

## Australian Consumer Law Review

### Consumer Law should protect everyone who suffers harm from unfair trading practices or unsafe or defective goods and services

Page 4 of the issues paper notes that consumers should have confidence that “markets are safe and fair, having access to information to make informed purchasing decisions and knowing they have adequate rights, protections and access to remedies in situations where they suffer harm from unfair trading practices or unsafe or defective goods and services.”

This clause should apply not just to consumers but to anyone who suffers harm from product sold in Australia. Everyone should be entitled to equivalent protection, especially when purchasers are given misleading information about a product.

A good example is the air pollution from domestic wood heaters. A consultancy report for the NSW EPA estimated the health costs of the resultant air pollution at several thousand dollars per heater per year.[1] NSW Chief Medical Officer Kerry Chant said [wood heaters are so detrimental to health she supports banning and phasing them out in built-up urban areas](#). The NSW Asthma Foundation warned that: [wood smoke emissions in winter pose a bigger health danger in built up urban areas than cars or cigarettes](#). Australian Lung Foundation spokesman Dr James Markos said [wood fire heaters should be banned from urban areas](#). He said real-life emissions from new wood-heaters have little relationship to measurements from a perfectly operated test model under laboratory conditions.

PM2.5 - particles less than 2.5 millionths of a metre are linked to more premature deaths than any other pollutant. The particles are so tiny they penetrate the deepest recesses of the lungs where they cause inflammation and pass into the bloodstream where they can transport the toxic chemicals they carry throughout the body. The average wood stove (new or old) emits more health-hazardous PM2.5 per year than 1,000 petrol cars. The most toxic chemicals in cigarette smoke are polycyclic aromatic hydrocarbons (PAH), several of are know carcinogens, including benzo-a-pyrene (BaP). An evening's heat - [10 kg of wood burned in a correctly-operated Australian heater produces as much BaP as in the smoke from a quarter of a million cigarettes](#).

There is no safe level of PM2.5 pollution. PM2.5 exposure is linked to cancers, strokes, genetic damage in babies, cot deaths, increased risk of behavioural problems such as anxiety, attention deficit and autism, reduced IQ when children start school and increased risk of dementia - see [woodsmoke.3sc.net/health](#)

There was general agreement at a Standards Australia meeting in 2007 that wood heaters should display health warnings to alert the public to these problems, but the agreement could not be acted upon because the process of updating the standard was stalled after objections by the wood heating industry. Consequently, the people who buy wood stoves have no idea about the potential damage to health nor the opinions of the Chief Medical Officer of NSW.

Whatever way the wind is blowing, it transports the pollution away from the home using the wood stove, with greatest impacts on households immediately downwind. There are several examples where the health of neighbours has been severely affected.

Australian Consumer Law needs to be changed so that the people who suffer health damage from products such as new wood stoves have similar rights, protections and access to remedies as the people who buy the products, especially when there is not attempt to alert prospective purchasers to the to health information.

### Making it easier to obtain justice

It is often very difficult for consumers who are harmed by a product to obtain justice. Statutory organizations such as the ACCC do not have the time or the funds to help consumers who experience harm from products sole in Australia. Current legal solutions can cost many thousands of dollars, posing an insurmountable barrier to perhaps 90% of cases where people suffer serious harm.

Box 15 of the issues paper suggests one solution: Managing surplus funds from court-ordered ACL remedies — creating an ACL trust? Ideally the trust could provide a cost-effective way of helping people who are harmed by consumer products and allow them to seek appropriate compensation and costs. Several of the examples in the issues paper, e.g. whether Coles should be allowed to describe bread that is partially baked, frozen and finished in store as “baked today” are trivial compared to the suffering of someone whose exposure to unnecessary air pollution causes a heart attack, stroke, dementia, or a stillbirth or cot death. But

these are the people who are currently unable to obtain justice, or even obtain injunctions to halt the pollution, despite experiencing air pollution that exceeds National Air Quality Standards.

A trust specializing in protecting against harm from products sold in Australia could greatly benefit such people. Most would be extremely grateful if the harm they experience is ended. If the trust could provide funds to assist these people, any costs that are recovered could be used to help other victims, so that over time many people would be able to obtain the justice they are currently denied.

### **Recommendations**

- 1) Consumer Law should be changed protect everyone who suffers harm from unfair trading practices or unsafe or defective goods and services.
- 2) Access to justice should be readily available to everyone who suffers harm. The creation of ACL trusts dedicated to helping such people could make a real difference and act as a deterrent to prevent future harm.

1. NSW OEH, *Economic Appraisal of Wood Smoke Control Measures*, 2011, AECOM Australia Pty Ltd. Prepared for the Office of Environment and Heritage. Available at:  
<http://www.epa.nsw.gov.au/woodsmoke/smokecontrolopts.htm>.