

JOINT COMMUNIQUÉ

MINISTERIAL COUNCIL ON CONSUMER AFFAIRS MEETING FRIDAY 8 MAY 2009

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

Members of the Council are:

Hon Lisa Singh MP (Tasmania - Chair)
Hon Chris Bowen MP (Commonwealth)
Hon Virginia Judge MP (New South Wales)
Hon Tony Robinson MP (Victoria)
Hon Peter Lawlor MP (Queensland)
Hon Troy Buswell MLA (Western Australia)
Hon Gail Gago MLC (South Australia)
Mr Simon Corbell MLA (Australian Capital Territory)
Hon Delia Lawrie MLA (Northern Territory)
Hon Heather Roy MP (New Zealand)

Apologies were received from the Hon Troy Buswell MLA, Mr Simon Corbell MLA and the Hon Delia Lawrie 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:

The Australian Consumer Law

Ministers welcomed the progress that the Commonwealth and States have made in delivering COAG's October 2008 agreement to implement a new national consumer law for Australia.

These important reforms mark a generational change in Australia's consumer laws and form a key element in the delivery of a seamless national economy. They will:

- introduce a single regime of national consumer protections for Australian consumers, giving them greater confidence in the goods and services they buy wherever they are;
- give Australia's consumer law regulators new and improved powers to enforce consumer laws in a nationally consistent way; and
- provide business with a single national law with which to comply, assisting in the development of a seamless national economy.

Ministers welcome the large number of public views that have been received from individual consumers and businesses and from groups that represent both businesses and consumers.

They noted that the information and consultation paper 'An Australian Consumer Law: Fair markets – Confident consumers' generated widespread interest in the community, and that SCOCA has to date received 101 submissions on the issues in the paper. These views will inform the preparation of the reforms and Ministers expressed their commitment to ensuring that an open and constructive dialogue with consumers and business is maintained as the reforms are developed.

A key element of the reforms is the new national provision on unfair contract terms. The Commonwealth is now developing, in close consultation with the States and Territories, legislation providing for a new national provision on unfair contract terms and for new national penalties, enforcement powers and consumer redress options, which will be introduced in the Winter Sittings of the Australian Parliament. This legislation will permit the States and Territories to apply the new national unfair contract terms law in time for its proposed commencement at the Commonwealth level on 1 January 2010.

Ministers agreed to a national product safety regulatory scheme at their May 2008 meeting, and this was adopted by COAG in July 2008. This reform will provide consistency in legislation and enforcement for businesses and provide enhanced enforcement to ensure that Australian consumers remain safe. Ministers noted that the preparation of legislation to introduce the new national scheme is well advanced and it is anticipated that legislation will be ready for introduction into the Australian Parliament by early 2010.

In October 2008, COAG also committed to improving and enhancing the text of the *Trade Practices Act 1974*, which will form the basis of Australia's new national consumer law, by including reforms based on best practice in existing state and territory consumer laws. At their next meeting, Ministers will consider a final list of the reforms to be included in the Australian Consumer Law. Ministers noted that these reforms will form part of the legislation that will also introduce a new national product safety system, to be introduced into the Australian Parliament in early 2010.

Ministers emphasised that the Australian Consumer Law will be a living law, which will continue to evolve in line with developments in Australia's consumer markets. They reiterated the commitment of the Commonwealth, the States and the Territories to work collaboratively to ensure that it remains current and effective, through the processes set out in the Inter-Governmental Agreement, subject to the agreement of COAG.

Ministers noted the work being done by Australia's consumer agencies to ensure that arrangements for cooperation and collaboration are in place for the commencement of the Australian Consumer Law. This will include:

- the development of formal arrangements in relation to enforcement cooperation and collaboration, market surveillance, complaint handling and information sharing and consumer and business education and compliance; and
- the development and publication of national guidance on the new national unfair contract terms provision and common approaches to national enforcement issues in time for the commencement of the Australian Consumer Law.

New Zealand is actively participating in the development of the Australian Consumer Law, as part of ongoing trans-Tasman cooperation and understanding on consumer policy development and enforcement. This collaboration builds on the already close relations between our two nations in consumer policy and enforcement.

Ministers noted that the Commonwealth, the States, the Territories and New Zealand would, consistent with the objectives of the Australia/New Zealand Closer Economic Relations Trade Agreement, work to foster improved communication, cooperation and coordination between the administration and enforcement of consumer law in Australia and New Zealand.

Intergovernmental Agreement for the Australian Consumer Law

A key element of the new Australian consumer policy framework will be the collaboration of all Australian governments in policy development, enforcement and the administration of the Australian Consumer Law.

This will be reflected in an Intergovernmental Agreement (IGA), to be signed by COAG.

Ministers agreed draft text for the IGA and noted the important role it plays in outlining, among other things, the manner in which the Australian Consumer Law will be implemented, the process for amending the Australian Consumer Law, arrangements for the administration and enforcement of the law (with specific detail on the administration of product safety), the need for inter-agency memoranda of understanding, and the need to issue national guidance on a number of issues.

Harmonisation of conduct provisions for occupations in the national licensing system

MCCA has agreed to consider and review conduct provisions of occupations that are part of the National Licensing System and report on the feasibility of national harmonisation of any conduct provisions, whilst ensuring that standards are not compromised.

Regulation of debt collectors

MCCA agreed that the regulation of debt collection and debt collectors would be placed on the MCCA forward agenda with the aim of minimising the regulatory overlap between the regulation and licensing of debt collectors currently administered by the states and territories and the new national consumer credit regime.

Standing Committee report: Harmonisation of Legal Systems

MCCA noted the report by the Parliamentary Standing Committee on Legal and Constitutional Affairs, titled '*Harmonisation of legal systems within Australia and between Australia and New*

Zealand. It also noted that the Australian Government's response to the report has accepted a number of recommendations which are relevant to MCCA.

Harmonisation of implied warranties in consumer contracts

One of the Parliamentary Committee's recommendations was for harmonisation between Australian and New Zealand legislation on non-excludable implied warranties in consumer contracts. MCCA agreed that many benefits can flow from increased legal harmonisation between Australia and New Zealand. To this extent, MCCA noted the Commonwealth's announcement that a review will be conducted into statutory implied conditions and warranties by the Commonwealth Consumer Affairs Advisory Council (CCAAC). In the context of this review, the Commonwealth will examine the scope for legal harmonisation of non-excludable implied consumer warranties between Australia and New Zealand. CCAAC will provide its final report during 2009.

MCCA also noted that the National Education and Information Advisory Taskforce will conduct a baseline study on consumer and supplier issues relating to statutory warranties and refunds. The study will involve comprehensive national survey and interview based research and will be completed by September 2009.

National harmonisation of consumer protection legislation

The Parliamentary Committee also recommended MCCA explore the national harmonisation of consumer protection legislation. Ministers noted that reforms are currently underway to implement COAG's decision on 2 October 2008 to create a new national consumer law. The new national consumer law will be fully implemented by the end of 2010.

Home builders' warranty insurance (HBWI)

MCCA noted the findings of the Senate Economics Committee's report into Australia's mandatory last resort home builders' warranty insurance (HBWI) scheme and agreed to refer this matter to SCOCA to consider as part of the review of the harmonisation of conduct provisions for the national licensing system. Ministers agreed to place this issue on the MCCA Strategic Agenda.

Review of consumer protection measures in the travel and travel related services market

Ministers acknowledged emerging concerns about the appropriateness of the current scheme for protecting consumers of travel related services. They directed SCOCA to commission a review of consumer protection measures in the travel and travel related services market, including the role of the Travel Compensation Fund.

MCCA Governance

MCCA endorsed a plan to reform the governance of MCCA, to increase MCCA's capacity to progress consumer protection reforms in alignment with the COAG's national reform agenda to deliver a seamless national economy.