

Australian Consumer Law Review – Response to Issues Paper

To
Consumer Affairs Australia and New Zealand

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Introduction

The Law Society of Western Australia (the Law Society) is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society is a not-for-profit association dedicated to the representation of its members and the enhancement of the legal profession through being a respected leader and advocate on law reform, access to justice and the rule of law.

The Law Society is pleased to provide the following submission to Consumer Affairs Australia and New Zealand in response to the Issues Paper on the Australian Consumer Law (ACL) Review.

The Law Society does not intend to respond to all questions posed in the Issues Paper, and comments as follows.

Response to questions

Question 3

Are there new approaches that could help support the objectives of the national consumer policy framework, for example, innovative ways to engage with stakeholders on ACL issues?

The Law Society notes that there is generally a lack of effective ongoing liaison between the government bodies dealing with the ACL and the advisers to the regulated community. By contrast, regulators such as the Australian Securities and Investments Commission have in place a system of regular liaison group meetings across different practice areas. These liaison group meetings have the function of allowing advisers and other stakeholders to be updated upon proposed regulatory initiatives and focus areas, as well as provide ASIC with feedback as to how the relevant laws are operating in practice. They provide a regular forum in which the invitees can raise any issues of concern with regard the operations of the regulator, any unintended effects of regulations on the business community and the identification of emerging risk areas to consumers.

Further, whilst good guidance has been provided by the ACCC and its State equivalents in relation to particular issues (recently the extension of the unfair contract terms provisions to small business, for example), there is a lack of central general guidance, in that it is unclear which government bodies (e.g. the Department of Commerce, the Australian Competition and Consumer Commission) are responsible for which aspects of the ACL, and therefore which entity should be approached by consumers and their advisors in different circumstances.

The Law Society also notes that there can be inconsistency between the various State and Commonwealth regulators on consumer issues and often conflicting responses can be received to the same question.

It would be useful if there could be greater collaboration between the States themselves and between the Commonwealth and State regulators to achieve a more consistent approach to enforcement and greater transparency as to which agencies should be approached in which circumstances.

Question 4

Is the language of the ACL clear and simple to understand? Are there aspects that could be improved?

The Law Society notes that there is a lack of clarity over whether various government instrumentalities engaging with consumers (such as the Insurance Commission of Western Australia) are caught by the ACL. Greater clarity in this respect would benefit both consumers and relevant government instrumentalities and reduce unnecessary cost .

Question 5

Is the structure of the ACL easy to understand and navigate? Are there aspects that could be improved?

The Law Society is concerned at the difficulty of consumers and their advisers in being able to easily access the Australian Consumer Law provisions under the relevant legislation both at Commonwealth and State levels. This difficulty has been created through the structure and inconsistent titling of the respective legislation.

For example State consumer legislation does not contain 'Australian Consumer Law' in the titles, which could be confusing for consumers. The ACL should be better signposted in the titles of the various Acts. In Western Australia in particular, it is important that consumers and their advisers are directed to the relevant State legislation as the source of the ACL, since it is not automatically updated in this State and can therefore differ in its content to the Commonwealth ACL from time to time.

Further, the Law Society suggests that the introduction of more "sign-posting" and explanatory notes, in a manner akin to that which has been introduced to parts of the Corporations Act 2001, for example, would improve ease of navigation.

Question 7

Is the ACL's treatment of 'consumer' appropriate? Is \$40,000 still an appropriate threshold for consumer purchases?

The Law Society notes that this limit has not been changed since it was introduced in 1986. This limit should at least be increased in accordance with CPI in order to provide better protection for consumers.

Question 12

Does the ACL need a 'lemon' laws provision and, if so, what should it cover?

The Law Society notes the 2015 inquiry into 'lemon' laws by the Queensland Parliament's Legal Affairs and Community Safety Committee.

The Law Society agrees that there should be a national approach to the issue, incorporating clear and practical definitions and provisions into nationally consistent laws, including:

- mandatory time and repair limits;
- clarity as to when a supplier or manufacturer must repair, refund or replace the product; and
- an adequate definition of what constitutes a 'lemon'.

However, the Law Society does not think that 'lemon' laws should be restricted solely to motor vehicles, and should cover any product with major defects.

Question 15

Should the ACL prohibit certain commercial practices or business models that are considered unfair?

There is an overriding need for clarity in the ACL and its application and enforcement. The Law Society opposes general, vague provisions that do not allow contracting parties certainty as to what the law is. A broad inclusion of 'unfair commercial practices' creates too much uncertainty. The Law Society supports a focus on consumer protection, but in a way that is clear so that businesses are able to understand their obligations and consequently properly comply with them.



Elizabeth Needham

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