasing the threshold in the definition of 'consumer' from \$40,000 to \$100,000, with a provision in the law to allow for indexation or other adjustments to this figure at regular intervals. The amount could be reviewed by using the Producer Price Indexes (PPIs), which measure changes in the prices received by businesses for categories of goods and services they produce. This option would only apply to goods not ordinarily purchased for personal, domestic or household use.

## Impact analysis

48. The benefits and costs are the same as those identified in Option 2. An additional benefit under this option is that the threshold will be reviewed more frequently so that it reflects the real value of goods more accurately. It ensures that the law does not become significantly out of alignment with the original policy intent.
49. An additional cost to this proposal is the potential increase in uncertainty, due to the threshold being regularly reviewed and amended. Purchasers may also find it more difficult to recall and assert their consumer guarantee rights if the threshold changes regularly. Suppliers may have difficulty in complying with regular amendments, potentially resulting in an increase in compliance and administrative costs as they will be required to update their records on a regular basis.
50. Given that the inflation rate in Australia is sufficiently low 'that it does not materially distort economic decisions in the community'<sup>12</sup>, there is a possibility that the costs of this option may significantly outweigh associated benefits.

BENEFITS	COSTS
<ul style="list-style-type: none"> <li>The real value of the threshold is maintained.</li> </ul>	<ul style="list-style-type: none"> <li>Increased uncertainty as the threshold amount will regularly change.</li> </ul>
<ul style="list-style-type: none"> <li>The original policy intent of the ACL regime is maintained in protecting small businesses in particular, and reducing search costs for businesses of all sizes.</li> </ul>	<ul style="list-style-type: none"> <li>Compliance costs to ensure and maintain updated record keeping on a more regular basis.</li> </ul>
<ul style="list-style-type: none"> <li>The threshold continues to increase in line with appropriate indexation, maintaining the real value of the goods entitled to protection under the ACL.</li> </ul>	<ul style="list-style-type: none"> <li>For businesses: training costs to understand and comply with legal obligations under the increased monetary threshold.</li> </ul>
	<ul style="list-style-type: none"> <li>Potential for increased financial loss due to the wider range of products covered by the ACL.</li> </ul>
	<ul style="list-style-type: none"> <li>Potential for greater confusion among consumers about their rights under the ACL, and whether their purchase is covered.</li> </ul>

12 Reserve Bank of Australia, *Inflation Target* <https://www.rba.gov.au/inflation/inflation-target.html>.

## **FOCUS QUESTIONS**

### **For everyone**

- Should the threshold amount be reviewed or indexed? If so, how regularly and through what mechanism should this review or indexation occur?
- Would Producer Price Indexes (PPIs) be an appropriate form of indexation? Are there any other indexes which could be applied?
- Are there any other regulatory mechanisms where units are indexed or adjusted which could be applied or used as guidance in the consumer law framework?
- Does this option offer any additional and/or significant benefits as compared to Option 2?
- Are there any particular goods, services or industries that would significantly benefit from a threshold amount that is reviewed and amended on a regular basis? Please describe.

### **For businesses**

- As a supplier, would your costs for compliance and training purposes increase if the threshold amount was reviewed and amended on a regular basis? By how much?
- What would be the differences in cost between options 2 and 3?
- Are there other benefits, costs or difficulties for your business if the monetary threshold was increased from \$40,000 to \$100,000 and then reviewed or amended on a regular basis that should be considered?

# FOCUS QUESTIONS

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The focus questions throughout this chapter are set out below for ease of reference. Stakeholders are encouraged to refer to the focus questions in their submissions. Where possible, Treasury encourages stakeholders to provide case studies, data and evidence to support their views.

## THE PROBLEM

### For everyone

- In your sale and purchase of goods experiences, what purchases of goods or services would have formerly met the requirements of the definition of 'consumer', but are now excluded from this definition due to the decline in the real value of the monetary threshold? Please describe how you have reached this conclusion.

### For businesses

- In your experience as a business, how often have consumers bought goods or services which could be used in both a domestic and commercial setting? Can you provide some common examples?
- If you have been excluded from making a claim under the ACL due to the decline in the real value of the monetary threshold, how has this exclusion impacted or affected your business? Please explain the circumstances.

### For consumers

- Please describe your experiences as a consumer when you have acquired a good or service that would not ordinarily be acquired for personal, domestic or household use? Why did you make this choice?
- If you have experienced exclusion from the ACL's protective regime due to the monetary threshold, please outline your experience in obtaining redress and remedy. What alternative legal recourse/s did you rely on? What was the cost associated with obtaining this redress?
- What means have you adopted to protect your rights as a consumer? Please discuss costs, resources required and experiences in negotiating and dealing with suppliers (if applicable).

## THE POLICY RESPONSE

### For everyone

- Is the current monetary threshold a barrier to consumer access to the ACL regime?
- Are there any other benefits associated with maintaining the status quo?
- What are other potential costs to industry, consumers and businesses if the status quo was maintained?
- How many purchases have you made for a commercial product costing above \$40,000?
- If you have been excluded from the ACL's regime as a result of the current monetary threshold amount, what means have you adopted to protect or enforce your rights? Please discuss costs, resources required and experiences in this context.
- To what extent would consumers and businesses, especially small businesses, be better protected under the ACL if the threshold amount was increased to \$100,000?
- Does increasing the threshold also result in increasing the potential class or categories of products that would not have been covered by the ACL regime under previous thresholds?
- Should the threshold amount be reviewed or indexed? If so, how regularly and through what mechanism should this review or indexation occur?
- Would Producer Price Indexes (PPIs) be an appropriate form of indexation? Are there any other indexes which could be applied?
- Are there any other regulatory mechanisms where units are indexed or adjusted which could be applied or used as guidance in the consumer law framework?
- Does Option 3 offer any additional and/or significant benefits as compared to Option 2?
- Are there any particular goods, services or industries that would significantly benefit from a threshold amount that is reviewed and amended on a regular basis? Please describe.

### For businesses

- Would your costs for compliance and training purposes increase if the threshold amount was increased to \$100,000? By how much?
- What are other potential costs (such as compensation and insurance coverage) to businesses if the monetary threshold was increased from \$40,000 to \$100,000?
- Are there other benefits, costs or difficulties for your business if the monetary threshold was increased from \$40,000 to \$100,000 that should be considered?
- As a supplier, would your costs for compliance and training purposes increase if the threshold amount was reviewed and amended on a regular basis? By how much?
- What would be the differences in cost between options 2 and 3?
- Are there other benefits, costs or difficulties for your business if the monetary threshold was increased from \$40,000 to \$100,000 and then reviewed or amended on a regular basis that should be considered?