

# Heads up: Your consumer law obligations are expanding

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There is a shake up coming for consumer law in NSW and nationally, with significant changes already in place or on the horizon. If you provide goods or services to consumers, these changes are likely to affect you and it is important that your business is aware of them *before* a regulator or angry customer comes calling. But never fear, we have summarized the big ticket items below.

**1. Expansion of 'consumer'.** From 1 July 2021, the definition of consumer is expanding. The monetary threshold is increasing from \$40k to \$100k, which means that:

- goods and services valued at up to \$100k will be supplied to a 'consumer'; and
- the mandatory consumer guarantees and remedies in the Australian Consumer Law will apply to those supplies.

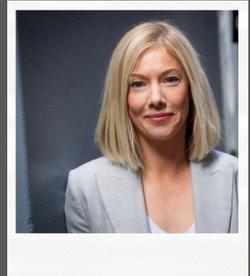
**2. NSW disclosure obligations.** There are new requirements under the Fair Trading Act in NSW to improve transparency in supply terms for consumers. The new expanded definition of consumer will also apply to these rules as well, covering goods and services up to \$100k from 1 July 2021.

- Businesses have to take reasonable steps prior to supply to ensure consumers are aware of 'prejudicial' contract terms that businesses may prefer hidden on page 18 of a 100 page document in small print. Prejudicial terms are ones that limit or exclude the supplier's liability, make the consumer liable for damage to delivered goods, allow the supplier to share data with third parties in a form which may enable the third party to identify the consumer, or require the consumer to pay an exit fee, balloon payment or similar payment.
- If intermediaries are getting a financial incentive from another supplier, they have to take reasonable steps to make customers aware of the commission or referral arrangements.

**3. Multiple minor failures can equal a major failure.** There was an amendment at the end of 2020 to clarify that multiple, non-major failures (i.e. minor failures) can amount to a major failure.

**4. Unfair contract term penalties still on the horizon.** The threat of penalties for unfair contract terms continues to loom, although we are still waiting on the draft legislation. The upshot? Probably worth making sure your business is prepared and a quick double check that all of your terms, marketing materials and employee training match up with the new rules.

Got questions? Give us a call.



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