



Top End Women's Legal Service Inc.

Toll Free: 1800 234 441 • Telephone: (08) 8982 3000 • Facsimile: (08) 8941 9935 • Email: TEWLS@clc.net.au
2/5 Edmunds Street, Darwin • GPO Box 1901, Darwin NT 0801 • ABN: 42 830 944 1784

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Australian Consumer Law Review Secretariat
Consumer Affairs Australia New Zealand (CAANZ)
c/- The Treasury
Langton Crescent
Parkes, ACT 2600

By Email to aclreview@treasury.gov.au

Dear Review Secretariat,

Submission to the Australian Consumer Law Review Interim Report – Top End Women's Legal Service Inc.

Thank you for inviting comments to the Australian Consumer Law Review Interim Report ("ACL Interim Report"). The Top End Women's Legal Service Inc. ("TEWLS") welcomes the opportunity to make a submission on how the Australian Consumer Law ("ACL") is working in practice and how it can be improved, with particular reference to how it can better operate to meet the needs of those consumers who are the most vulnerable and disadvantaged.

We note that our submission is focussed upon our experience assisting women in the Top End of the Northern Territory ("NT"), where our clients often present with legal issues in relation to the ACL. Our submission will address a sample of the Appendix B: Consolidated List of Questions, given the nature of our experience and continuing work within the sector.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department to provide referrals, legal advice, casework and community legal education to women in the Top End of the NT. TEWLS provides assistance in a number of areas of law including domestic and family violence, sexual assault, family law, compensation for victims of crime, housing, discrimination, workplace health and safety, employment law, motor vehicles and consumer credit debts. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women incarcerated in the Darwin Correctional Precinct.

Our Submission

I Scope and Coverage of the ACL

1.2.4. Who is protected under the ACL?

Given the \$40,000 threshold for the definition of “consumer” under the ACL has not changed since 1986, we consider it reasonable that an increase to the threshold is applied so as to better reflect inflation and consumer price increases. Although this is not a common issue amongst our client base, we are of the view that the current \$40,000 threshold does not adequately protect small business owners and non-for-profit organisations and afford them the same kind of ACL protection for goods and services acquired for their business. For example, if TEWLS were to upgrade items required by our organisation, such as a motor vehicle, they would likely fall outside of the threshold for consumer purchases and would not be protected under the ACL.

We submit that the \$40,000 threshold should be amended by way of an increase and agree with the views expressed in the ACL Interim Report that the threshold should be linked to the consumer price index to better reflect the cost of goods and services today. Additionally, we submit that an increase to the threshold would provide better protection to the interests of small businesses and organisations as consumers.

II Consumer Guarantees

2.1.2. “Acceptable quality” for goods

We submit that a more prescriptive definition of “acceptable quality” for goods would provide further guidance and information so as to assist consumers. In our experience, while the current test for durability is flexible and designed to take into account the specific circumstances of each good, it is also a difficult exercise for consumers, particularly where English is not their first language. By way of example, please see below case study.

Case study – Mary’s story

Mary* is an Aboriginal woman living on a remote Indigenous community in the Top End. In 2011, a consumer credit provider approached Mary and the parties entered into a two-year lease agreement for a fridge.

In 2016, Mary’s fridge began to have numerous problems – it would often break down, meaning that she would not have a fridge for periods of time while it was being repaired. Mary approached TEWLS for assistance, where Mary sought for the fridge to be repaired by the provider. Before seeking advice from TEWLS, Mary did not know that she had rights under the ACL.

With TEWLS’ assistance, Mary was able to negotiate an agreement with the supplier, as the fridge did not meet the durability test for “acceptable quality” under the ACL.

*not her real name

Mary's story demonstrates that while she was able to apply the "acceptable quality" test and seek an appropriate remedy, she would not have been able to do so but for the assistance of a legal representative. In the current funding environment, where the Community Legal Centre sector is faced with a 30% funding cut following 30 June 2017, without legal assistance, Mary would not have understood or been able to apply her rights under the ACL.

Further, we submit that consumers would benefit from further guidance in relation to the cost of returning goods and what may constitute a "significant" cost. In the NT, there is often significant difficulty in returning goods, particularly from remote areas. The creation of Plain English resources, as well as language-specific resources for Aboriginal and Culturally and Linguistically Diverse consumers would assist to empower consumers to pursue ACL remedies.

2.1.4 Lack of clarity about "major failures"

We support the submission of the Queensland Law Society that there should be certain circumstances where a series of "minor" failures would be deemed to constitute a "major" failure per section 262 of the ACL.¹

2.1.6. Disclosure of rights under the ACL

We submit that there are other and more effective ways to notify consumers about their consumer guarantee rights, including by way of a notice/fact sheet at the point of sale, a cooling-off provision and funding to the Community Legal Centre and Legal Aid sectors to facilitate community legal education regarding consumer guarantee rights. We support holistic and alternative methods to informing consumers of their rights, where we note that consumers absorb information in different methods; what will work for one will not necessarily work for another.

2.3. Unconscionable conduct and unfair trading

2.3.2 Are the provisions working effectively?

We believe that the law on unconscionable conduct is developing appropriately, however further clarification is required in order to provide further guidance about the interpretation of the word "unconscionable". We submit that penalties be sufficient to not only penalise offenders but to also deter large businesses from engaging in unconscionable conduct.

2.5 Unsolicited consumer agreements

2.5.4 Concerns about the level of regulation

2.5.5 Concerns about vulnerable and disadvantaged consumers

We submit that unsolicited agreements are anti-competitive and do not afford consumers the opportunity to make enquiries with other sellers. In our experience, the ten-day cooling off periods intended to provide a safety net to consumers do not provide adequate protection to disadvantaged and vulnerable consumers. Our experience is that

¹ ACL Interim Report, 54.

² ACL Interim Report, 159.

the most disadvantaged consumers rarely utilise such cooling off periods and consequently are not being adequately protected by the ACL.

Case study – Sophie’s story

Sophie* is an Aboriginal woman living on a remote Indigenous community in the Top End. Sophie’s community is more than two hours away from the closest regional centre and there is no phone reception. This means that she is two hours away from seeking legal advice and assistance.

Under current funding arrangements, Sophie’s community is attended by TEWLS on a monthly basis. Were Sophie to enter into an unsolicited consumer agreement shortly after TEWLS’ monthly attendance, Sophie would be able to seek legal advice after the expiration of the ten-cooling period.

*not her real name

3.1 Implementing the Australian Consumer Law and its objectives

3.1.3 Barriers to accessing information

We support of the submissions of the Redfern Legal Centre, Legal Services Commission SA and QUT study, as described in the ACL Interim Report,² where consolidating the ACL legislation and information into one easily-found location would assist to eliminate the current barriers for consumers in accessing information.

Further, we submit that there are current enforcement barriers, where the current system provides for an adversarial model of dispute resolution and consumers are typically not entitled to legal representation within a Tribunal, except in limited circumstance. The fact that consumers are required to represent themselves against businesses and suppliers is both unfavourable and intimidating. In some situations this prevents consumers from taking their disputes further. The fact that the consumer is required to attend the Tribunal in person and pay a filing fee are existing barriers to pursuing a remedy under the ACL.

Conclusion

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss the above comments further. Should you require further information, please do not hesitate to contact our office on (08) 8982 3000 or email to admin_tewls@clc.net.au.

Yours faithfully,
TOP END WOMEN’S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

² ACL Interim Report, 159.