

AUSTRALIAN CONSUMER LAW REVIEW INTERIM REPORT

Bruce Bebbington

Further to my submission in the original round of submissions, in relation to the interim report, I submit-

Page 13 and Page 27 Question 4

Option 2 The \$40,000 limit should be increased to at or above \$100,000, as per my original submission, to ensure that the consumer safeguard provided 30 years ago is maintained. We should not have any lesser levels of consumer safeguards that we had previously.

We should always be striving to improve consumer safeguards, product safety standards and consumer protections and remedies.

The level, once increased to at or above \$100,000 should be either indexed to CPI, or the legislation should have automatic increases to \$110,000, \$120,000 etc stipulated in the wording.

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Option 3 Financial services should not be exempt from the ACL and should be incorporated.

Page 32

Comments from the Suncorp submission

"has not observed any significant issues that would necessitate changes to the application of the ACL to financial services.

Any move to change the application of the ACL to financial services must be based on clear evidence of a problem that is not resolved by the current regulatory regime"

Historically, the financial sector has had difficulty in the detection and observance of significant issues affecting consumers. It is unlikely that Suncorp or any other provider of financial services is going to openly admit to their being any issues detected or otherwise and that there should be greater control over this industry.

Their submission overlooks the fact that many consumers cannot get resolution of problems within the financial services sector, and simply give up due to the strength of the opposition to complain by the sector and its participants.

Yet this is not unfair or unconscionable.

If the ACL were expanded to cover this industry and to the updated dollar amount suggested, there will be more complaints lodged, as a clear framework would exist where it does not currently exist.

Page 33 Question 7

Yes, the ASIC act should be amended if it gives greater consumer protection than now, or reinstates protections lost with changes over the last 30 years or so.

Page 38

"For example, the Federal Chamber of Automotive Industries submitted that ordinary passenger vehicles should not be protected by the ACL if the vehicle was actually purchased for use in a business context, such as vehicles to be used as taxis and light commercial vehicles."

In regard to this submission comment, an ordinary passenger vehicle would be a car or station wagon, which contradicts the reference to a light commercial vehicle. Clarification should be sought on what they actually class as an ordinary passenger vehicle.

Is an ordinary passenger vehicle an SUV or a 4wd with the increase of the predominance of this type of vehicle?

What is "use in a business context"?

Would this be if it is owned by the business or could this simply cover any vehicle for which a business use can be claimed? A Tupperware representative carrying their display and claiming a mileage allowance for taxation purposes- would this be a business use?

Should there be a percentage of mileage and or time of use of a vehicle to warrant it being business verses personal?

In some states it is necessary to register a vehicle as "non-private" if it is used in any form as a work related or business role.

For a farmer who has a car that is used to go to pick up parts for a tractor or to do bank a cheque at the same time as the weekly food shop-, does this mean that the Federal Chamber of Automotive Industries intention would be that they would not have protection under the ACL for this vehicle?

Why should the farmer be denied protection that someone in the city would get for his or her private car?

Page 50 Question 11 and page 58 industry specific laws

Are there other areas of uncertainty raised by stakeholders that would benefit from further guidance, for example, the cost of returning rejected goods and what may constitute a 'significant' cost?

Consumers should not be prevented from making a claim simply because the cost of returning a product is affected by the location of the consumer and the supplier.

If a manufacturer wishes to sell a product in Karratha through a shop in Karratha, but is based in Melbourne, then the cost of return should be based on the nearest point. The consumer in Karratha is impacted by the cost of return as well as the duration of the transport of the item.

The consumer in Melbourne may have little cost and can have the item at the manufacturer within a day, and may get a remedy within a few days. The consumer in Karratha will have to wait about 10 working days by post or freight each way.

I refer to the point of sale (or nearest sale point), rather than location of the goods, as the manufacturer has no control over the customer in Karratha buying the washing machine for use in the town, or 1000km away and the manufacturer should have some protection also in this regard.

If no substitute item can be provided, should a consumer be without a washing machine for a month?

Should the consumer guarantee be based on a time frame for effecting a repair or replacement? Should there be specified time frames on critical items such as a fridge, for which you cannot go without, compared to an electric toothbrush for which an old fashioned one would cover the duration?

Should there be different standards for essential products. A 90,000-litre water tank we had installed had a leak, which when reported was repaired with one section of pipe because the manufacturer was aware of the fault in a series of tanks. They stated they did not have to replace the lost water because that is in their warranty, however, as they were aware of the faults in the series of tanks and took no action to instigate a recall, should they have replaced the water?

In our instance when given the option of the known fault being reported to consumer affairs which may lead to a recall or them supplying sufficient fresh drinking water to see us through the summer (not the entire amount lost), they elected to supply the water.

Should a supplier of an essential item like drinking water in rural and remote Australia, require higher levels of safeguard than for the supplier of a non-essential item?

Page 99 Questions 33 and 34

Voluntary recall- mandatory where there is an imminent risk to human life and property, or like in the instance of the water tank, whereby the failure or problem could lead to a risk to human life or property protection.

Penalty should reflect the impact or potential impact the failure to make a voluntary recall could have.

Page 112 Question 39

Publicly listed companies should not be excluded from unconscionable conduct provisions, nor should government bodies or government business enterprises.

It is the size and immunity of these specific organisations that in itself creates situations of unconscionable conduct.

Page 116 Question 42

Is it unfair or unconscionable where excessive fees are charged that cannot be justified or warranted?

Is a late fee of \$15 justified for a phone bill if there is no cost for having that bill issued or maybe a \$2 fee for issue the original bill?

Cyclical billing must be cyclical not ad hoc.

An energy provider issuing bills when they conduct a meter reading following a self meter read or an estimated bill, unless there is grounds for claim of misconduct by the customer, should not result in a new bill, out of sequence, creating a shortened billing cycle.

This is despite it being contrary to a code of conduct, but creates 7 bills a year instead of six, increasing the potential for late fee revenue collection. The billing cycle should remain constant so that budgeting can be allowed.

Is it unfair or unconscionable if such an act forces the early payment of a bill, that is otherwise not due, at the expense of other bills?

General contract and terms

Consistency is needed in contracts and terms and conditions.

Phone plans have critical information summaries, but these do not have consistent terminologies and comparisons. For example a monthly plan should either be a calendar month, so the due date is the 3 or 10th, or should standardise as 30 days.

28 days is becoming an increasingly common month in the telecommunications industry on monthly plans, yet actually cost up to 11% more than a true 31-day plan.

Complaint handling

Better complaint handling is needed in business, government and regulators. Writing back in two weeks to say, "we have looked at it, there wasn't a problem, the file is closed, goodbye" is not complaint handling. Might help if they actually took down the details of the complaint.

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