



LEGISLATIVE AND GOVERNANCE FORUM
ON CONSUMER AFFAIRS
MELBOURNE, VICTORIA 26 OCTOBER 2018

JOINT COMMUNIQUE

MEETING OF MINISTERS FOR CONSUMER AFFAIRS

Today, Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection met in Melbourne, Victoria.

Members of the Forum are:

Hon Guy Barnett MP (Tasmania - Chair)

Hon Kris Faafoi (New Zealand)

Hon William (Bill) Johnston MLA (Western Australia)

Mr Shane Rattenbury MLA (Australian Capital Territory)

Hon Vickie Chapman MP (South Australia)

Hon Matthew Kean MP (New South Wales)

Hon Yvette D'Ath MP (Queensland)

Hon Stuart Robert (Commonwealth)

Hon Natasha Fyles MLA (Northern Territory)

Hon Marlene Kairouz MP (Victoria)

Apologies were received from:

Hon Guy Barnett MP (Tasmania - Chair) represented by Mr Dale Webster

Hon William (Bill) Johnston MLA (Western Australia) represented by Mr David Hillyard

Mr Shane Rattenbury MLA (Australian Capital Territory) represented by Mr David Snowden

Hon Vickie Chapman MP (South Australia) represented by Mr Matt Cowdrey MP

Hon Matthew Kean MP (New South Wales) represented by Mr Benjamin Coles

Hon Natasha Fyles MLA (Northern Territory) represented by Mr Gary Clements

Hon Marlene Kairouz MP (Victoria) represented by Mr Simon Cohen

The Hon Stuart Robert MP chaired the Forum in the absence of the Hon Guy Barnett MP.

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.

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Paper billing

Ministers considered the Decision Regulation Impact Statement on paper billing fees.

Ministers agreed to encourage businesses not to charge vulnerable or disadvantaged consumers to receive paper bills by providing a strict twelve month period to increase the subscription to their existing exemption programs (option 2 in the Decision Regulation Impact Statement).

Ministers expect this approach will mitigate consumer harm and detriment for vulnerable and disadvantaged consumers while minimising regulatory costs for businesses.

Ministers issued an explicit warning to business that if the increase in exemption program subscription is not met, Ministers will favourably consider a complete ban on paper billing fees.

Gift cards

Consumer Affairs Ministers agreed out of session to amend the Australian Consumer Law to implement a national scheme for the regulation of gift cards requiring that:

- a. gift cards and vouchers have a minimum three year expiry period;
- b. post-purchase fees are banned; and
- c. gift cards prominently display an expiry date.

Ministers further noted that:

- a. Consultation on the supporting regulations to outline exemptions from the gift card requirements will conclude on 31 October 2018; and
- b. exemptions will be finalised after further consultation with stakeholders and Consumer Affairs Australia New Zealand (CAANZ) officials.

Ministers agreed that the Chair of CAF would write to the Commonwealth Attorney General to consider the implications of Commonwealth insolvency and bankruptcy laws on unused gift cards.

Ticket reselling

Fair access to affordable event tickets is an important objective for Australian consumers, but this has been undermined by some of the practices occurring in the secondary market for tickets.

To address these issues, Ministers agreed to require ticket resale websites to disclose the face value of tickets and to disclose the fact that the website is not a primary ticket seller.

This change will ensure consumers are aware they are buying from a reseller, rather than the official seller, and of how much above the face value they are paying for a particular ticket. With this information, consumers will be able to make an informed decision about whether to buy tickets from resellers.

Ministers were updated on the work being undertaken by the Commonwealth to explore options to ban ticket buying bots and Ministers requested a further report at the earliest opportunity on how best to enforce a ban.

CAF noted that some states and territories will continue to move to limit resale prices and CAF will continue to monitor this.

Consumer Guarantees (Super RIS)

Consumer Affairs Ministers discussed the outcomes of the 'Clarification, simplification and modernisation of the consumer guarantee framework' regulatory impact assessment of five proposals arising from the Australian Consumer Law Review Final Report (proposals 1, 2, 3, 14 and 15).

On the basis of this work, Ministers:

1. Agreed to increase the threshold in the Australian Consumer Law definition of 'consumer' from \$40,000 to \$100,000. Ministers noted that this would restore the real value of the monetary threshold that has remained unchanged since 1986.
2. Agreed to maintain the current framework in the Australian Consumer Law for non-major failures, including failures within a short period of time after purchase and to undertake further work to ensure consumers and retailers are supported when a good fails.
3. Directed CAANZ to undertake further work on options relating to failures within a short time after purchase, including whether tailored approaches are needed with respect to high-value goods including motor vehicles and caravans. CAANZ was requested to report back during 2019.
4. Directed CAANZ to undertake further work on the operation of, and possible improvements to, the supplier indemnification provisions in the Australian Consumer Law. This work will go towards ensuring that suppliers are supported by manufacturers in carrying out their refund obligations.
5. Agreed to clarify existing provisions of the Australian Consumer Law that multiple non-major consumer guarantee failures can amount to a major failure. Ministers noted that clarification would enable consumers to obtain a refund if there are multiple non-major failures. In doing so, it would assist consumers who can get stuck in cycles of failed repairs for 'lemon' goods. This would not be a change to the intended operation of the law, but a clarification.
6. Agreed to a cooling off right and enhanced disclosure for extended warranties. Consumers will be able to better understand how the benefits of an extended warranty compares with their rights under the Australian Consumer Law. The reforms will require businesses to provide better information about extended warranties to consumers, ensuring consumers are aware of whether extended warranties provide additional benefit beyond the Australian Consumer Law, and providing them with the opportunity to opt out of extended warranty contracts.
7. Directed CAANZ to commence a post-implementation review of the effectiveness of the extended warranty reforms after two years and whether any further regulatory intervention, such as an opt-in regime, may be considered.
8. Agreed to maintain the current framework in the Australian Consumer Law regarding the existing exemption from the consumer guarantees for goods sold via auctions. Ministers

noted that New Zealand will be undertaking a review of the consumer law reforms that took effect between 2013 and 2015, including changes made to the consumer protections applying to auctions, and that there would be benefits in further considering this matter in light of the outcomes of the New Zealand review. Ministers requested CAANZ to report back following completion of the New Zealand review.

Ministers noted Queensland's position on point 2 above, that Queensland and South Australia did not support any delay in the provision of enhanced protections for consumers who had purchased 'lemon' motor vehicles or caravans.

Ministers noted that the 'Clarification, simplification and modernisation of the consumer guarantee framework' Decision Regulation Impact Statement identified and acknowledged significant problems consumers can experience obtaining a refund or replacement for new 'lemon' motor vehicles and caravans.

Further to point 3 above, Ministers directed CAANZ to undertake work on additional options. This includes ACL amendments to:

- provide consumers with a 60 day refund or replacement right if a motor vehicle or caravan is immobile or not driveable; and
- reverse the onus of proof to ease the evidentiary burden on consumers by requiring suppliers to demonstrate that at the time of supply a new motor vehicle or caravan was compliant with consumer guarantees.

General safety provision

Consumer Affairs Ministers supported the ongoing work to strengthen the product safety framework and noted the options being considered by senior officials, including the proposal to introduce a general safety provision.

Third party certification of food

Ministers agreed that the Australian Consumer Law is capable of addressing misleading or deceptive third party certification of food claims, and there should be no further regulatory intervention for third party certification of food under the Australian Consumer Law at this time.

Payday loans

Ministers noted the progress of the Commonwealth Government with regards to payday lending and consumer leasing companies and also noted the need to progress this as a high priority to protect vulnerable consumers, noting the work of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the Senate inquiry into the Credit and financial services targeted at Australians at risk of financial hardship.

Debt management firms

Ministers noted the progress of the Commonwealth Government in regulating debt management firms. CAF requested CAANZ to report back on options to further regulate debt management firms.

Palm oil labelling

Ministers noted the work of the Australia and New Zealand Ministerial Forum on Food Regulation in relation to the labelling of fats and oils.

Charitable fundraising

NSW raised a potential regulatory gap arising from restrictions the ACNC faces in taking action against former directors or office holders of charities registered with the ACNC.

NSW also raised the recent recommendation by the ACNC Act review panel that directors' duties and auditors' obligations under the *Corporations Act 2001* (Cth) should be reinstated for bodies corporate registered with the ACNC.

The Commonwealth Government has not formally responded to the ACNC Act review panel report. While awaiting that response, CAANZ members will consider any potential regulatory gap for their local charitable fundraising statutory regimes.

Car manufacturers' sharing technical data with independent repairers

Ministers agreed to support Commonwealth action addressing the difficulties independent licensed vehicle repairers face in obtaining motor vehicle manufacturers' technical data, which affects their capacity to compete in the motor vehicle repair market on a level playing field.

Strategic Agenda 2018-2022

Ministers endorsed the Strategic Agenda 2018 – 2022, which sets out key priorities that are centred on empowered consumers, responsible traders, forward-looking co-ordinated regulatory activity and implementing the CAF endorsed ACL review agenda.

CAANZ progress report to CAF

Ministers noted the progress and work of CAANZ since the last CAF meeting including the Takata airbag recall, most complained about businesses nationally, consumers with a disability and the NDIS, the 'Make Sharing Fair' and Festivals education campaigns, and implementation of ACL Review proposals.

CAANZ also updated Consumer Affairs Ministers on developments in the retirement villages sector and work that has been done since Ministers considered the issue in August 2017. Ministers noted there have been a number of developments to benefit retirement village residents, including significant reforms and commitments to implement reform proposals. Ministers now have a nationwide perspective on issues affecting retirement village residents which will be taken into account by states and territories in considering future reform in the sector. CAANZ also noted that on 16 September 2018, the Federal Government announced a Royal Commission into Aged Care Quality and Safety.