

JOINT COMMUNIQUÉ

MINISTERIAL COUNCIL ON CONSUMER AFFAIRS MEETING FRIDAY 23 MAY 2008

The Ministerial Council on Consumer Affairs (MCCA) held its nineteenth meeting in Auckland, New Zealand today. MCCA comprises Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection laws, trade measurement and credit laws.

Members of the Council are:

Hon Judith Tizard MP (Chair, New Zealand)
Hon Chris Bowen MP (Commonwealth)
Hon Tony Robinson MP (Victoria)
Hon Linda Burney MP (New South Wales)
Hon Kerry Shine MP (Queensland)
Hon Sheila McHale MLA (Western Australia)
Hon Jennifer Rankine MP (South Australia)
Hon David Llewellyn MHA (Tasmania)
Mr Simon Corbell MLA (Australian Capital Territory)
Hon Chris Burns MLA (Northern Territory)

Apologies were received from the Hon Chris Burns MLA, and the Mr Simon Corbell MLA.

MCCA's objective

MCCA's objective is to provide the best and most consistent protection for Australian consumers through its consideration of consumer affairs and fair trading issues of national significance and, where possible, development of consistent approaches to those issues.

MCCA's principal strategies

To achieve this objective, MCCA's principal strategies are to facilitate and encourage:

1. nationally coordinated and consistent policy development and implementation by all jurisdictions, including legislative consistency of major elements of consumer protection law and emerging policy issues (*Policy and Legislative Harmonisation*);
2. consistency of policy and enforcement decisions for the suppliers of goods and services within a national marketplace (*Consistent Enforcement*);
3. access to education and information for consumers and suppliers (*Education*);
4. co-operation and consultation on consumer policy between Australia and New Zealand (*Australia/NZ Co-operation*); and
5. research into consumer concerns and trade practices (*Research*).

MCCA is supported by a Standing Committee of Officials of Consumer Affairs (SCOCA).

MCCA considered a range of consumer issues in the context of these strategies. Outcomes of the meeting included:

Strategy 1 - Policy and Legislative Harmonisation

Review of Australia's Product Safety Policy

MCCA today agreed to a significant reform of product safety regulatory arrangements in Australia. This reform delivers on COAG's commitment to address overlap and inconsistency between jurisdictions in the existing product safety regulatory arrangements.

Ministers agreed that:

- The Commonwealth will assume responsibility for the making of permanent product bans and standards under the Trade Practices Act 1974 (TPA). The States and Territories will retain their power to issue interim product bans. Interim bans will apply for 60 days. Interim bans can be extended for 30 days and then for a further 30 days in exceptional circumstances at the discretion of the Commonwealth Minister.
- The Australian Competition and Consumer Commission and the State and Territory offices of fair trading will share responsibility for enforcement of the product safety law.
- Any jurisdiction may refer a proposal for a permanent ban or standard to the ACCC and there will be requirements for the ACCC to communicate its assessment to the Commonwealth Minister and to MCCA.

It is anticipated that the revised regulatory arrangements will be fully implemented by mid 2010 and will be subject to review by MCCA two years after commencement. Procedures will be put in place for States and Territories to have input into the policy development process as part of a comprehensive intergovernmental agreement.

The Chair of MCCA will write to the Chair of COAG's Business Regulation and Competition Working Group, advising of these decisions.

Ministers thanked all industry groups, consumer groups, regulators and individuals that have participated in consultation on this issue, either directly to MCCA or through the Productivity Commission's *Review of Australia's Consumer Product Safety System*.

New Zealand as the current Chair of MCCA welcomed today's agreement and the potential it brings for enhanced consumer product safety Trans-Tasman.

Review of Australia's Consumer Policy Framework

Ministers received a presentation from Mr Robert Fitzgerald, presiding Commissioner, and Mr Ralph Lattimore, Assistant Commissioner, on the findings of the Productivity Commission's final Report on the Review of Australia's Consumer Policy Framework.

Ministers noted the Final Report of the Productivity Commission's Review of Australia's Consumer Policy Framework and thanked the Commission for its work in preparing the report and also expressed their appreciation to all of those who have given the Commission the benefit of their views.

Ministers committed to meeting the Council of Australian Government's deadline of October 2008 for developing enhanced national processes to improve the consumer policy framework (including legislative and regulatory structures), drawing on the Commission's Final Report.

Ministers welcomed the opportunity to work together to develop a world-leading consumer policy framework to benefit Australian consumers, and noted that these reforms could provide a potential net gain to the Australian community.

Ministers agreed that this is a unique opportunity to develop a new national approach to consumer policy, based on the recommendations in the Final Report. They noted that these reforms would serve to overcome inefficiencies resulting from the division of responsibilities between Australian Governments so as to deliver better outcomes for consumers, lower costs for businesses and more speedily tackle practices that harm consumers. Ministers also agreed that the new national approach to consumer policy within Australia would have flow on benefits for consumers in New Zealand.

Ministers also agreed, in principle to:

- Adopt a common overarching objective and supporting operational objectives for Australian consumer policy based on the Commission's recommendations: 'to improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly', along with the Commission's six proposed operational objectives.
- Support the development and implementation of a new national harmonised, generic consumer law to apply in all Australian jurisdictions, based on the consumer protection provisions of the Trade Practices Act 1974 (TPA), with appropriate amendments which recognize best practice in state legislation.
- Identify provisions in existing State/Territory fair trading laws which should be retained as part of a national generic consumer law and consider the need for new provisions which would enhance the TPA into the future. This would include consideration of provisions dealing with unfair contract terms and heightened enforcement powers, as identified by the Productivity Commission and provisions on naming and shaming as discussed by the States and Territories.
- That SCOCA commence an assessment of the elements to be included in a new generic consumer law. It is also intended that there will be consultation with stakeholders on the new generic law.
- Joint enforcement of the new national generic consumer law by the Australian Competition and Consumer Commission (ACCC) and State and Territory consumer regulators. This recognises that in some instances individual State and Territory Governments might choose to develop agreements with the Australian Government for greater regulatory involvement by the ACCC.
- Undertake further work, informed by the PC report, to determine the best legislative model to create and maintain uniform Commonwealth and State/Territory consumer law.
- Implement a nationally harmonised system of product safety regulation as agreed in response to Agenda Item 5.
- Develop an improved framework for the regulation and enforcement of credit, recognising that credit providers are increasingly operating at a national level, and noting the recommendations of the Productivity Commission. Await the Green Paper to inform a possible way forward.

Ministers also agreed to:

- Note the Productivity Commission's recommendation that COAG's Business Regulation and Competition Working Group, in consultation with the Ministerial Council on Consumer Affairs, should instigate and oversee a far reaching review and reform program for trade licensing and industry-specific consumer regulation.

- The Standing Committee of Officials of Consumer Affairs (SCOCA) progressing a response to the Productivity Commission's Final Report and report to MCCA. The Commonwealth will coordinate this process with active engagement from the States/Territories.
- Give further consideration to the establishment of a framework providing enhanced advice to Ministers on emerging significant consumer policy issues and an improved research capacity and consultation mechanisms.
- Meet in August 2008 for the purposes of agreeing a MCCA response to the Commission's recommendations for submission to COAG in October.

Review of Mandatory Comparison Rates

In line with the recommendations of an independent review, the Ministerial Council on Consumer Affairs agreed to reform the scheme of mandatory comparison rates in the Consumer Credit Code. There was in principle agreement to repeal the requirement to provide consumers with "schedules" of comparison rates, while the format and calculation of comparison rates in credit advertisements will be substantially revised. The Review will be released publicly.

Fringe Lending

The Ministers appreciate the time, effort and collaboration of consumer and industry stakeholders during extensive consultation on initiatives to address unfair practices in parts of the fringe credit market. The Ministers look forward to progressing amendments to the Uniform Consumer Credit Code during 2008.

Arrangements for Progressing Other Consumer Protection Outcomes from the March COAG Meeting (Trustee Companies, Mortgage Credit and Advice, Margin Lending, Non-deposit Taking Institutions)

COAG in March of this year decided in principle that the Australian Government will assume responsibility for the regulation of mortgages, mortgage advice and margin loans. It also requested that other consumer credit products that would best sit within the Australian Government's regulatory responsibility should be identified. MCCA has noted that Treasury will establish an implementation taskforce consisting of working level officials from the Australian Government and the States and Territories in order to discuss the way forward for progressing the in-principle decision by COAG in relation to mortgages and margin loans. This will also include identification of the appropriate regulatory arrangements for consumer credit products other than home loan mortgages and margin loans. MCCA will consider this matter further at its August meeting.

Other issues

Statutory Warranties

Ministers today discussed the effectiveness of statutory warranties law which provides fundamental rights to consumers when they purchase goods or services. These laws have their origin in the late 1800's and given the fundamental changes that have taken place in the market, it is not surprising that they do not operate as intended.

Ministers agreed that jurisdictions would take action to raise consumer and business awareness of the laws, however, in the longer term, it was agreed that the laws needed a comprehensive review.

Ministers have agreed that the Commonwealth Government initiate a review of the implied terms/statutory warranty regime in the Trade Practices Act 1974 and state and territory fair trading/goods legislation with the aim of developing clear codified law that can be applied nationally.

Wine Labelling Reforms

The States and Territories have agreed to expedite bringing the World Wine Trade Group's Agreement on Requirements for Wine Labelling into force in their respective jurisdictions.

The labelling changes will allow wine producers to place the measurement statement anywhere on a wine container (except the base or cap) provided that the measurement statement can be viewed together with the country of origin, alcohol content and product description.

Wine producers will have the choice of complying with the new wine labelling rules or the existing rules, which require the measurement statement to be placed on the front label.

Assessments by the Australian Bureau of Agricultural and Resource Economics have estimated that the proposed changes in wine labelling will save the Australian wine industry \$25 million in labelling costs per year. Wine producers in South Australia are already benefiting from the new labelling rules due to changes made in that State in November last year.

Budget Airlines

Ministers discussed the Australia and New Zealand wide relevance of findings and recommendations from a Victorian investigation of budget airline consumer issues. The Consumer Affairs Victoria inquiry followed an announcement by the Victorian Minister for Consumer Affairs, Hon. Tony Robinson MP, in February 2008.

Ministers noted that complaints against airlines to consumer agencies had increased over this financial year following a series of incidents where passengers were stranded due to flight delays and cancellations.

Ministers agreed that the consumer issues identified during the Victorian inquiry had relevance to all jurisdictions given the coverage of airline carriers in Australia and New Zealand.

Ministers supported the development of best practice airline and airport customer service charters, subject to the development of a RIS assessment, and requested the Commonwealth consider this issue as part of its review of national aviation policy.

Tasmania Minister for Consumer Affairs to be next Chair of MCCA

As of 1 August, the new Chair of the Ministerial Council will be the Tasmanian Attorney-General and Minister for Justice, The Hon David Llewellyn MHA

Next Meeting

Ministers agreed to meet again in early August 2008.