



OUT16/22951

ACL Review Secretariat
Markets and Competition Policy Division
The Treasury, 100 Market St, Sydney NSW 2000
ACLReview@treasury.gov.au

Dear Sir or Madam,

Australian Consumer Law Review Issues Paper

Thank you for giving the Office of the NSW Small Business Commissioner (OSBC) the opportunity to provide feedback on the Australian Consumer Law Review Issues Paper of March 2016.

We are committed to supporting and improving the operating environment for small businesses throughout NSW. The role of the OSBC is to support small businesses in NSW by:

- providing mediation and dispute resolution services;
- delivering quality small business support through a range of programs and resources; and
- speaking up for small business within government.

The OSBC works closely with small businesses and industry to identify regulatory requirements that place an unnecessary burden or cost on small businesses across a wide range of sectors. This extends to acting as the NSW small business representative on a range of government agency consultations, reviews and reforms.

Questions 4-7: The ACL definition of a business 'consumer'

The OSBC notes that there is a lack of clarity at the agency information officer level regarding the definition of a business 'consumer' for the purposes of the ACL.

This can result in small businesses that raise concerns with individual agencies being referred from agency to agency. Developing a clear, single overarching definition of 'consumer' that applies to the entire ACL would assist to reduce any such uncertainty. Alternatively, supporting guidelines clearly setting out in what circumstances a business is to be considered a 'consumer' for the purposes of the application of the ACL would assist agencies responsible for administering the ACL to determine which matters fall within their purview.

The OSBC notes that the \$40,000 monetary threshold is dated and could be increased to reflect the greater cost of goods and services purchased by consumers (cars, for example).

Question 13: Consumer guarantees

The OSBC notes that despite the ACL indemnification provisions, which require the manufacturer to compensate suppliers for costs associated with defects that are the manufacturer's fault, small businesses often experience difficulties receiving reimbursement from the manufacturer or importer after rectifying product defects and refunding the consumer.

A separate issue is the complexity of warranties and ACL statutory consumer guarantees, which may often be difficult for small business consumers to navigate and understand.

Question 25: Barriers to businesses enforcing their rights and seeking remedies under the ACL

The OSBC would appreciate clarification regarding when a 'business consumer' can access the NSW Civil and Administrative Tribunal to make a claim under the ACL, as currently, many business consumer matters are litigated in the small claims division of the Local Court, which only has jurisdiction to hear claims valued at up to \$10,000.

Question 37: Online reviews

Online reviews and testimonials can be problematic for small businesses when competitors leave disingenuous negative reviews to discourage potential customers from transacting with a business. Small businesses report experiencing difficulties convincing search engines to take down negative reviews.

Questions 38-39: The 'sharing' economy

The ACL should apply to small businesses operating in the 'sharing' economy. Consumers of those services, as well as the business owners themselves, should ideally be informed about their rights and responsibilities under the ACL.

The OSBC can assist in publicising and circulating relevant information to industry groups and small businesses operating in the collaborative economy in NSW.

To avoid doubt and to bring the ACL up to date with the emerging sharing economy, it may be helpful to clarify in the ACL that 'in trade or commerce' applies to small businesses operating in the sharing economy, even if, due to the regularity of their transactions or other circumstances, such firms are implicitly captured by the ACL's provisions.

We believe that personal transactions between individuals - as distinct from entities representing themselves as regular providers of a service through an established website and legal entity - should remain excluded from the application of the ACL.

Questions 40-43: Disclosure of data

The OSBC agrees that businesses should allow consumers greater access to their consumption and transaction data within practical boundaries.

Consumers should then be better able to make informed choices - and reward suppliers that best meet their needs.

The OSBC is able to liaise with industry associations and small businesses to help communicate any disclosure obligations aimed at ensuring consumers have greater access to this data.

Concluding remarks

Small businesses may be both business 'consumers' and suppliers for the purposes of the ACL. In either case, ensuring that the provisions of the ACL are clear and easy to understand for both businesses and regulators is essential to ensuring that its provisions are followed and that adequate redress can be sought in the event of infringement.

In the age of information technology and the sharing economy, it is essential to ensure that the ACL's provisions remain up to date and adaptable to new products and services being offered by innovative businesses.

Should you wish to discuss any of the issues raised in this submission, please contact Tamsin Reeves, Advisor, Advocacy on 02 8222 4828 or at tamsin.reeves@smallbusiness.nsw.gov.au.

Yours sincerely



Alexandra Geddes
Acting NSW Small Business Commissioner
14 June 2016