

JOINT COMMUNIQUÉ

MINISTERIAL COUNCIL ON CONSUMER AFFAIRS MEETING FRIDAY 4 DECEMBER 2009

The Ministerial Council on Consumer Affairs (MCCA) held its twenty-second meeting in Perth, Western Australia 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:

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

Apologies were received from the Hon Virginia Judge MP, the Hon Lisa Singh MP, the Hon Delia Lawrie MLA, and Mr Simon Corbell MLA.

The National Consumer Policy Objective

On 15 August 2008, MCCA agreed to the national consumer policy objective:

‘To improve consumer well being through consumer empowerment and protection fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.’

This is supported by six operational objectives:

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

MCCA's Strategic Priorities

1. Complete the Council of Australian Governments' (COAG) consumer law reforms, with a particular focus on the Australian Consumer Law.
2. Rationalise and harmonise other consumer laws.
3. Articulate the benefits of rational, robust and effective consumer policy.
4. Promote the achievement of consumer outcomes under the Australian and New Zealand Single Economic Market Framework Agenda.
5. Develop a consistent approach to gathering and analysing intelligence on issues in consumer product and service markets.
6. Implement a national communication strategy to educate businesses and consumers on Australia's new consumer laws.
7. Develop and implement a policy and research program to inform MCCA's consumer policy agenda.
8. Develop the national capacity of Australia's consumer agencies.

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

Today the MCCA agreed to the final form of the Australian Consumer Law, building on previous decisions about key elements of the Law at the 15 August 2008 and 8 May 2009 meetings of the Ministerial Council.

The Australian Consumer Law represents the largest reform to Australia's consumer laws in a generation and will take full effect on 1 January 2011. It will introduce a single, national law for fair trading and consumer protection, which applies equally in all Australian jurisdictions, to all sectors of the economy and to all Australian consumers and businesses.

It is one of the highest priorities of the regulatory reform agenda being undertaken by the Business Regulation and Competition Working Group of the Council of Australian Governments (COAG) to develop a seamless national economy to the benefit of Australian consumers.

As recommended by the Productivity Commission, the Australian Consumer Law will be based on the existing consumer provisions of the *Trade Practices Act 1974*, but will be enhanced by:

- a new national unfair contract terms law, which is currently being considered by the Australian Parliament;
- a new national product safety legislative and regulatory framework, the final aspects of which Ministers agreed today;
- a new national consumer guarantees law, which will replace the provisions in 15 existing national, state and territory laws about implied warranties and conditions in consumer contracts for goods and services; and

- reforms, drawing on best practice in state and territory laws, which will make the Australian Consumer Law reflective of national consumer policy and which both enhance its effectiveness and minimise business compliance costs.

In developing the Australian Consumer Law, MCCA has been guided by the following key principles:

- maintaining consumer protection for all Australian consumers;
- minimising the compliance burden on business;
- creating a law which can apply to all sectors of the economy and to all Australian businesses;
- ensuring that the Australian Consumer Law is clear and easily understood; and
- having laws which can be applied effectively by all Australian courts and tribunals.

Ministers noted that the Australian Parliament is presently considering a Bill to implement key aspects of the Australian Consumer Law, namely the establishment of the Law, a national unfair contract terms law, new enforcement powers, civil penalties and remedies. Ministers further noted that the Australian Government intends to introduce a further Bill in early 2010 to fully implement the Australian Consumer Law, which will reflect the key reforms agreed by Ministers today.

Product Safety

MCCA agreed to specific reforms as part of a new national law on product safety in the Australian Consumer Law, which will enhance consumer protection in Australia. These reforms implement recommendations made by the Productivity Commission in its 2006 Review of the Australian Consumer Product Safety System.

MCCA has agreed that the new national product safety law will:

- include a reporting requirement for suppliers to notify the appropriate product safety regulator when it becomes aware of consumer goods it has supplied that have been associated with a serious injury or death;
- apply the national product safety requirements to services related to the supply, installation or maintenance of consumer products;
- apply a threshold for product bans and product recalls to include goods which, through reasonably foreseeable use, will or may cause injury to any person; and
- allow product safety regulators to undertake a product recall where no supplier can be found to conduct the recall.

MCCA also agreed to reforms to the investigative powers of product safety regulators in order to effectively enforce the national product safety law by ensuring all regulators can access a consistent core set of powers.

In addition, Ministers noted the progress of the implementation of operational changes to support the new national product safety law, including a ‘one-stop’ national website as the primary source of information on product safety for consumers and businesses.

Ministers reiterated their commitment to the commencement of a new national product safety law on or before 31 December 2010, in line with the remainder of the Australian Consumer Law.

Consumer Guarantees

MCCA agreed, as part of the Australian Consumer Law, to clarify and enhance the basic rights of consumers when they purchase goods and services anywhere in Australia. MCCA sought a comprehensive review of law in this area in May 2008.

Ministers noted the comprehensive studies of the law on consumer rights and the effectiveness of existing laws undertaken by the Commonwealth Consumer Affairs Advisory Council (CCAAC) in its Report *Consumer rights: Reforming statutory implied conditions and warranties and the SCOCA's National Education and Information Taskforce (NEIAT)* in its Baseline Study for Statutory Warranties and Refunds. Ministers thanked CCAAC and NEIAT for their impressive contributions to the understanding of these laws and the needs of consumers and businesses, and further noted the publication of these reports.

Ministers noted the findings of the NEIAT study to the effect that many consumers and businesses have little, if any, awareness of consumer rights and that a significant contributor to this is the current legal framework.

Informed by the NEIAT study, CCAAC has recommended that the existing system of statutory implied conditions and warranties in consumer contracts be replaced with a system of statutory consumer guarantees. Ministers share CCAAC's view that such a system will be a significant enhancement of the law and will be more readily understood by consumers and businesses.

MCCA agreed, as part of the development of the Australian Consumer Law, to improve the legal framework for consumer rights that apply to the acquisition of goods and services. This will be a single national law guaranteeing consumer rights in relation to their acquisition of goods and services. They will be based on existing implied conditions and warranties, which will be simplified and streamlined.

This new system of consumer guarantees, supported by effective redress, will foster a greater ability to inform and educate all Australian consumers and businesses about their rights and obligations, and will reduce the compliance burden for businesses, particularly those that operate in more than one state or territory.

Ministers noted CCAAC's finding that a national system of consumer guarantees will provide much-needed clarity for consumers dealing with motor vehicle lemons. Ministers agreed that consumer agencies should develop national guidance for the new law.

These reforms will also align Australia's law with the existing New Zealand law. This will advance one of the objectives of the *Australia New Zealand Closer Economic Relations Trade Agreement* by developing common approaches to shared market issues.

Changes drawing on best practice in state and territory laws

COAG agreed in 2008 that the Australian Consumer Law should include provisions which amend or augment the existing provisions of the *Trade Practices Act 1974*, where it was generally agreed to be inadequate to address a consumer issue.

A key objective of the Australian Consumer Law is to have a law that is current, easy to understand, can be effectively enforced by consumer agencies and administered by all courts and tribunals.

MCCA considered and agreed on 14 specific proposals which will enhance the effectiveness of the Australian Consumer Law. These changes have been developed as a result of a cooperative process

by the Australian Government and the governments of the states and territories, and included public consultation.

MCCA agreed that the Australian Consumer Law will include a single national law covering unsolicited sales practices, including door-to-door selling, telephone sales (to the extent not already covered by the *Do Not Call Register Act 2006*) and other forms of direct selling which do not take place in a retail context. This new national approach will replace the eight state and territory regulatory regimes and will simplify the rules that apply to unsolicited sales.

Ministers agreed that the Australian Consumer Law would set out fundamental rules for lay-by sales transactions.

When a business agrees to supply goods or services, the Australian Consumer Law will make it clear that they should be supplied to the consumer as described and within the specified time, or if no time is specified, within a reasonable time of the agreement to purchase.

Similarly, when a business promises to give a consumer a gift or a prize, the Australian Consumer Law will make it clear that they should be supplied to the consumer as described and within a reasonable time of the promise being made.

The Australian Consumer Law will clarify that goods with multiple prices displayed should be sold at the lowest displayed price unless the seller chooses to withdraw them from sale.

The Australian Consumer Law will make it clear that false or misleading testimonials about goods and services are specifically prohibited.

The Australian Consumer Law will make it clear that demanding payment for unsolicited advertisements is prohibited and, in this regard, any document seeking payment for unsolicited goods, services, advertisements or directory entries shall include a statement that it is not a bill payable by the consumer. The Australian Consumer Law will also clarify that a consumer is not liable for unsolicited services.

Simple, national rules will be applied to the provision of consumer information.

Under the Australian Consumer Law, there will be a single national power for the making of information standards about goods or services. Any new standards will be subject to best practice regulation requirements and the voting requirements of the *Inter-Governmental Agreement for the Australian Consumer Law*.

The Australian Consumer Law will not take a prescriptive approach to any documents it requires to be given to consumers, but it will make it clear that any such document should be clear and legible.

The ability of consumers to enforce their own rights can be compromised by the lack of any evidence of a transaction.

The Australian Consumer Law will entitle consumers to receive a receipt for goods or services supplied above a certain value where businesses are not already required to give a tax invoice to a consumer under the GST law. The requirements will be consistent with those already in place in the GST law. The Australian Consumer Law will also entitle consumers to request an itemised bill for services.

The Australian Consumer Law will include clarifications to the provisions on pyramid selling, injunctions and representations as to future matters to ensure consistent application of these provisions by courts and tribunals throughout Australia.

Going forward

Ministers are grateful to those consumers, businesses and their representatives who have contributed their views to the development of the Australian Consumer Law, and expect that further consultation will serve to improve the quality of the final form of the legislation.

Ministers noted COAG's signing of the *Inter-Governmental Agreement for the Australian Consumer Law* on 2 July 2009, and welcome its establishment of a firm foundation for future consumer policy development, law reform and enforcement cooperation in Australia.

Ministers noted the time lines of the *National Partnership Agreement to Deliver a Seamless National Economy* and, in accordance with these, that the Australian Government expects to introduce legislation in early 2010 to fully implement the Australian Consumer Law, and that the governments of the states and territories will introduce legislation into their respective Parliaments to apply the Australian Consumer Law as a law of each jurisdiction by the end of 2010.

National Credit Reforms

MCCA noted that the National Consumer Credit Protection Bill 2009 (Credit Bill) and related Bills, which give effect to the COAG commitments of last year, passed the Australian Parliament on 23 November 2009. The Commonwealth is working closely with the States to ensure referral of legislative power to the Commonwealth is completed in time for the commencement of the national credit regime by 1 July 2010.

Ministers also noted that regulations supporting the national credit reform package were released in November 2009 for a third and final round of public consultations. The regulations are expected to be finalised and in place in February 2010 in readiness for the commencement of the national credit regime.

National Business Names registration

Ministers noted that the reforms to achieve a national system for registering business names are on track to deliver a streamlined registration process for business. An implementation plan outlining key milestones for the ABN/BN project has been agreed by COAG and all key milestones, including the commencement of delivery of business online service components remain on track.

MCCA also noted that the Intergovernmental Agreement for Business Names and Business Online Services Heads of Agreement were agreed by COAG in July 2009. These will provide guidance for the drafting of new business names legislation and a Memorandum of Understanding regarding the provision of services to business by all levels of government. The Australian, state and territory governments are continuing to work together to progress important policy issues relating to the transition to a national system and on developing necessary legislation and legislative amendments.

National Licensing System report on progress

MCCA notes that States and Territories have agreed to fund the establishment and operating costs of the new national licensing system for specified occupations on an equal per capita basis for the period 2009-10 to 2012-13. The Exposure Draft of the National Occupational Licensing Law and an accompanying Explanatory Paper have recently been released for public comment. This represents a significant step towards the establishment of a national licensing system.

National Trade Measurement System

Ministers welcomed the substantial progress towards implementing an Australian National Trade Measurement system. Considerable progress has been made in the key areas (including the legislative framework and operational arrangements) needed for effective administration of the National Trade Measurement from 1 July 2010. New Zealand is being kept fully informed of progress on this reform.

Personal Property Securities

Ministers also welcomed the passage of the Commonwealth Personal Property Securities Bill 2009 and the enactment of supporting referral legislation by New South Wales, Queensland, Victoria and South Australia. Ministers noted that the national personal property securities (PPS) law and PPS register are on track for national commencement by May 2011.

PPS law reform is a priority item on the COAG's regulatory reform agenda. It is a landmark law reform measure which is expected to result in significant cost savings for business, and greater choice and certainty for consumers and businesses.

Single Economic Market

MCCA recognises the importance of harmonisation and cooperation in creating a seamless trans-Tasman environment in which business and consumers benefit from streamlined trade, movement and increased competition. MCCA reconfirmed its support and commitment to progress the trans-Tasman Single Economic Market Outcomes Framework.

The MCCA Strategy for 2010-2012 notes that the implementation of the Australian Consumer Law offers an opportunity to achieve greater policy coordination and regulatory consistency between Australia and New Zealand. The Strategy includes a strategic priority to promote the achievement of consumer outcomes under the Australian and New Zealand Single Economic Market Outcomes Framework.

Promoting a seamless trans-Tasman environment will deliver benefits for consumers and businesses both in Australia and in New Zealand.

MCCA Governance Arrangements

Ministers endorsed a new governance framework for MCCA and SCOCA and a reformed range of supporting committees, to enhance MCCA's capacity to progress consumer policy and legislative reform and to effectively administer and enforce national consumer laws, in keeping with COAG's reform agenda to deliver a seamless national economy.

MCCA Strategic Agenda

Ministers endorsed a new Strategic Agenda for 2010-12 to reflect a new approach to consumer policy in Australia.

The Strategic Agenda recognises that the implementation of the Australian Consumer Law and other COAG reforms will dramatically change the way consumer policy is developed and implemented in Australia. The Strategic Agenda sets out MCCA's priority projects for the next three years.

MCCA intends that the new Strategic Agenda will assist it to achieve five key aspirations for consumer policy in Australia by 2012:

- consumers and businesses enjoy the benefits of simpler consumer laws;
- consumers drive compliance with the law;
- consumer laws are reaching the most problematic traders and protecting vulnerable consumers;
- emerging consumer issues are identified early and responded to in a rapid, cohesive manner; and
- the impact of consumer policy regulatory reform is demonstrable.

National Indigenous Consumer Strategy 2010 - 2013

Ministers noted the significant achievements of the National Indigenous Consumer Strategy in improving the understanding of Indigenous disadvantage in consumer affairs and the development of better governmental responses. Ministers approved the National Indigenous Consumer Strategy Action Plan for 2010 to 2013, with a key focus on trading practices, housing and consumer literacy.

Australian Uniform Cooperative Laws Agreement

Ministers agreed to release a proposed national cooperatives law for public comment. The proposed national law is designed to replace separate cooperatives legislation in each State and Territory (other than Western Australia). Western Australia is in the process of enacting legislation that is consistent with the proposed national law. This will ensure that the same law applies to cooperatives wherever they are registered in Australia. A period of 12 weeks will be allowed for public consultation.

Review of Consumer Protection in the Travel and Travel-Related Services Market

At its meeting on 8 May 2009, MCCA agreed to a review of consumer protection measures in the travel and travel related services market, including the role of the Travel Compensation Fund. Ministers noted that the review of consumer protection measures in the travel and travel-related services is in progress and will be conducted in the first half of 2010. The findings of the review are scheduled to be presented to MCCA in the second half of 2010.

Residential Tenancy Databases

MCCA Ministers noted that the national regulation of residential tenancy databases project is progressing and that a national consultation process on the model provisions is currently underway.

Model National Disclosure Statement for Retail Tenancy Leases

Ministers agreed to support the adoption of the draft Model National Disclosure Statement to the extent possible in their respective jurisdictions. Ministers also agreed that Western Australia would write to the Chair of SBMC on the outcomes of this meeting.