

JOINT COMMUNIQUÉ

MEETING OF MINISTERS FOR CONSUMER AFFAIRS

FRIDAY 7 DECEMBER 2012
SYDNEY, NEW SOUTH WALES

FINAL

Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection met in Sydney, New South Wales, today.

Members of the Forum are:

Hon Anthony Roberts MP (New South Wales - Chair)
Hon David Bradbury MP (Commonwealth)
Hon Michael O'Brien MP (Victoria)
Hon Jarrod Bleijie MP (Queensland)
Hon John Rau MP (South Australia)
Hon Simon O'Brien MLC (Western Australia)
Mr Simon Corbell MLA (Australian Capital Territory)
Hon Nick McKim MP (Tasmania)
Hon John Elferink MLA (Northern Territory)
Hon Simon Bridges MP (New Zealand)

Apologies were received from Mr Simon Corbell (Australian Capital Territory), the Hon Nick McKim MP (Tasmania) and the Hon Simon Bridges MP (New Zealand).

The Legislative and Governance Forum on Consumer Affairs' (CAF'S) objective

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

CAF was previously the Ministerial Council on Consumer Affairs (MCCA).

The Australian Consumer Law

Implementation of the Australian Consumer Law: Report on progress II (2011-12)

Ministers released the second report on the progress of the implementation of the ACL, highlighting the coordinated enforcement and education initiatives that have occurred during the period between 1 July 2011 and 30 June 2012.

Ministers commended the critical work that was undertaken by consumer agencies which included:

- improving consumer and business awareness of their rights and obligations including through awareness campaigns on consumer guarantees and unfair trading practices in regional and remote Indigenous communities;
- communications strategies that support compliance activities such as the travelling conmen campaign which saw 30 prosecutions against 28 individuals for 105 breaches of the ACL and state laws;
- national projects to identify and respond to emerging consumer issues such as group buying;
- timely support for consumers including national responses to consumer issues including to airline groundings throughout 2011-12; and
- the ACCC obtaining \$1 million in penalties against an energy retailer and its sales agent that engaged in illegal door-to-door selling practices in breach of the Unsolicited Consumer Agreement provisions.

The report outlines a number of case studies that demonstrate coordinated national responses to a range of consumer issues that support all consumers.

Ministers acknowledged the good work already achieved and agreed there must be a continued commitment to the ongoing enforcement of the ACL.

Review of the Australian Consumer Law

Ministers discussed preparations for the upcoming review of the Australian Consumer Law. It has been two years since the Australian Consumer Law was introduced on 1 January 2011. In this time, Commonwealth, State and Territory consumer agencies have been working to implement the law, and efforts have been focused on raising consumers' awareness of their rights, and business' understanding of their obligations, under the law.

Ministers consider the review should assess the effectiveness of the Australian Consumer Law and the consumer policy framework, including implementation of the law, consumer policy development, consumers' and business' awareness of the law, and education, compliance and enforcement activities. The review will commence in 2016.

Review of Inconsistent Legislation

Ministers reaffirmed their commitment to an integrated and harmonised approach across all states and territories to protect consumers, especially the most vulnerable in our community. The Australian Consumer Law supports this commitment.

Ministers agreed that a strategic approach should be adopted. Where possible, legislation that is inconsistent with the Australian Consumer Law should be reviewed and either amended or repealed to remove inconsistencies, targeting those areas of greatest concern. This will help to reduce regulatory duplication, provide greater certainty to business, and reduce compliance burden and thereby costs to consumers.

Single pricing amendments for restaurants and cafés

Ministers noted that the consultation process has commenced on the Commonwealth's proposal to give effect to a Productivity Commission recommendation in its 2010 *Annual Review of Regulatory Burdens on Business: Business and Consumer Service*. The proposal involves amending the single pricing provision in the Australian Consumer Law as they relate to restaurant and café menu surcharges for specific days (such as public holiday surcharges) and seeks to deliver simpler and clearer requirements for restaurants and cafes, avoiding the need for separate menus on those days.

Exposure drafts of the proposed amendments have been released on the Treasury website for public comments until 18 January 2013. CAF will consider and decide on the issue following the close of the consultation process, early in 2013.

AUCLA - Co-operatives National Law

Significant progress has been made with bringing in the new national uniform co-operatives laws during the 2012 International Year of Co-operatives. In May 2012, the initial template legislation was passed by the NSW Parliament. Other States and Territories are working on their application or alternative legislation which will introduce the new laws in their jurisdictions.

The draft Co-operatives National Regulations, which support the operation of the new laws, were publicly released for consultation on 20 November 2012. Consultation will close on 7 January 2013. NSW Fair Trading is hosting the consultation on its website on behalf of the other jurisdictions. Stakeholders can have their say via a short online survey or they may also provide their comments by submission. All stakeholder comments will be considered before the draft National Regulations are finalised.

Ministers have unanimously approved an extension of time for States and Territories to introduce the CNL or alternative consistent legislation until 18 May 2014 to reflect potential implementation issues in some jurisdictions. Importantly, this extension will not impede those States and Territories in a position to commence the new legislation sooner being able to do so, and jurisdictions will continue to make best endeavours to commence as soon as possible.

Commencement of the CNL in jurisdictions will occur when each State or Territory has made national and local regulations and the necessary administrative arrangements to enable smooth operation of the CNL or alternative consistent legislation as the case may be. Further transitional arrangements to assist co-operatives doing business across borders, before all jurisdictions have commenced their new laws, may be necessary. The inter-jurisdictional working group is investigating this matter and will report back to CAANZ and CAF by mid-2013 on this issue.

Other Consumer Affairs Issues

Ministers also discussed a number of other consumer affairs issues including:

- Gift Cards
- Energy Retailers and Solar Energy Retailers
- Egg Labelling

- **Consumer Protection in Travel Services**

Ministers today approved, by a majority, a Travel Industry Transition Plan (TITP). The Transition Plan provides

- a. a staged phasing out of the existing National Scheme, commencing with the proposed cessation of prudential supervision in mid-2013, followed by the repeal of travel agents' legislation by mid-2014;
- b. reliance on the Australian Consumer Law ('the ACL') and other generic incorporation laws, as well as industry-led regulatory mechanisms and market based remedies such as credit card charge backs to protect consumers;
- c. winding up the TCF and dedicating a proportion of remaining reserve funds (for those States and Territories who choose to adopt the TITP) to a range of purposes, including but not limited to:
 - stakeholder communication and education initiatives both as part of the implementation process for the recommended reforms and on a long-term basis;
 - one-off grant for consumer research and advocacy purposes;
 - one-off grant to fund development of an industry-led accreditation scheme by a national working party of government, industry and consumer representatives, ; and
 - paying any transitional compensation claims and the TCF's legal fees for undertaking cost recovery action relating to these claims; and
- d. funds will be redistributed according to the terms of the Trust Deed of the TCF.

In implementing the plan, governments and agencies will work with industry to ensure there is appropriate disclosure of consumer risk in agency transactions and in developing commercial solutions to address business insolvency.

The TITP will commence from 1 July 2013 with a view to full implementation in 2015.

All jurisdictions will cooperate to achieve implementation of the plan and South Australia and Western Australia will consider their position in light of the national scheme no longer operating.

- **Food Labelling**

Ministers welcomed the extensive work undertaken by Australian consumer agencies in response to concerns raised recently about a range of food labelling issues. Ministers agreed that the Australian Consumer Law has the necessary investigative and enforcement powers to effectively address food labelling concerns. Two particular issues that have been raised include the labelling of olive oils in Australia and country-of-origin labelling of food. In response to these issues, consumer agencies are progressing a comprehensive compliance and enforcement program to determine the level and nature of any misconduct by suppliers.

Ministers noted that an assessment of this extensive work program has not concluded with results to be finalised in 2013.

To complement compliance and enforcement activity, Ministers also welcomed the release of guidance material for consumers that explains Australia's country-of-origin labelling framework as well as information on the various terms commonly used on olive oil labels. These publications provide important guidance for consumers so they are able to purchase the best product for their needs. These publications and apps are available on consumer agency websites. Ministers encourage consumers to consider this advice when purchasing olive oil or considering country-of-origin labels on food products.

Ministers also encourage businesses to address any concerns consumers may have with value claims on food - for example, claims that certain foods are 'organic', 'halal' or 'kosher'. Consumer agencies have published guidance material for businesses and industry to assist them to establish, administer, monitor and comply with such claims. Ministers agree that industry is best placed to develop responses to concerns with value claims. This approach is consistent with the findings and recommendations of the recent review of food labelling law and policy by the Hon Dr Neal Blewett AC.

- **Release of public consultation paper on Fuel Price Boards**

Following an agreement reached on 6 July 2012 to work towards a consistent national framework on fuel price board signage, Ministers today released a public consultation paper on a proposed national petrol information standard.

The aim of the consultation paper is to stimulate discussion on fuel price transparency with a view to increasing competition and enabling consumers to accurately compare fuel prices at different retailers. The public consultation paper proposes three options:

1. No new regulation. Generic consumer protections against false, misleading and deceptive conduct, bait advertising and multiple pricing.
2. Basic national standard. Only undiscounted fuel prices on signs permitted, although fuel discount schemes may be included.
3. Detailed national standard. All fuel retailers must maintain a fuel price board, displaying in equal prominence the undiscounted prices of a specified minimum number of fuels.

During the consultation period, a working group of Commonwealth, State and Territory officials will meet with key stakeholders, including industry groups, motoring associations and consumer groups. The consultation period will end on 15 February, 2013.

The consultation will take into account matters such as remoteness and other location specific issues.

ATTACHMENT A

CAF's principal strategies

To achieve this objective, CAF'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*).