

Summary and Recommendations

Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010

This bill is the second in a suite of trade practices reforms. It renames the *Trade Practices Act 1974* as the *Competition and Consumer Act 2010*. While transferring many protections from the existing act, it changes the drafting to conform to modern plain English. It also replaces a variety of federal, state and territory legislation with uniform national law. In addition, the bill introduces specific protections such as consumer guarantees and addresses some undesirable practices of unsolicited sellers. Finally, the bill introduces new remedies and enforcement mechanisms for regulators and consumers.

The Committee believes the bill represents a substantial achievement which will bring real benefits to consumers.

Recommendation 1

The Committee recommends that the Senate pass the bill, preferably adopting the other recommendations in the report.

The Committee notes the overwhelming support for uniformity of consumer protection legislation. The greater clarity this brings could be enhanced if the occasional inconsistencies in the definition of 'consumer' in the bill could be removed. The Committee believes that the Government should aim to arrive at a single definition of 'consumer' throughout the provisions of the ACL in future consultations and amendments to the legislation.

The Committee heard a number of suggestions as to how 'consumer' should be defined, but on balance did not find any of the alternatives better than the main definition used in the bill, which regards 'consumer goods' as those 'of a kind ordinarily acquired for personal, domestic or household use or consumption'.

The bill will help consumers avoid paying for 'additional' warranties that are really only duplicating their legal rights. This will be more effective if consumers can readily comprehend the benefits they would receive from buying an additional warranty.

Recommendation 2

The Committee recommends that the Minister look at requiring plain English explanations be provided to consumers of the additional benefits, or otherwise, of any extended warranty beyond existing statutory rights.

A theme that emerges at a few places in the report is that the new legislation will need to be accompanied by education of consumers to enable its full benefits to be realised.

Recommendation 3

The Committee notes the low rate of Australian consumers' awareness, compared with that of New Zealand consumers, of their statutory rights when purchasing goods and services, particularly in relation to warranties. The Committee recommends the Government introduce a programme to educate Australian consumers about their statutory rights in relation to express warranties and other consumer guarantees. The programme should particularly aim to educate consumers about the guarantee that goods must be of "acceptable quality", which may offer protection above that included in manufacturers or extended warranty contracts.

Recommendation 4

ACCC and consumer regulators should issue national guidance in relation to the new consumer guarantees to ensure regulators, consumers and businesses have a consistent understanding of their new rights and responsibilities.

The bill envisages a distinction between 'minor' and 'major' breaches of consumer guarantees. This concerned some witnesses.

Recommendation 5

The Committee recommends that an appropriate agency monitor and, as soon as practicable after 1 July 2013, provide a comprehensive report on:

- (a) the application of the distinction in Part 5-4 of the bill between major and minor based on consumer behaviour (with a view to ascertain whether improved definitions are required or amendments are warranted); and**
- (b) consumers' behavioural awareness of consumer guarantees and use of remedial relief.**

The Committee welcomes that the bill will extend consumer protection by requiring that services be 'fit for purpose'. The Committee believes exemptions from these provisions should be strictly limited. The exemption of utilities industries in cases such as unforeseeable weather events can be justified, especially as these industries are also subject to specific, additional regulation. The Committee was not, however, convinced by the argument of architects and engineers for their services to be exempted (although they should not be held responsible if their designs are poorly realised by builders).

Another attractive feature of the bill is that it gives consumers more protection in situations of 'unsolicited selling', such as door-to-door sales, where they may be vulnerable to high-pressure sales techniques. The Committee supports the bill's restricting these activities to 9 am to 6 pm on weekdays and 9 am to 5 pm on Saturdays. It considers the field sales industry's fears of higher product prices and industry unemployment are an insufficient counterargument to the householders' interests in relation to safety and freedom from nuisance.

The Committee believes these provisions could be strengthened to avoid sellers trying to get around them.

Recommendation 6

The Committee recommends that the bill defines an 'unsolicited consumer agreement' as to include circumstances in which consumers are contacted (and contact dealers) through indirect means. This should include circumstances:

- **where a consumer is contacted in relation to the supply of goods or services after providing his or her name or contact details to a person, and the predominant purpose for providing those details was not to supply those goods or services; and**
- **where a consumer contacts a dealer in response to a 'missed call'.**

Recommendation 7

The Committee recommends that the Minister review the \$100 exemption limit after consultation with direct sellers, other direct marketers and other interested parties.

The bill also introduces a nationally consistent scheme for product safety reporting. This information will be transmitted to the public through a new website.

Some submitters, however, were concerned that the requirement to report incidents involving death, serious injury or illness 'associated with' a product rather than 'caused by' the product could be casting the net too widely. In the case of motor vehicles it could also duplicate existing reporting obligations. The Committee is sympathetic to the need to balance protection of consumers and avoidance of overwhelming both suppliers and regulators with unproductive paperwork, but is also aware that making exceptions to legislation causes complexity and ambiguity. Furthermore, replacing 'associated with' by 'caused by', would probably raise more problems by putting an onus on the reporter to verify or investigate the incident before reporting.

Recommendation 8

The Committee recommends that the provisions of the legislation relating to product safety be reviewed within three years of implementation, particularly with regard to the costs of compliance versus the benefits obtained, the integrity of confidentiality of reports and any requirement to review definitions of product safety and risk in mandatory reporting.

The bill has been criticised for sometimes reversing the onus of proof. The Committee believes, however, that this has only been done in instances where it is justified.

Finally, committee inquiry processes have unearthed some apparent drafting errors which the Committee suggests be investigated.

Recommendation 9

The Committee notes the claim of drafting errors. The Committee does not believe that these issues are of sufficient magnitude to delay passage of the bill. Notwithstanding this, the Committee recommends that the Minister seek further advice and rectifies any drafting errors where warranted.