Additional comments by Coalition senators

Introduction

While the Coalition broadly supports the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010, there are a number of areas of particular concern to the Coalition, which are outlined below.

Definition of consumer and consumer good

The definition of consumer within section 3 of the Trade Practices Act (Australian Consumer Law) Bill (No. 2) 2010, as well as the definition of consumer goods were controversial issues across many submissions.

Of initial concern is that there is no class of consumer that deals with small business. This is of grave concern, particularly given that small business is the largest employer of people in Australia.

There has previously been a small business application for the definition of consumer, as discussed in the hearings:

> Traditionally, there has been that small business application for the definition of 'consumer' in existing section 4B for goods purchased under a particular value, regardless of their nature. That has now been excluded.[1]

There is also concern about the fact that some consumers would make small purchases that would not fit within the definition currently proposed. This was brought up in both submissions and evidence before the committee.

> This is particularly concerning in relation to persons with special needs which may require them to purchase specialised goods and services that are not ordinarily acquired for personal, household or domestic use. Although such persons would not be protected under the Bill, they are arguably among the most vulnerable groups in society, required to spend relatively substantial sums on products that meet their unique needs and are thereby most in need of protection. For example, a mobility impaired person may require a lift to be installed in their two storey home in order to provide access to the upper storey. The person would likely not be protected by the proposed consumer guarantees under the Bill if the lift is not held to be a good ordinarily acquired for personal, domestic or household use since it would ordinarily only be installed in commercial buildings. Similarly, a person unable to write or type may require voice recognition software to be installed on their home computer in order to study or access the internet

1 Ms Deborah Healey, Senior Lecturer, Faculty of Law, University of New South Wales, *proof Committee Hansard*, 28 April 2010, p. 34

> without assistance. If the software was developed for business use and is rarely used by individuals, the purchaser may be left without remedy if the software is defective.[2]
>
> Further, it would be possible for unscrupulous businesses to take advantage of this lacuna in the Bill by targeting vulnerable groups with products developed for uses other than personal, domestic or household use. For example, if a company were to doorknock sufferers of a particular condition with equipment ordinarily supplied to hospitals, individuals who purchased the products would not have the benefit of a termination period under the proposed unsolicited consumer agreements regime because the products would fall outside the regime since they are not ordinarily acquired for personal, household or domestic use.[3]
>
> By removing the financial threshold there is the possibility that someone may purchase an item which would not ordinarily be acquired for personal, domestic or household use. Perhaps an example could be someone suffering from emphysema who has to get oxygen cylinders of some sort, or for medical equipment that may be supplied normally through the hospital system which would not ordinarily be acquired for personal, domestic or household use.[4]

It was argued by Treasury that the amendment merely removed the arbitrary monetary threshold of $40,000 which applied with respect to all goods.[5] Given the number of examples given over the course of this inquiry, it is extraordinary that Treasury decided to take the approach of a case-by-case basis.

> We could go through many examples and attempt to split hairs. The provision is drafted in general terms so that cases can be dealt with on a case-by-case basis and the actual situation can be dealt with. I cannot say whether a particular kind of cement mixer might or might not be a good ordinarily of a kind et cetera, but the provision is designed to deal with consumer purchases of those sorts of goods.[6]

The main concern of the Coalition is that small business has not been accounted for within the definition of consumer.

Recommendation 1:

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2 Law Council of Australia, *Submission 18*, p. 5.

3 Law Council of Australia, *Submission 18*, p. 5.

4 Mr Lynden Griggs, *Proof Committee Hansard*, 29 April 2010, p. 10.

5 Mr Simon Writer, Manager, Infrastructure, Competition Policy Framework Unit, Competition and Consumer Division, Department of the Treasury, *Proof Committee Hansard*, 30 April 2010, p. 32.

6 Mr Simon Writer, Manager, Infrastructure, Competition Policy Framework Unit, Competition and Consumer Division, Department of the Treasury, *Proof Committee Hansard*, 30 April 2010, p. 33.

The Coalition recommends that the definition of consumer should allow for a class of consumers that would encompass small businesses

Similarly, the Coalition has concerns about the definition of consumer goods, as some goods purchased by small business would fit within the definitions of consumer goods and others would not under the current definitions in section 3 of the bill. Consequently, the Coalition believes that a consumer good could be defined as follows and makes a recommendation on this basis.

Recommendation 2:

The Coalition recommends that the definition of a consumer good should be as such:

***consumer goods* are goods where:**

(a) The goods are of a kind ordinarily acquired for personal, domestic or household use; or

(b) The goods consisted of a vehicle or trailer acquired principally in the transport of goods on public roads; or

(c) The price of the goods did not exceed the prescribed amount.

This would include the new definitions and allow the status quo to continue applying to goods under $40,000 (including for business).

Consumer guarantees

The Coalition support Recommendation 2 at paragraph 4.16 in the Chair's report. The requirement for plain English would ensure that consumers are better informed about the issues associated with extended warranties. A number of submissions pointed out that there was confusion over what rights consumers had under statutory warranties and what they pay for with additional manufacturers' warranties or extended warranty schemes.[7]

An additional concern was that consumers did not have enough information to make an informed decision, hence the Coalition's support for Recommendation 3 at paragraph 4.19. It was noted that the change in drafting would be ineffectual without an appropriate information campaign

> ...warranties continue to raise serious problems. For many consumers, paying for an extended warranty on a large purchase seems to make good sense because it offers peace of mind but in many cases that sense of security is an illusion. It is based on a danger that does not exist because the statutory implied warranties offer as good or better protection. Nevertheless, under the old system of contract based remedies, consumers

7 Choice, *Submission 20*, p. 6.

> may have seen some value in paying to avoid the hassle of trying to enforce these warranties. With the move to consumer guarantees, *Choice* calls on the Senate to ensure that consumers receive adequate information about their rights before entering into extended warranties. This should be done through a compulsory disclosure at the time the extended warranty is offered so that consumers can judge for themselves whether the warranty offers any additional protection and, if so, whether it is worth the price.[8]

It is important to note that there was general support for the reforms proposed under Part 3-2 of the Bill.[9] The Coalition supports the increase in education for consumers, particularly given the New Zealand model discussed by a number of submissions and witnesses.[10]

The Coalition supports Recommendation 4, as it is important for all parties to a transaction to have a consistent understanding of their rights and responsibilities under the new Bill.

On a similar note, the Coalition supports Recommendation 5.

Architects and Engineers exemption from 'fitness for purpose' guarantee

There was some concern about the exemption of architects and engineers from the 'fitness for purpose' guarantee.

This amendment was made in 1986 to section 74(2) and reads as follows:

> Where a corporation supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation any particular purpose for which the services are required or the result that he or she desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connexion with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the corporation's skill or judgment.[11]

Senator Janine Haines of the Australian Democrats gave a particular reason

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8 Mr Christopher Zinn, Director, Communications and Campaigns, Choice, *Proof Committee Hansard,* 28 April 2010, p. 7.

9 Mr Lynden Griggs, *Submission 7*, p. 2.

10 Mr Lynden Griggs, *Submission 7;* p.2; see also Dr Stephen Corones, 'Consumer Guarantees in Australia: Putting an End to the Blame Game', *Queensland University of Technology Law Journal* (2009) 9(2) 137; Treasury, *Submission 46;* Law Council of Australia, *Submission 18,* p. 7; Choice, *Submission 20*, p. 3.

11 *Trade Practices Act 1974* (Cth), section 74(2)

> The issue with regard to architects and engineers is we believe that they fall into a special category as far as their relationship to their client is concerned; that is that, while they come up with designs, specifications and so on in accordance with whatever a particular client wishes, in the implementation of those specifications, designs, contracts and so on a fairly significant third party intervenes.[12]

The main concern was the application of the 'fitness for purpose' guarantee. Consult Australia put forth an example of how this could result in unscrupulous conduct by consumers.

> …the really big difference here is that most consumers of engineering and architectural services do not have the skill-set required to understand fully what they are signing off on. Once again I give the example of the family home. The drawings that you get from the engineer or architect can be explained to you. However, your brief could have been, 'I want a room to be light and airy,' for example, and the engineer says, 'Once you take into account your council considerations and your total floor space and your budget in terms of how big this house can be, we have given you this room that is three by four with this many windows' or whatever might be the case. In the engineer's or architect's mind that might equate to 'light and airy' for that room. However, your definition of light and airy and my definition of light and airy may be two completely different things. This is where the ambiguity arises.[13]

Similarly, the Australian Institute of Architects expressed concern about the removal of the exemption as well.

> The Institute strongly objects to the inclusion of architects and engineers as service suppliers subject to the proposed statutory guarantee to consumers of fitness for purpose. The statutory guarantee would then apply to consumers who engage an architect for their house, but not to those who will on-sell their home as a developer.[14]
>
> There is no evidence that an additional head of liability is necessary or that it addresses a systemic failure in the recourse consumers presently have for loss attributed to architects, through negligence, misleading and deceptive conduct under s.52 or s.51A of the TPA, and/or contractual claims.[15]
>
> No substantiated reasons appear to have been advanced for the removal by s.61 of the Australian Consumer Law Bill No. 2, of the exemption contained in the existing equivalent Trade Practices Act (TPA) section 74(2).[16]

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12 Senator Janine Haines, *Senate Hansard*, 30 April 1986, p. 2053.

13 Ms Megan Motto, Chief Executive Officer, Consult Australia, *Proof Committee Hansard*, 28 April 2010, p. 26.

14 Australian Institute of Architects, *Submission 16*, p. 3.

15 Australian Institute of Architects, *Submission 16*, p. 3.

16 Australian Institute of Architects, *Submission 16*, p. 3.

Concerns were raised by Coalition Senators as to the possibility of game playing by clients who might seek to avoid final repayments.

> It is incredibly common. As I said, the litigiousness in our market is incredibly common, unfortunately. Clients will often seek to avoid making final payments of professional fees by deeming something to be unacceptable in the end product, and rather than holding up just the fees for the particular party involved they will hold up all fees. Particularly this is the case when an engineer or architect also works as a project manager on site for a home. They will hold up the final architectural or engineering payments because the cornices on a particular room have not been finished to their liking or a tile is cracked in the bathroom and has not been replaced or whatnot. These are, once again, faults of tradespeople. It is not something that is within the jurisdiction or ambit of the engineer or architect.[17]

It is the position of the Coalition that the exemption for architects and engineers should remain, as their role as designers rather than suppliers puts them in a unique position. Despite the comments in the Chair's Report in paragraphs 4.87 and 4.88, the Coalition Senators believe that given the litigious nature of the Australian market, there is justification for maintaining this exemption.

Recommendation 3:

The Coalition recommends that the exemption at section 74(2) of the current Trade Practices Act 1974 be included in the *Trade Practices Act (Australian Consumer Law) Bill (No. 2) 2010*.

Unsolicited Selling

The Coalition believes that there should be more strict definitions for "unsolicited consumer agreements" to allow for the circumstances listed in Recommendation 6.

Likewise, Recommendation 7 is supported by the Coalition. This is an area that requires further work and consultation.

Product Safety Reporting

Firstly, the Coalition supports Recommendation 8 at paragraph 6.30, as it is important that all the relevant provisions relating to product safety are reviewed to ensure that there is no unnecessary red tape, an appropriate level of confidentiality and any amendments to definitions.

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17 Ms Megan Motto, Chief Executive Officer, Consult Australia, *Proof Committee Hansard*, 28 April 2010, p. 27.

Broadness of reporting requirements

There was considerable debate about the form that any reporting should take. One method of reporting is product hazard reporting (also known as risk reporting), rather than the incident reporting system that is currently in place.

> The test for association between a product and an injury is not defined and has not been tested in law. The ATA would prefer the more usual test of causation, i.e. a product may be associated with an injury but not the cause of it, e.g. a consumer has a heart attack while riding a bike. Suppliers should only be required to report goods where it has been established that the injury was caused by the good. There is sufficient case law surrounding causation to provide a clear understanding as to whether an injury was caused by the good.[18]
>
> Hasbro submits the focus of any reporting regime should be *products*, not *incidents*; specifically the focus should be on defects in products which present risks of serious injury or death.
>
> The proposed "association" test in Part 3-3, Division 5 would significantly increase the enforcement burden of government to review a large number of incident-based notifications, of which Hasbro considers a significant proportion will not relate to genuine health and safety concerns arising from issues with the product. As Hasbro indicated in its Draft RIS submission, each year thousands of bicyclists in Australia are treated in hospital emergency rooms for injuries sustained in cycling accidents.2 Yet, to enhance the safety of bicycles, the focus should be on those accidents where there is evidence of a product defect (e.g. faulty brakes or sub-standard design or construction), rather than accidents caused by a myriad of other factors. Incident-based notifications would not meaningfully advance efforts to identify products that present an unreasonable risk and could divert both the supplier's and government's attention and resources away from those issues that merit serious consideration.[19]

This was reflected in some of the testimony from Hasbro.

> Where we are coming from is we wholeheartedly agree with the objectives of the mandatory reporting requirement, which is to have earlier access to information about product risks and to get that information from the place where government has said it can be most reliably obtained, which is from business, from the suppliers. However, under the current proposal, which is a proposal that all incidents, all accidents, be reported, the focus of the information which is being sought is the accident; it is not the risk with the product. The concern we see is that there is some valuable information which will be reported and that is the information about the product risk but there is an enormous amount of extra information which is going to be reported for these reasons. Firstly, there will be reports about known risks. Products have risks. We have just heard from the motor vehicles people and

18 Australian Toy Association, *Submission 42*, p. 1.

19 Hasbro Australia Limited¸ *Submission 6*, paragraphs 6.2 – 6.4, p. 5.

> we know that there are going to be accidents associated with motor vehicles, but unless the report relates to a defect with the product, it is not of assistance, and unless it is a new defect, it is not of assistance.[20]

The Coalition believes that product hazard reporting is the best method to take. This means that the incidents are reported quickly and efficiently, without excessive amounts of red tape.

Recommendation 4a:

The Coalition recommends the following as the text for Section 131:

1. If:

(a) a person (the supplier), in trade or commerce, supplies consumer goods; and

(b) the supplier becomes aware of information which reasonably supports the conclusion that those consumer goods:

(i) fail to comply with an applicable safety standard, information standard, interim ban or permanent ban;

(ii) contain a defect which could create a substantial product hazard; or

(iii) create an unreasonable risk of death or serious injury or illness to any person,

the supplier must, within 2 days of becoming aware of that information, give the Commonwealth Minister a written notice that complies with subsection (4).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

2. Subsection (1) does not apply if the supplier has actual knowledge that the Commonwealth Minister has been adequately informed of such:

(a) failure to comply with an applicable safety standard, information standard, interim ban or permanent ban;

(b) defect which could create a substantial product hazard; or

(c) unreasonable risk of death or serious injury or illness to any person.

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20 Mr David McCredie, Hasbro Australia Limited, *Proof Committee Hansard*, 30 April 2010, p. 24.

3. Without limiting subsection (1), the ways in which the supplier may become aware of information as mentioned in subsection (1)(b) include receiving the information from any of the following:

(a) a consumer;

(b) a person who re-supplies the consumer goods;

(c) a repairer or insurer of the goods;

(d) an industry organisation or consumer organisation.

4. The notice must:

(a) identify the consumer goods; and

(b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given:

(i) when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;

(ii) the nature of any failure to comply with an applicable safety standard, information standard, interim ban or permanent ban;

(iii) the nature of any defect which could create a substantial product hazard;

(iv) the nature of any unreasonable risk of death or serious injury or illness to any person;

(v) if the substantial product hazard may have caused any death or serious injury or illness, the circumstances in which that death or serious injury or illness occurred, and, in the case of a serious injury or illness, the nature of that serious injury or illness;

(vi) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.

5. The giving of the notice under subsection (1):

(a) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to:

(i) the consumer goods; or

(ii) the death or serious injury or illness of any person; and

(b) may not be used as the basis for any criminal prosecution.

Recommendation 4b:

The Coalition recommends the following be inserted into section 3

serious injury or illness **means an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place), but does not include:**

> **(a) an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or**
>
> **(b) the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.**

substantial product hazard **means a product defect which (because of the pattern of defect, the number of defective products distributed in trade or commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.**

An additional issue was raised about the privacy associated with the reports being sent to the Minister. There was concern in a number of submissions about the confidentiality of the report:

> The 2006 Productivity Commission Report acknowledged the need to guarantee that reported information would be kept confidential, at least until further investigation concluded that the product did in fact pose an unacceptable safety risk. The Bill makes no provision for this and in fact the Bill does not deal at all with the disclosure or use of information provided to government through the mandatory reporting requirement.[21]
>
> Hasbro recognises that governments should be able to make use of information received in order to protect consumers from unsafe products, particularly where there is an immediate risk of harm. However much of the reported information would be confidential business information and, because reporting is to be required in such a short time frame, much would be unverified. Information released about unverified incidents may be misinterpreted by the public or the media, may give rise to false alarms and may cause serious reputational damage to businesses, even if it is later determined that the product was not at fault. These are not justifiable consequences of the reform.[22]

This is a valid concern, as the information received in those reports could include proprietary information and create unnecessary media problems for the company concerned. There is also the risk that the competitor products of any consumer good that is reported could receive negative publicity as well.

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21 Australian Toy Association, *Submission 42*, p. 2.

22 Hasbro Australia Limited, *Submission 6*, paragraph 8.3, p. 6.

Recommendation 4c:

The Coalition recommends the insertion of the following subsections within Section 131:

- **(6) The Minister must keep notices given under Subsection (1), and any communications with suppliers relating to the information contained in such notices, confidential and must not disclose any information contained in such notices to any person other than:**
    - **(a) another responsible Minister**
    - **(b) a regulator**
- **(7) A responsible Minister or regulator who receives information contained in a notice given under subsection (1) must keep that information confidential**
- **(8) Subsections (6) and (7) do not apply in relation to the disclosure of information if the supplier who gave that information to the Minister consents to its disclosure.**

Products already covered by comprehensive reporting regulations

It was submitted by the Motor Trade Association of Australia and the Federal Chamber of Automotive Industries that the duties created under sections 131 and 132 would duplicate existing provisions within the Act.[23] The argument was predicated on the justification that they already need to report under numerous state and territory regulations. They proposed that a specific industry-specific amendment should be included in the wording of section 131(2) (c) as an accident and its cause needs to be reported under the relevant state and territory regulations.

The Coalition suggests that an amendment could be made to section 131(2) to allow for the Minister to determine that a specific industry could be made exempt of the duties under sections 131 and 132, provided that those specific industries already have substantial reporting requirements.

Recommendation 5:

The Coalition recommends

- **The insertion of a subsection within Section 131(2):**
    - **If the supplier is in a kind of industry that has been exempted by the Minister**

23 Motor Trades Association of Australia, *Submission 24*, pp 3-4; Federal Chamber of Automotive Industries, *Submission 29*.

- **In determining the kind of industry to be exempted, the Minister must give regard to any currently existing Federal and State reporting framework and regulations**

Goods supplied 'of a particular kind"

There was concern about the requirement to report on goods supplied 'of a particular kind'. There is potential for an unintended consequence, where goods of a particular kind could include goods sold by competitors. It was put forward in submissions that

> …the reporting requirement will not be a "self-reporting" requirement, it would also be a requirement to report other suppliers' products. This would have two undesirable consequences:
>
> (a) The volume of reports required to be made would increase enormously.[24]

Treasury argues that suppliers will not be required to report on competitor products.

> Senator BUSHBY—…So the interpretation, which some of the submitters have suggested, which actually could apply or require competitors of a similar good to report is not actually the case?
>
> Mr Writer—That is not my reading of that provision.[25]

It is the Coalition's submission that if it is the intention of the bill not to require the reporting of competitors' products, then the bill needs to make this explicit.

Recommendation 6:

The Coalition recommends that a subsection of Section 131 be included:

- **If the supplier is not the supplier of those particular consumer goods associated with death, serious injury or illness**

Two day reporting deadline when suppliers 'become aware"

This is a provision that needs to be properly examined under Recommendation 8 at paragraph 6.30.

Multiple reporting of incidents

There was general concern about the issue of multiple reporting of incidents. The Coalition believes that this needs to be addressed in a way that does not unnecessarily increase the amount of red tape already experienced by businesses. It is important that this area receives further investigation to ensure that the onus of reporting does not wind up falling onto one point in the supply chain.

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24 Hasbro Australia, *Submission 6*, p. 3.

25 Mr Simon Writer, Treasury, *Proof Committee Hansard*, 30 April 2010, pp 38-39.

Recommendation 7:

The Coalition recommends that the Department and the Minister seek further advice as to how to minimise the resource-heavy impact of multiple reporting, with a view to reducing red tape.

Enforcement and dispute resolution

The reversal of the onus of proof was a major concern in several submissions.

> We believe that this can lead to significant accidental non-compliance which will be costly and time consuming to rectify. We would urge the government to slow down the process so that this legislation when it is put into effect can work more effectively.[26]

> …the bill provides that where an agreement is asserted to be an unsolicited consumer agreement, it is presumed to be an unsolicited consumer agreement unless proved otherwise. The committee does not consider this reversal necessary as it should not be unduly difficult for the consumer to establish that a particular agreement fulfils the elements of an unsolicited consumer agreement. Even more concerning, the evidential burden regarding testimonials has been reversed for criminal prosecutions. The committee does not support the reversal of the evidentiary burden in relation to the proposed subsection 151(2). Although the imposition of an evidentiary burden stops short of an actual reversal of onus, the finding of a criminal contravention is a very serious matter and should require all elements of the offence to be proved against the accused.[27]

While evidence was given that there are some situations where the reversal of the onus of proof is appropriate,[28] it was accepted that when the consumer is prosecuting the matter, the consumer is in the position of power by having the best evidence and recollection of the circumstances.[29]

Lack of consultation and Drafting issues

A number of submissions highlighted the lack of consultation compared to *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* (Cth), also known as ACL 1 Act.

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26 Professor Bob Baxt, Partner, Freehills, *Proof Committee Hansard*, 29 April 2010, p. 37.

27 Ms Jacqueline Downes, Partner, Allens Arthur Robinson and Trade Practices Committee, Business Law Section, Law Council of Australia, *Proof Committee Hansard*, 28 April 2010, p. 42.

28 Mr Stephen Ridgeway, Deputy Chairman, Trade Practices Committee, Business Law Section, Law Council of Australia, *Proof Committee Hansard*, 28 April 2010, p. 44

29 Mr Stephen Ridgeway, Deputy Chairman, Trade Practices Committee, Business Law Section, Law Council of Australia, *Proof Committee Hansard*, 28 April 2010, p. 44

> As a preliminary matter we not that, in contrast with the ACL 1 Act, regardless of one's views on the content of the current Bill, in our view the provisions have not been subject to appropriate public consultation.[30]

Similarly, some submissions pointed out that the relevant professional and industry bodies were not consulted.

> We were also puzzled as to why there has been no consultation on this proposal with the relevant professional and industry bodies, other than through the review of implied terms by the Commonwealth Consumer Affairs Advisory Council, which did not initially raise the issue of removal of the exemption. There appears to be no market failure to justify taking such an approach, and no evidence that it will improve consumer protection.[31]

> DSAA makes the point that reference to regulating unsolicited selling in material released as recently as November 2009 (the draft Regulation Impact Statement) had not defined the impact of the proposals on business and that the RIS process would have benefited enormously had business been able to respond to what is now proposed in the unsolicited selling provisions. DSAA submits it is grossly unfair that the implications of these proposals for genuine direct selling activity must be examined and determined by 21 May 2010 and against the broader coverage of the ACL. This submission records our present analysis but further issues are likely to emerge as its effect is considered by members.[32]

This was reflected in the evidence given before the committee in the four hearings held, where a number of witnesses told the committee about the lack of consultation.

> Our concern is that, in the original review paper in March 2009, no indication was made that this exemption was actually going to be something that was looked at. So our understanding is that, of the 30-odd submissions that were made at the time, other than the submission by Consult Australia and the Institute of architects, none made any reference whatsoever to that particular exemption. So there was no complaint against the exemption from any other groups in the original submissions. Despite that, a decision had been taken in the final report to remove the exemption. However, no further consultation has happened with the parties that may have been affected by that particular provision. And there are not that many of those parties in Australia. There are only really four major bodies that represent engineers and architects in Australia. So it would not have been a difficult task to consult with those four bodies.[33]

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30 Consumer Action Law Centre, *Submission 28,* p. 3.

31 Engineers Australia, *Submission 34*, p. 2.

32 Direct Selling Association of Australia, *Submission 17*, p. 9.

33 Ms Megan Motto, Chief Executive Officer, Consult Australia, *Proof Committee Hansard*, 28 April 2010, p. 24.

> One broader point about that is that because there has not been an exposure draft consultation process with the bill there has been no opportunity for Telstra or stakeholders like us to engage in the real details of the provisions. That is a real shame, which means that you, as senators, are going to have to grapple with all of those little details that you would not normally want to.[34]
>
> Under the COAG agreements there was meant to be April to June exposure draft consultation process, and instead this bill was drafted and introduced into the parliament in March. It probably would have taken three months.[35]
>
> In fairness to its members, the DSAA records its disappointment at the lack of adequate consultation on the unsolicited selling provisions. Its only opportunity to comment on this threat to the direct selling industry has been a 10-day turnaround period for submissions on generalised commentary on proposals in the draft regulation impact statement last November and, within DSAA constraints, literally days to analyse almost 400 pages of proposed law and 700 pages of explanatory memorandum.[36]
>
> MTAA is also disappointed with the level of consultation undertaken by the government in relation to these changes. The government appears to have adopted the report of the Commonwealth Consumer Affairs Advisory Council without any discussion with business of the impact of the views contained in that council's report.[37]

The level of consultation, or lack thereof, particularly with professional and industry bodies, is of considerable concern to the Coalition. This has lead to some poorly drafted legislation as pointed out in the submissions and suggested before Committee hearings.

The Chair's report highlighted a number of potential drafting errors but expresses concerns at Recommendation 9. This recommendation leads the Coalition to believe that this is part of the continued legacy of the Rudd Government of rushing legislation into Parliament without proper drafting as a result of poor consultation.

Recommendation 8:

The Committee recommends that Treasury investigate the claimed drafting errors reported in Chapter 8 of this report and the failure of the Government to consult with stakeholders in the manner prescribed by COAG's implementation plan.

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34 Ms Catriona Lowe, Co-Chief Executive Officer, Consumer Action Law Centre, *Proof Committee Hansard*, 29 April 2010, p. 47.

35 Ms Nicole Rich, Director, Policy and Campaigns, Consumer Action Law Centre, *Proof Committee Hansard*, 29 April 2010, p. 48.

36 Mr Anthony Greig, Chairman, Direct Selling Association of Australia, *Proof Committee Hansard*, 30 April 2010, p. 9.

37 Mr Michael Delaney, Executive Director, Motor Trades Association of Australia, *Proof Committee Hansard*, 30 April, 2010, p. 16.

Conclusion

The Coalition believes that there is merit in a universal consumer law bill, and is looking forward to working with the Minister in discussing the recommendations in this report with a view to dealing with the concerns raised by both the Chair and the Coalition.

Senator Alan Eggleston **Senator David Bushby**

Deputy Chair