

Better Business Reforms *explained*



*Empowering everyday
Australians*

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Minister's message



Australia is an aspirational country. We aspire to own our own home, to travel, to finish an apprenticeship, to do well at university, to send our kids to good schools, to earn a promotion, to see our sons and daughters happy and with a family of their own.

Australians believe in these simple dreams and aspirations. It is a belief based on countless examples of Australians who have shown that with a practical plan, hard work and perseverance, there is a way to make their hopes a reality. But that belief is being challenged.

Property prices are forcing young people to question whether they will be able to own their family home. Stagnant wages are leaving people wondering whether they will be able to realise the aspirations they have for themselves and their families. The Banking Royal Commission has shown example after example of why the Australian people are questioning their belief in aspiration.

Some have responded to this challenge by calling for an end to free trade and open markets; for more government. But, as a liberal, I believe we can solve problems by applying the principles that have served us well in the past, and that it is classic liberal principles that have done just that.

We need to give people more freedom. As the English philosopher John Locke wrote more than three centuries ago, the purpose of government “is not to abolish or restrain, but to preserve and enlarge freedom”. We need to increase competition. We need to reward those who use their abilities to deliver for their customers, not to fleece hardworking Australians. We need to give people more choice and more information. If we allow people to make meaningful decisions, they will make the best decisions for themselves and their families.

The Better Business Reforms are delivering on these liberal principles by cutting red tape – especially for tradies and other small businesses – and by giving consumers the information they need to make meaningful decisions. The great challenge facing our country is to give Australians reason to continue to believe in the simple hopes and aspirations that have defined Australia for generations. The plan that I have set out will not solve that challenge, but reforms like it will be where the solution begins.

Matthew Kean MP
Minister for Innovation and Better Regulation

Introduction

The NSW Government is committed to a strong state economy and to ensuring that everyday Australians living in NSW can realise their hopes and aspirations.

The Better Business Reforms aim to do just that, creating opportunities for small business by cutting red tape, costs and complexity without reducing consumer protections, and giving consumers the information they need to make meaningful decisions about their future. The headline reforms include extending tradies' licenses, making it easier for tradies to get the qualifications they need to work in the motor vehicle industry and requiring businesses to be upfront about any terms and conditions which could hurt their customers.

By giving NSW businesses more freedom and reducing unnecessary red tape they will save more than \$495 million over 10 years. These reforms will save consumers at least \$150 million over 10 years by giving them the information to make better and more meaningful decisions.



1 Better for business

1.01 Ongoing licences for 13 home building trades

Over 27,000 licenses from 13 licence categories (specified in the box below) will no longer have to periodically renew their licence and pay the accompanying renewal fee. Instead, the licence will be 'ongoing'. This means licence-holders will only have to notify NSW Fair Trading every 5 years to confirm they want to maintain their licence. This will ensure their details remain current and that they have not been disqualified from holding a licence.

The primary purpose of licensing schemes under the *Home Building Act 1989* is to protect consumers and ensure that tradespeople have the relevant qualifications and experience to complete work safely. These trades have been identified as presenting a lower risk to both workers and consumers. They involve tasks that are not likely to present major safety risks or risks of significant financial detriment. The proposed reform recognises the potential lower risk of compliance and enforcement costs for NSW Fair Trading from these licences.

These changes will save licensees \$5.2 million annually. This is the result of reducing the time it takes to renew licences and decreasing renewal fees from \$605 every 3 years, to a \$51 processing fee every 5 years.

Tradespeople will still be required to obtain relevant qualifications and have the required experience to obtain their licence in the first instance. They will also have to comply with all the requirements in the legislation, as they currently do. Licensees will still be required to notify NSW Fair Trading of any change to their circumstances and will remain subject to disciplinary processes for non-compliance with statutory requirements. This ensures that consumers have adequate protection while reducing the costs of doing business.

List of licenses to be ongoing:

- Decorating
- Painting
- Fencing
- Glazing
- Kitchen & bathroom benchtop installation
- Splashback installation
- Paving
- Shower screen installation
- Ducting/mechanical ventilation
- Shade sails and shade systems installation
- Dry plastering
- Wet plastering
- Minor maintenance/cleaning



**Saving licensees
\$5.2 million a year**



**Reduced
renewal fees**

1.02 Extending and harmonising licence duration

More than 400,000 licenses will benefit from reforms that will harmonise licence periods across the Innovation and Better Regulation portfolio. There will no longer be different renewal and restoration periods for different licences. Licensees, except those who already hold 5-year licenses or longer, will have the option to have their licence issued or renewed for 1, 3, or 5 year periods. There will be a standard 3-month restoration period that will allow licensees who have missed the renewal date to renew their licence within 3 months of it expiring, without having to reapply. There will be the power to extend this period under exceptional circumstances.

These changes will make it easier for licensees to continue to trade and reduce administrative and financial burden, with savings of over \$20 million per year. Licensees can choose the licence duration that works best for their business and their budget. Occasionally, unexpected events prevent on-time renewal, and the restoration period allows licensees to get back to business more quickly and with less hassle and cost than reapplying for a lapsed licence.



1.03 Exemptions from tow truck licensing requirements

The *Tow Truck Industry Act 1998* will be amended to allow an exemption from licensing requirements on application to NSW Fair Trading, saving tow truck operators nearly \$900,000 over 10 years. The grounds for making an application will be provided in the regulations. NSW Fair Trading will advise the Commissioner of Police of an exemption when it is granted, and the holder of the exemption must be able to produce evidence of the exemption when operating a tow truck.

Grounds for the exemption will be based on whether the towing activity (for which the exemption is being sought) represents a risk to consumers, or the exemption risks undermining licensing requirements. Possible grounds for an exemption could be where businesses and individuals do not provide towing services to consumers or for the benefit of others. For example, a motor dealer uses their tow truck to move their cars or recreational vehicles; or when a licensed motor vehicle repairer has been doing repair work on a tow truck and they test drive the vehicle.

The purpose of the *Tow Truck Industry Act 1998* is to protect consumers from misconduct by tow truck operators and to eliminate criminal elements from the industry. Capturing businesses who use their own tow trucks to transport vehicles to and from showrooms, expo venues or for their own benefit does not contribute to achieving the purposes of the Act. The proposed exemption will reduce costs, inconvenience and administrative burden for businesses without increasing the risk of consumer or community harm.

1.04 Caravans/Recreational Vehicle LP gas and electricity licence category

A new specialised LP gas and electrical repair work licence category for repairs on caravans and other recreational vehicles is proposed, resulting in savings of \$1.6 million per year for tradespeople and consumers.

The training and knowledge requirements for a full licence are disproportionate compared to the expertise and knowledge required to do repair work on gas and electrical articles in recreational vehicles. The gas, electrical, air-conditioning and refrigeration components of recreational vehicles are simpler to work on compared to the rest of the vehicle and it can be difficult and costly for businesses to put their employees through the training required to obtain a full licence.

The new specialised licence category will reduce red tape and costs for businesses. It also provides more freedom to structure businesses in the way they see fit, while still maintaining appropriate safety standards and mandated training requirements.

1.05 New specialised classes for motor vehicle repairers

New specialised licence classes will be created for specific types of motor vehicle repair work. While consultation with the industry and the vocational education and training (VET) sector will determine the final list of specialised classes, the new classes would likely include new specialised classes for transmission work, or work to suspensions only.

This will reduce the cost and time to obtain full motor vehicle repair qualifications needed to get a licence, as employees will no longer have to obtain unnecessary qualifications for work they are not performing. This specialised work would only require completion of either a certificate I or II rather than a certificate III as is currently required for all repair work. This will save repairers over \$17 million annually, and over 600 hours in training time for those who only work in specialised trades. Stakeholders advised that, particularly in rural areas, it is not possible to get fully qualified motor vehicle repairers when all that is required is this more specialised work. This reform will make it easier and cheaper to get qualified for this work, increasing the ability of traders to get the workers they need to keep their businesses going. It will also reduce their employment costs.

Case Study

During consultation, stakeholders advised that tyre shops are required to employ a Certificate III (fully qualified mechanic) in order to do wheel alignments. This is despite those businesses not providing other mechanical services. This has a negative effect on the business and the industry for several reasons

1. Higher wages for higher skilled tradesperson
2. Increase in running costs to the business, resulting in higher charges to consumers; and
3. Increased pressure on the industry resulting in a skills shortage.



**\$17 million
saving per year**



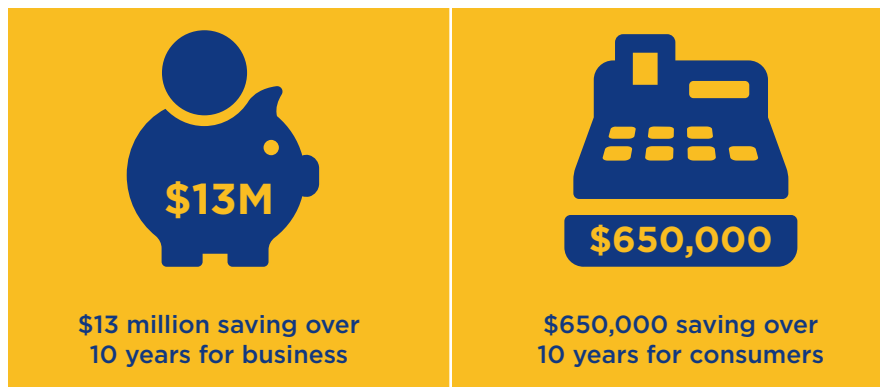
**Reduced training time for
specialised trades**

1.06 Trading out of external administration

Discretion will be given on whether to renew or maintain a corporate licence when a corporation has entered external administration. Currently, when a corporation enters voluntary administration, NSW Fair Trading must refuse licence applications and cancel current licences of corporations, and the licenses of persons involved in the management of an externally administered corporation.

This will provide licence holders and businesses with the opportunity to trade out of financial hardship and lead to \$13 million in savings for creditors and \$650,000 for consumers over 10 years. This could benefit creditors who are able to have more of their debts paid, customers who are more likely to see their partially finished work completed, and employees, contractors and suppliers who rely on the corporation for their livelihood.

A similar discretion will apply to individuals involved in the previous 3 years in the management of an externally administered corporation. Often corporations enter administration through no fault of the management, but rather, because of external events beyond their control. The discretion to grant licences to these traders will allow them to recover once economic conditions improve, while also limiting the ability of individuals to recklessly allow companies to go into administration only to quickly re-commence trading through a new corporation, also known as 'phoenixing'.

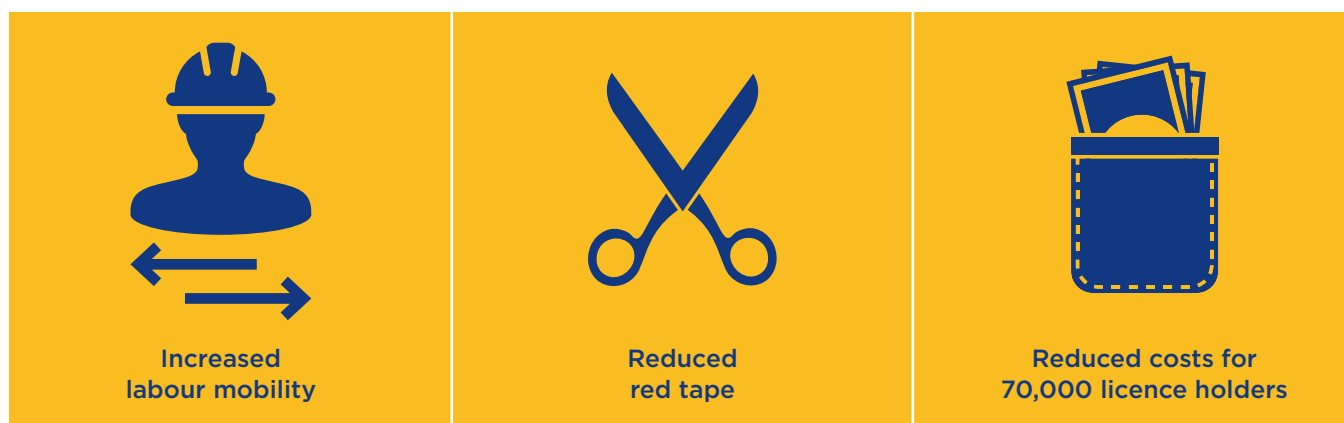


1.07 Automatic mutual recognition – architects and other building related occupations

Automatic mutual recognition allows an occupational licence holder in other Australian States and Territories to practise their occupation in NSW, without the need to apply for licence recognition. It allows a person to work across the country with only one licence.

An automatic mutual recognition scheme is being considered for architects, plumbers, drainers and gasfitters. This would allow a seamless transition for licensed individuals working in another state or territory to work in NSW. The scheme would facilitate labour mobility and reduce regulatory burden and costs for up to 70,000 licence holders. This can increase competition and productivity. These benefits can flow down to consumers by increasing choice, reducing prices and improving the quality of the services available.

Automatic mutual recognition schemes are currently in place for electricians in the eastern states of Australia, and for veterinarians in all Australian states except for Western Australia. These schemes were introduced to reduce unnecessary regulatory and duplicative burdens, and to assist in recovery efforts following major natural disasters.



1.08 Continuing professional development (CPD) requirements

The CPD requirements for stock and station agent licensees under the *Property, Stock and Business Agents Act 2002* will be substantially reduced.

The objective of requiring the completion of CPD for occupational licensees is to ensure that licensees remain up to date with innovations and laws related to their practice. The advice from the sector has been that not much changes for them from year to year. As a result, agents generally do the same CPD courses each year. This increases their costs and takes time that they could otherwise use to grow their business. Work will be undertaken with the sector to determine the appropriate amount of CPD required.

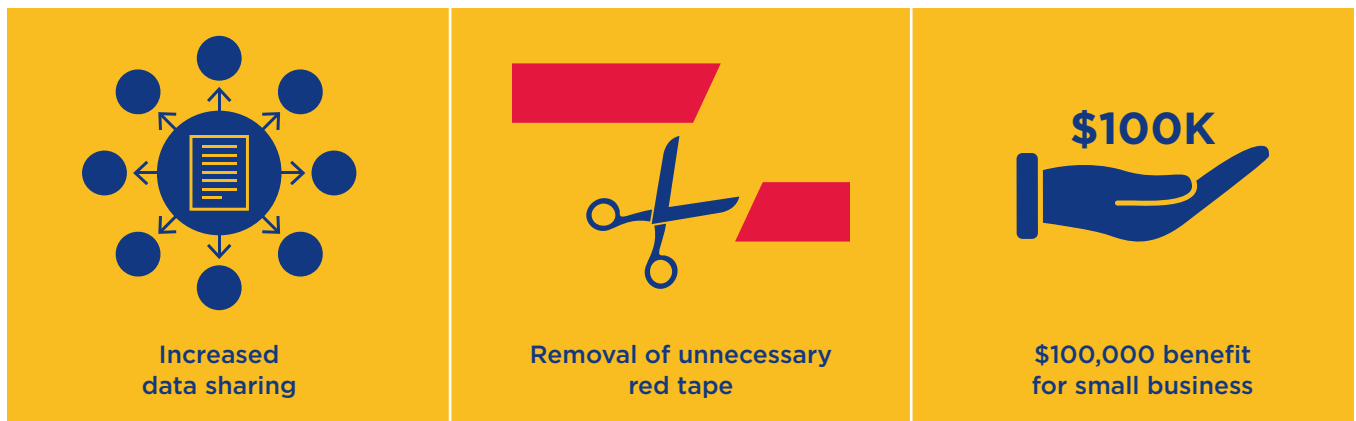
A broader review of the CPD requirements across licensing schemes will also be conducted to ensure that CPD continues to remain relevant and provides the intended benefits. This will help ensure that CPD requirements are consistently applied across different licence categories and that requirements remain reasonable and the cost of compliance does not outweigh the benefits.

1.09 Streamlining financial reporting for charities, conveyancers and real estate agents

Duplicative or redundant requirements for financial reporting and record keeping for charities, conveyancers and real estate agents will be removed. Licensed conveyancers and real estate agents will no longer have to submit a copy of their audit report to NSW Fair Trading, with the report only needing to be submitted by their auditor. In addition, the requirement for conveyancers to maintain records of ex-employees will be removed.

Other comparable licensing legislation does not require these records or reporting requirements. Removing them does not increase risk and removes unnecessary regulatory burden. Increased data sharing and digitisation across government removes the need for duplicative record keeping requirements. This gives back over \$100,000 annually for up to 1,500 small businesses and supports the NSW Government's commitment to improving government customer service through the 'tell us once' initiative.

Duplicative reporting requirements have been removed for charities that are also registered with the Australian Charities and Not-for-profit Commission (ACNC). Annual reporting may now be submitted to the ACNC with information being shared with NSW Fair Trading. This is explained in more detail in *1.15 Improving charitable fundraising laws*.



1.10 Removing age requirements for architects

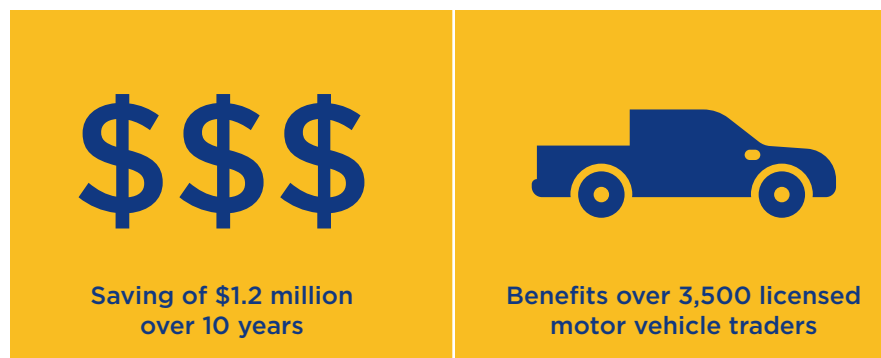
Age restrictions prohibiting anyone under the age of 21 from practising as an architect will be removed, as will the restrictions on online submission of registration documents to the Architects Registration Board. These restrictions are unnecessary and limit skilled and qualified individuals from becoming registered architects.

1.11 Reduced regulatory burden for motor vehicle dealers

Licensed motor vehicle dealers will only need to notify NSW Fair Trading of the locations from which they intend to trade, as long as the dealer complies with RTA requirements. They will also be able to complete sales at trade shows, rather than the current requirement to complete transactions at the registered office. In addition, the requirement to include licence numbers in motor vehicle advertising will be removed.

This will bring NSW in line with other Australian States and benefit over 3,500 licensed motor vehicle dealers in NSW, saving them nearly \$1.2 million over 10 years. NSW Fair Trading must be informed of any site where trade is proposed to take place (other than trade shows) within 20 days' notice. Relevant planning and council approvals must still be obtained. This will reduce red-tape without seeing car lots opening up at improper locations.

Licence information will still be required at trading locations and on documentation. In addition, the information will be easily accessible online on the NSW Fair Trading website. Having licence information in advertising increases costs. Having this information available in so many other locations means consumer protections are maintained while removing unnecessary regulatory costs.



1.12 Streamlining uncollected goods regulation

Uncollected goods are regulated by several different Acts, with duplication, inconsistency and discrepancies across the different legislation. The various uncollected goods provisions will be streamlined into one set of laws that will simplify the process so that traders and consumers will have a clear understanding of their rights and responsibilities when it comes to uncollected goods. This will save nearly \$6 million over 10 years for those responsible for disposing of these goods.

A standard set of requirements will be introduced that regulates how different categories of abandoned goods are to be disposed of. There will be a balance between simplifying the requirements for businesses without the costs involved in storing and disposing of goods, with the need to provide the owner of the goods the opportunity to claim their property (or the proceeds from their sale).



1.13 Repealing redundant statutes and provisions

Over time, legislation that once served an important purpose becomes redundant and no longer relevant to modern life. An important role of government is to ensure the statute book remains up to date and provisions in remaining statutes remain fit for purpose.

A sweep of all legislation in the Innovation and Better Regulation portfolio has resulted in these reforms. The reforms reduce the regulatory burden of complying with these requirements and remove any civil disobedience from non-compliance, because it simply isn't possible to comply anymore.

The following redundant Acts will be repealed, with non-redundant provisions inserted into other relevant statutes in the portfolio:

- *Prices Regulation Act 1948*
- *Innkeepers Act 1968*
- *Rural Workers Accommodation Act 1969*
- *Landlord and Tenant (Amendment) Act 1948*
- *Landlord and Tenant Act 1899* was due to be repealed on 29 June 2020 as part of earlier reforms passed in 2015. The repeal date will be brought forward to 2018
- *Co-operative Housing and Starr-Bowkett Societies Act 1998* will be 'grandfathered'. No new societies can be registered but it will remain operational.

The following redundant provisions will be removed from impacted legislation:

- the requirement for some organisations to possess and use a seal when signing documents
- the use of fax or registered post as a legislated method of communication to serve notices
- provisions establishing 5 redundant and inactive ministerial advisory councils and the former (no longer operational) Products Safety Committee
- advertising restrictions no longer required in individual statutes due to overriding restrictions in the Australian Consumer Law.

1.14 Identification requirements

Service NSW will trial streamlined and tiered identity verification requirements so that consumers use no more than three methods. The new arrangements will be trialed for approximately 40 transactions. There are currently 9 different methods of proving a customer's identity across these 40 transactions alone, and this streamlining will reduce red tape and make it easier to do business. If the trial is successful, it will be expanded across all appropriate NSW licences.



1.15 Improving charitable fundraising laws

The outdated and confusing charitable fundraising laws will be modernised and simplified, reducing red tape and enabling stronger compliance and enforcement powers to take action against those who do the wrong thing.

Key changes include aligning reporting requirements to those of the Australian Charities and Not-for-profits Commission (ACNC) and allowing proof of ACNC registration to be sufficient to grant a charity an authority to fundraise in NSW. ACNC registered charities who are also incorporated in NSW as an association, will only have to report once, to the ACNC, with this information being shared with NSW Fair Trading. In addition, large charities that have to provide an annual audit to both the ACNC and Fair Trading will only have to provide that audit to the ACNC. Penalties for non-compliance will be increased, and NSW Fair Trading will have the authority to conduct investigations without the onerous requirement to set up a formal ministerial investigation.

With over 5,000 authority holders operating in NSW, these reforms will lead to administrative savings of around \$15 million over ten years that will go back into the community through charitable works. This in turn will help improve confidence in the charitable sector, so the people of NSW feel confident that when donating money, it is going towards the charitable purpose it is intended.



Over 5,000 authority holders in NSW



\$15 million over ten years

2 Better for consumers

2.01 Notice of key terms in consumer contracts

Meaningful choices require that individuals understand the nature of their decisions. In trade and commerce, that includes understanding contract terms and conditions.

Among the terms and conditions there are often more important terms ('key terms') that a consumer's attention should be drawn to. These terms may be critical to a consumer in determining whether to go ahead with the contract. However, terms and conditions are often lengthy and hard to understand, with key terms often buried deep within them, making them hard for consumers to understand. For example, CHOICE found that Amazon Kindle's terms and conditions contained 73,198 words and took 9 hours for a person to read out loud.

Traders, including certain providers of free online services, will be required to provide consumers with upfront, explicit notice of key terms at the time of contract. This will be required for any transaction involving terms and conditions (including subscription services) when a product disclosure statement is not already required. This will help consumers be fully aware of the nature of the contract they enter into. This will provide a benefit of \$40 million over 10 years for consumers.

Case Study

In reviewing the Amazon Kindle's terms and conditions in 2017, CHOICE found a term that consumers who experience problems with their Kindle must use a United States-based arbitration process in order to progress their complaint. This is despite the fact there are strong consumer law rights and remedies in Australia. As this example highlights, individual terms that prejudice a consumers interests can happen in part because they are hidden in massive and difficult to understand contracts. Highlighting key terms that impact consumers interests upfront would help address this issue.

2.02 Disclosure of commissions and referral fees

The existence of commissions and referral fees will need to be disclosed when providing advice to consumers. This will help ensure that all consumers are made aware of conflicts of interest arising from commissions and referral fees paid to third parties.

Consumers often rely on third party businesses for referrals, professional advice, information or recommendations on goods and services. However, financial incentives to sell products can bias, or appear to bias, the advice, information or recommendations provided. An emerging risk area is product aggregation websites. These products provide consumers with comparisons of goods and services on a range of products and can be a powerful tool in helping consumers make good purchasing decisions and encouraging competition. However, it can be unclear to consumers when such websites receive commissions on the products shown, and therefore how accurate the information is. For example, Choice has reported that iSelect received 2.27 million 'utility' leads in 2017 and 'converted' 12.6 per cent of them to new providers.

2.03 Non-disclosure agreements

The enforcement of NSW consumer protection laws is undermined by traders settling consumer complaints against them based on terms which limit the consumer's capacity to provide details of the complaint to NSW Fair Trading. When a consumer is prevented from commenting on their experience or providing information to the regulator, it reduces transparency in the market and limits the ability of the regulator to take enforcement action against the trader due to a lack of evidence. It also limits the amount of public information about common concerns, particularly on product safety.

Non-disclosure clauses in settlement agreements will no longer be able to restrict a consumer's capacity to lodge a complaint to NSW Fair Trading. Consumers are to be informed of this right when entering into any non-disclosure agreement. This will assist in the enforcement of NSW consumer protection laws, and increase transparency.

Case Study

Thermomix Australia refused to provide refunds for faulty goods unless customers signed non-disclosure agreements that required them "not to disparage or otherwise comment negatively about Thermomix... and not to take any action that is intended, or would reasonably be expected to harm the reputation of Thermomix or lead to unwanted or unfavourable publicity". This prevented customers from making complaints to the ACCC or NSW Fair Trading, even though the faulty products were dangerous and led to hospitalisation in some cases. This meant that the public was not promptly made aware of the dangerous defects and were put at risk.

2.04 Consumer information standards

The *Fair Trading Act 1987* will be amended to replace specific regulation-making powers for certain information standards in the Fair Trading Regulation 2012 with a general regulation making power.

Consumer information standards prescribe minimum requirements for the type and amount of information provided to consumers and how this information is presented. This general power will continue to allow the existing information standards for fuel price signs, textile labels, employment placement services, and funeral services to be prescribed in the regulations. This will also enable new standards to be prescribed, such as in relation to toiletries or cosmetic content labeling, as the need arises. It will also allow standards to be prescribed where a market failure is identified in the future which happens when information is not consistent.

One such market failure that could be addressed through consumer information standards has already been identified. Currently certain traders 'sell' extended warranties to consumers for their goods. However, statutory warranties for the goods are already freely available under the Australian Consumer Law. More information about this reform is in *2.05 Mandatory disclosure for extended warranties*.

In addition to informing consumers at the point of sale, NSW Fair Trading collects and publishes this information on freely available websites and applications like FuelCheck. This helps increase transparency on the price, availability and quality of goods and services and motivates traders to compete for consumer business.

2.05 Mandatory disclosure for extended warranties

The Australian Consumer Law (ACL) provides overarching protections for consumers about the quality, fitness for purpose, and representations made about purchased goods or services. These are known as consumer guarantees. While most extended warranties provide consumers with peace of mind and additional protections, many consumers are unaware of their existing rights under the ACL. This may encourage them to purchase extended warranties that provide no additional benefit to what is already covered by statutory rights.

Consumers need to be aware of their rights under the ACL so they can make informed and meaningful decisions about purchasing extended warranties. A prescribed information standard would require traders to include information about the ACL warranties and the remedies freely available to consumers in all documents and at the point of sale for extended warranties.

2.06 Online portal of registers

A range of statutes in the Innovation and Better Regulation Portfolio are being amended to ensure consistency of information about licensees and traders on public registers. A central 'portal' will be created where existing information can be more easily accessed and in a searchable data format. This will save consumers an estimated \$40 million over 10 years in reduced costs for rectification of shoddy workmanship.

NSW Fair Trading and SafeWork NSW currently maintain multiple public registers on traders, licensees and authority holders. The registers and other publicly available data and information is not contained in the one location and can be inconsistent in the level of detail available. Consumers must search several websites to access all the information they would need to make an informed decision about a licensee, authority holder or trader.

A single, user friendly online portal will allow consumers centralised access to data held on traders, licensees and authority holders. The information contained on the portal would be consistent and freely available, improving access to information and transparency for consumers.



2.07 Improvements to the rental bond system

The tenancy laws will be amended to make it easier to allow a bond to be transferred from one property to another.

Tenants will now be able to transfer a bond from the property they are vacating, to a new property that they are leasing, before the first bond has been released. This will prevent tenants from needing to have multiple bonds lodged at one time, as they move between properties, reducing bridging costs on tenants.

Tenants have to find the additional funds for a new bond while waiting for their old bond to be returned. Sometimes this money can only be accessed through expensive lenders, like payday lenders or other short-term lenders, who charge exorbitant interest for the period that the additional money is required. The reform will ensure that tenants can make this transfer and reduce their costs. It also allows the former landlord to claim on the bond if required, while ensuring the new landlord can obtain any shortfall in the transferred bond amount. The reforms will be implemented in consultation with stakeholders, including to ensure that landlords have appropriate protections.

This will benefit over 300,000 new tenancies annually in NSW

2.08 Allowing strata lots to choose their own utilities provider

The *Strata Schemes Management Act 2015* will be amended to prohibit developers from locking in future owners corporations into long-term utilities contracts.

This reform will ensure that the approximately 200,000 lot holders of strata schemes registered in NSW in the last 5 years will have the freedom to choose their own utility provider. This will allow them to find the most appropriate service for their budget and circumstances or change providers if they are dissatisfied with the service they are receiving. It will also allow them to take advantage of any reduced costs or increased competition that may arise in the future.

Long-term contracts that lock an entire strata lot into a utility contract with a particular provider will now be treated in the same way as long-term strata management and building management contracts. The owners corporation will review contracts annually and be given the opportunity to renew, change or opt-out of contracts, improving consumer choice.

This could save new owners corporations nearly \$9 million over 10 years



