

Australian Consumer Law Review

Thank you for inviting COTA SA to be part of the public consultations about the Australian Consumer Law review's interim report.

COTA SA is an older people's movement run by, for and with older people. We represent the aspirations, interests and rights of 590,000 older South Australians. COTA SA was founded in 1957 and is part of a national federation. We work closely with partner organisations to reach the rich diversity of older South Australians and run an active policy agenda on a wide range of issues.

While COTA SA cannot claim to be a specialist in consumer law, we regularly outreach into the older community, and we are in touch with what matters to older people and the challenges many face. We are pleased to pass on to the review the experiences and concerns older people have raised with us through their various consumer journeys, and also to provide COTA SA's overarching comments about the landscape of consumer law as it relates to older people.

COTA SA's comments to the review are framed around access, equity, anti-discrimination and the rights of older people as participants and consumers. Some cohorts within the older population have particular vulnerabilities and we would encourage the review to look at special protection for those groups.

1) Utilities, Financial & Communications Markets

Consumer Focus UK's 2012 report "Tackling consumer vulnerability – an action plan for empowerment" noted that the utility, financial and communications markets may present a specific set of difficulties for consumers. These difficulties come from contractual terms with extended commitments, complex and changing deals from companies providing the services and barriers to accessing the best deals.

Older people have raised with COTA SA the lack of clarity, particularly around phone contracts, and selling methods (reference "unsolicited selling" below).

We have particular concerns about financial abuse and exploitative practice and would encourage the review to look at additional protections as they fall within the ACL remit.

COTA SA supports that consumer protections for financial services be extended to financial products so that ACL is consistent with the ASIC Act.

COTA SA supports concerns expressed by SACOSS at the Adelaide meeting with ACL (23 November 2016) about lack of legislation for behind the meter energy options (for example solar power) and urges the review to give attention to that space.

2) Insurance

COTA SA supports that insurance contracts – including health insurance - should be made subject to the same unfair contract terms protections as other standard form consumer contracts in an industry-wide approach. We do not believe that the current exemptions for the insurance industry are justified.

Insurance contracts, in line with all contracts, need to be clear and easily understood with the rights of the consumer highlighted, for example:

- a) Many older people travel, and the lack of clarity about the terms and conditions of travel insurance is an issue on which we receive regular feedback, including that disclaimers are “buried” within the fine print and insurance companies require multiple medical reports before paying a claim. For example:

“I travelled overseas twice with the confidence I was covered, having purchased insurance with my plane ticket on line. Last time I travelled I actually went through the fine print to find I was older than the age it covered, and had been for my previous trips!” D.S., Urrbrae

We believe that protections for consumers within the travel insurance industry are not adequate and we encourage the ACL to strengthen them.

- b) For older employed people, COTA SA has concerns about the life and total or permanent disability insurance industry. Recent media has highlighted issues around companies using delaying tactics – including requiring multiple different medical reports – to avoid paying the claim.
- c) COTA SA notes that there are thousands of health insurance options and no standardisation between health insurance funds about how they refer to the same clinical treatment which results in confusion for consumers and delayed payments.

3) Consumer Guarantees

COTA SA believes there needs to be enhanced transparency regarding extended warranties. Specifically, retailers should be required to provide clear explanations in writing, as well as verbally, about the additional value provided under any extended warranty.

*“I was caught with an extended warranty on a new car. The extension amounted to an insurance policy that had various restrictions ... and involved making insurance claims.”
D.S. Urrbrae*

We note the comments within the ACL review of the Consumer Action Law Centre which likens these policies as “analogous to junk insurance policies ... offering very little real value”. Fact sheets offered at point of sale and a cooling off period as per the New Zealand model seem to us to be sensible safeguards.

4) Consumer Rights on Manufactured Goods

COTA SA supports that an ACL statement about consumer rights be included as a mandatory and highlighted inclusion within information provided about products which are covered by manufacturer warranty against defect.

5) Product Safety

Clearly, products sold to all Australian consumers – either directly or on line – need to be fit for purpose and safe to use. COTA SA supports a general safety provision which prohibits supply of unsafe goods via compliance to a defined Australian or international product safety standard. The current reactive approach of only having products removed from market once they have been proved to pose a risk is not preferred; pre market controls about minimum general safety provisions including safety standards, design and safety obligations should be explicit. We support a regime which is proactive rather than reactive.

6) Unsolicited Selling

As the ACL review notes, unsolicited home sales (via door knock and telephone) have the potential to inflict particular harm on consumers who are vulnerable. COTA SA supports that protections for consumers against predatory selling practices should be enhanced. We agree with the suggestion that customers who enter into enduring contracts of significant value (for example, phone plans) receive additional protection via an opt-in clause which requires them to agree to the contract within a specific period without further canvassing from the seller. If they do not opt in within that period, a contract should be void.

COTA SA has recently received evidence of door to door sellers identifying older people as “soft” targets for their pitches – in this case for solar panels. We passed information to the Office for Business and Consumer Affairs who are investigating. From information passed to COTA SA, the salesperson involved was specifically targeting older people in the area and the information provided appeared misleading on a number of fronts including that the scheme was supported by the local council.

“He told me that the solar panels would be installed for free and that it was an initiative of the local Council to do something to help older people pay their bills.” M.S., Victor Harbor

The Council (Victor Harbor) has confirmed they know nothing about the scheme. We suggest that the opt-in provision could be one of a suite of protections to safeguard older people from such predatory selling techniques. We also suggest that the complaints mechanisms should be clearly stated on contracts – people come to COTA SA with their complaints because they don’t know where else to go.

7) On Line Sales

The risks for some consumers when transacting on line sales are broad ranging and complex. However, COTA SA would suggest that the on line sales model where customers have to opt out (rather than opt in) be made illegal in Australia. We have had brought to our attention instances

where advertising misrepresents that a good/service is free but starts charging after the initial period.

COTA SA supports that any additional fees or charges associated with pre-selected options must be included in the up-front price.

8) Consumer Rights in Aged Care

As aged care continues its progress to a market driven structure with consumers at the centre, the protections in place for older consumers as they negotiate with providers must be robust and transparent. COTA SA believes that consumer rights in aged care – both in home and residential – deserves special attention as more onus is put on consumers to assess the offers being made to them. Some people will be particularly at risk in a self-directed care environment; older people and the agents acting for them need to be sure that their rights as consumers are protected and that the complaints mechanisms and penalties are effective.

As with other contracts, aged care providers must be required to provide comprehensive information in a form which is accessible, easily understood and highlights consumer rights.

9) Cognitive Impairment – a special case for protection

COTA SA urges the ACL review to examine international models to find out what extra protections can be in place for customers who have medically diagnosed cognitive impairment (whether temporary or permanent).

“I am always sorting out problems for my husband who has dementia as well as other disabilities. His type of dementia means he can present quite normally most of the time, so casual contacts often assume he knows exactly what he is doing. There definitely needs to be protection when it comes to contracts and purchases made by people with cognitive impairment.”
DS Urrbrae

10) Dispute Resolution

COTA SA frequently receives feedback about consumer complaints mechanisms which indicates they are involved and confusing. As noted by the ACL, asserting rights becomes even more challenging for some elderly people, the financially disadvantaged, cognitively impaired and those with low levels of English or literacy. We support the suggestions by sector agencies within the review report about improving access and comprehension for disadvantaged groups.

We hope that the feedback we have provided assists the ACL review and would be happy to answer any questions.



Jane Mussared
Chief Executive