



AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600  
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3 September 2020

The Hon Michael Sukkar MP  
Minister for Housing and Assistant Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [minister.sukkar@treasury.gov.au](mailto:minister.sukkar@treasury.gov.au)

CC: [atdlo@treasury.gov.au](mailto:atdlo@treasury.gov.au)

  
Dear Minister,

**Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds)  
Regulations 2020 [F2020L00907]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

***Modification of primary legislation***

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be included in primary, rather than delegated, legislation).

The instrument amends the Competition and Consumer Regulations 2010 to increase the monetary threshold in the definition of 'consumer' for the purposes of the Australian Consumer Law. The instrument also amends mirror provisions in the Australian Securities and Investments Commission Regulations 2001 (ASIC regulations) for consistency.

The monetary threshold for the purposes of defining a consumer was previously \$40,000 and the instrument increases this threshold to \$100,000. The explanatory statement to the instrument notes that this is the first time the threshold has been changed since 1986. The committee is concerned that while paragraph 3(1)(ii) of the Australian Consumer Law permits an amount greater than \$40,000 to be specified in regulations this is a significant change that should be enacted via primary legislation.

This significant increase to the monetary threshold is likely to have a substantial effect even if the increase is only designed to restore the real value of the monetary threshold. Furthermore, as the threshold has not been amended since 1986, from a scrutiny perspective, the committee considers that it would be appropriate for the changes to be

subject to the full range of parliamentary scrutiny associated with amending primary legislation. The instrument is exempt from sunseting and will therefore be in place for an unspecified amount of time which makes the measures more appropriate for the full range of parliamentary scrutiny given their potential longevity.

**The committee therefore requests your detailed advice as to why it was considered necessary and appropriate to use delegated legislation, rather than primary legislation, to significantly increase the monetary threshold in the definition of 'consumer' for the purposes of the Australian Consumer Law.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

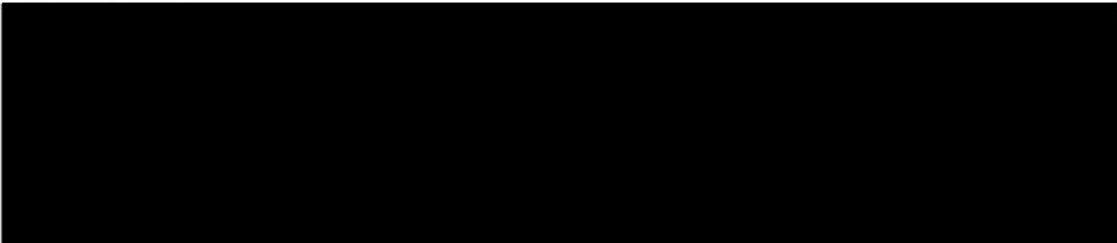
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **17 September 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,



**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**



**THE HON MICHAEL SUKKAR MP**  
**Minister for Housing and Assistant Treasurer**

Ref: MS20-002038

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Suite S1.111  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House  
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

A handwritten signature in blue ink, appearing to read 'Conni'.

I refer to correspondence from the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) requesting my advice with respect to the *Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020*. The Committee has sought my advice as to why it was considered necessary and appropriate to use delegated legislation, rather than primary legislation, to increase the monetary threshold in the definition of ‘consumer’ for the purpose of the Australian Consumer Law (the ACL).

Small companies can be as time poor as ordinary consumers and lack knowledge and expertise about the products that they buy. The monetary threshold in the definition of “consumer” of \$40,000 was included in the ACL as a ‘bright-line standard’. It provides consumers and businesses with a figure that is easy to recall and comply with, when compared with regular indexation. The *ACL Review Final Report 2017*, a joint product of Commonwealth, State and Territory consumer affairs officials, found that the level of protection afforded to consumers, particularly small business, has been eroded due to inflation in the cost of goods and services over time, and the original threshold amount is now not fit-for-purpose.

The changes to the monetary threshold restore the effective value of the threshold to the level originally set by the Parliament. Therefore, I consider the changes to be consistent with Parliament’s intent for how the law should operate, rather than a departure.

This change ensures that the ACL remains fit for purpose, but I also note that its significance should not be overstated. The bulk of transactions protected by the law involve individual consumers purchasing goods for personal, domestic and household use and no monetary threshold applies to these transactions. The increase in threshold applies to a much more limited subset of transactions involving consumers (including individuals, small businesses, farmers etc.) purchasing commercial goods under \$100,000. The increase, although aimed at protecting small businesses, has a flow-on benefit to capture ordinary consumer purchases of commercial products above the current \$40,000 threshold, such as commercial glass for installation in a home.

Your letter notes that the increases to the threshold relevant to the definition of consumer by way of regulation is already contemplated by the primary legislation.

As a general approach to law design, delegated legislation such as regulations should be used for detailed technical provisions or for setting thresholds that require periodic revisions. The primary law that creates the power to change the threshold in the ACL is clear and unambiguous in the scope of the power, and has been used in accordance with that provision.

I note that the Government has an ambitious legislative agenda, driven by our response to the Coronavirus pandemic. The Government is keenly focussed on prioritising Parliament's sitting time for Bills that have national significance. I also note that these regulations are subject to the disallowance process which accords them a proper amount of Parliamentary scrutiny.

The change to the monetary threshold has been contemplated for an extended period of time and has been the subject of public consultation on a number of occasions. Consultation on the policy underlying this change has taken place since 2016, starting with the *ACL Review Issues Paper*.

Similarly, comprehensive consultation occurred as part of the regulatory impact assessment process in 2018 and Commonwealth, State and Territory consumer affairs Ministers subsequently considered and agreed the change at the meeting of the Legislative and Governance Forum on Consumer Affairs on 26 October 2018.

In submissions, stakeholders have noted the positive impacts of the increased protections on small businesses. This is because it will restore ACL protections to a range of goods purchased by businesses, particularly goods such as farm equipment and machinery. Generally, businesses that buy these kinds of products would have to ordinarily rely on existing remedies which may be more complex, slow, costly and resource-consuming. Therefore, the increased ACL protection is likely to lead to increased small business confidence in purchasing decisions and assist in stimulating investment in the form of refurbished facilities and new equipment.

In addition, consumer groups and other stakeholders have been aware and supportive of the contemplated increase to \$100,000 since 2017 when the ACL Final Report was released.

Whilst I accept that this instrument is the first such change to the threshold in a considerable period of time, given the amount of consultation as outlined above, the supportive feedback from consumers and the general approach that threshold-type changes be made by way of regulation, this change is appropriately made by subordinate legislation.

I trust this information will be of assistance to you.

Yours sincerely

The Hon Michael Sukkar MP



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8 October 2020

The Hon Michael Sukkar MP  
Minister for Housing and Assistant Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [Michael.sukkar.MP@aph.gov.au](mailto:Michael.sukkar.MP@aph.gov.au)

CC: [atdlo@treasury.gov.au](mailto:atdlo@treasury.gov.au); [CommitteeScrutiny@treasury.gov.au](mailto:CommitteeScrutiny@treasury.gov.au)

Dear Minister,

**Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations  
2020 [F2020L00907]**

Thank you for your response of 28 September 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 7 October 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation