



LEGISLATIVE AND GOVERNANCE FORUM ON CONSUMER AFFAIRS

JOINT COMMUNIQUE

MEETING OF MINISTERS FOR CONSUMER AFFAIRS

Today, Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection met via videoconference.

Members of the Forum are:

Hon John Quigley MLA (Western Australia) (Chair)
Mr Shane Rattenbury MLA (Australian Capital Territory)
Hon Vickie Chapman MP (South Australia)
Hon Kevin Anderson MP (New South Wales)
Hon Yvette D'Ath MP (Queensland)
Hon Michael Sukkar MP (Commonwealth)
Hon Selena Uiibo MLA (Northern Territory)
The Hon Melissa Horne MP (Victoria)
Hon Elise Archer MP (Tasmania)
Hon Dr David Clark (New Zealand)

Apologies were received from:

Hon Vickie Chapman MP (South Australia)
Hon Yvette D'Ath MP (Queensland)
Hon Michael Sukkar MP (Commonwealth)
Hon Dr David Clark (New Zealand)

The objective of the Legislative and Governance Forum on Consumer Affairs (CAF)

CAF's objective is to provide the best and most consistent protection for Australian and New Zealand consumers through its consideration of consumer affairs and fair trading issues of national significance and, where possible, development of consistent approaches to those issues.

Ministers noted that following the National Cabinet's decision to implement the recommendation of the Review of COAG Councils and Ministerial Forums, this would be the final time Ministers met formally as CAF. Ministers discussed the achievements of CAF and the benefits that strong collaboration between all jurisdictions has provided. Ministers committed to continued collaboration on nationally significant consumer matters and our shared national consumer law, consistent with National Cabinet's decision. Ministers also reaffirmed their commitment to trans-Tasman collaboration on consumer matters.

Unfair contract terms

More than ten years after Australia's introduction of unfair contract term (UCT) protections for consumers and nearly four years since their extension to small businesses, evidence shows that UCTs remain prevalent and there is uncertainty around the scope of the protections.

Ministers considered a Decision Regulation Impact Statement (RIS) and agreed that action is required to protect consumers and small businesses from UCTs. Ministers have agreed to:

- make UCTs unlawful and give courts the power to impose a civil penalty;
- provide more flexible remedies to a court when it declares a contract term unfair by:
 - giving courts the power to determine an appropriate remedy, rather than the term being automatically void
 - clarifying that the remedies available for 'non-party consumers' also apply to 'non-party small businesses'; and
 - creating a rebuttable presumption provision for UCTs used in similar circumstances.
- increase the eligibility threshold for the protections from less than 20 employees to less than 100 employees, and introduce an annual turnover threshold of less than \$10 million as an alternative threshold for determining eligibility;
- remove the requirement for the upfront price payable under a contract to be below a certain threshold in order for the contract to be covered by the UCT protections;
- improve clarity around the definition of standard-form contract, by providing further certainty on factors such as repeat usage of a contract template, and whether the small business had an effective opportunity to negotiate the contract; and
- enable certain clauses that include 'minimum standards' or other industry-specific requirements contained in relevant Commonwealth, state or territory legislation to be exempt from the protections.

These enhancements will help reduce the prevalence of UCTs in standard form contracts, providing a fairer and more efficient allocation of risk in these contracts, and will improve consumer and small business confidence when entering into standard form contracts.

Information Standards

Button Batteries

State and territory Ministers endorsed a proposal for new information standards to improve product safety for consumer goods that contain button batteries, as well as button batteries themselves, for consideration by the Commonwealth Minister later this year as part of a package of instruments to address safety concerns associated with button batteries.

The proposed information standards will set out a combination of mandatory requirements and best practice recommendations for warnings and information to be provided when supplying button batteries and consumer goods that contain them.

The information standards will mean consumers are alerted to the hazard of button batteries and advised to keep button batteries out of reach of children, and to seek medical attention immediately if it is suspected that a button battery has been swallowed or placed inside any part of the body.

Hand Sanitiser

Ministers also agreed to update the existing Australian cosmetics information standard to include additional requirements for hand sanitiser. The changes will require cosmetic hand sanitiser to display the percentage of alcohol contained in the product, as well as warnings about safe use and storage.

This update to the information standard will allow consumers to make an informed choice about effective hand sanitisers. Consumers will be informed about the amount of alcohol contained in hand sanitiser and the warning information about safe use and storage will provide important messaging on the product's use and storage.

Unfair trading practices

Ministers discussed concerns that there are some unfair business practices that are unlikely to be covered by the existing protections in the ACL, such as business models that are arguably oppressive, exploitative or contrary to standards of professional diligence or fair dealing.

Ministers noted the work of Consumer Affairs Australia and New Zealand to progress this project to a point where issues and options have been identified for further work. Ministers agreed that these issues warrant further exploration through a regulation impact assessment process, including seeking further evidence on the nature of the problem and the extent of consumer harm arising from potential gaps in the current law.

Payday lending

Ministers recognised that Small Amount Credit Contracts and Consumer Leases may be offered by lenders in a manner that leads to greater financial hardship on those whom they are intended to assist, and that the economic impact of the COVID-19 pandemic has exposed financially vulnerable individuals to greater risks from high cost credit products and predatory lending practices.

The Commonwealth has announced a suite of consumer credit reforms aimed at improving access to credit and ensuring protections for vulnerable consumers. The Commonwealth is working towards introduction of legislation as soon as practicable.

Australian State and Territory Ministers acknowledged the Commonwealth's recent announcement on reforms in this area but called on the Commonwealth to introduce legislation this year to implement the full scope of protections originally proposed in 2017 in the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 to ensure appropriate protections are provided for vulnerable consumers of Small Amount Credit Contracts and Consumer Leases.

Australian State and Territory Ministers also agreed to commence preliminary work to identify regulatory and non-regulatory options that could be implemented by States and Territories to supplement any national reform.

CAANZ progress report to CAF

Ministers noted the progress and work of Consumer Affairs Australia and New Zealand since the last CAF meeting including the establishment of the CAANZ COVID-19 Urgent Response Group, providing guidance to industry about safety standards, and continued outreach and education on a range of product safety and consumer issues.

Ministers also noted that officials will develop recommendations by the end of 2020 on appropriate mechanisms to take forward strategic policy collaboration and jurisdictions' joint regulatory responsibilities for the implementation of the Australian Consumer Law.