

INTERGOVERNMENTAL AGREEMENT FOR THE AUSTRALIAN CONSUMER LAW

Council of
Australian
Governments

An agreement between

- the **Commonwealth of Australia** and
- the **States and Territories**, being:
 - ◆ The State of New South Wales
 - ◆ The State of Victoria
 - ◆ The State of Queensland
 - ◆ The State of Western Australia
 - ◆ The State of South Australia
 - ◆ The State of Tasmania
 - ◆ The Australian Capital Territory
 - ◆ The Northern Territory of Australia

30 August 2019

Intergovernmental Agreement for the Australian Consumer Law

PURPOSE

- A. This is the second Intergovernmental Agreement for the Australian Consumer Law. It replaces the first agreement which was signed by First Ministers on 2 July 2009 prior to the commencement of the Australian Consumer Law on 1 January 2011.
- B. This Agreement provides the foundation for the Parties to collaborate on policy development and to facilitate the operation of the Australian Consumer Law.
- C. In signing this Agreement, the Parties acknowledge that collaboration and coordinated action is core to effectively protect and empower consumers, foster effective competition and enable the confident participation of consumers in markets by promoting fair trading. Central to this is the Legislative and Governance Forum on Consumer Affairs (CAF) which is responsible for consumer policy and oversees the Australian Consumer Law's single law/multiple regulator approach.
- D. This Agreement may be amended only by the unanimous agreement of all the Parties.

OBJECTIVES

- E. The objectives of the Australian Consumer Law are to:
 - improve consumer wellbeing through consumer empowerment and protection;
 - foster effective competition; and
 - enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.
- F. These objectives are supported by six operational objectives:
 - 1) to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
 - 2) to reduce the supply of unsafe goods and related services in the Australian market and ensure they are fit for the purpose for which they are sold;
 - 3) to prevent practices that are unfair;
 - 4) to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
 - 5) facilitate accessible and timely redress where consumer detriment has occurred; and
 - 6) to promote proportionate, risk based enforcement.

DEFINITIONS AND INTERPRETATION

- 'ACCC' means the Australian Competition and Consumer Commission;
- 'ASIC' means the Australian Securities and Investments Commission;
- 'Australian Consumer Law' means the text contained in Schedule 2 of the *Competition and Consumer Act 2010* and any legislative instruments made pursuant to the Australian Consumer Law;
- 'COAG' means the Council of Australian Governments;
- 'Commonwealth Minister' means the Commonwealth Minister responsible for consumer affairs;
- 'CAF' means the Legislative and Governance Forum on Consumer Affairs;
- 'minor or inconsequential amendments' means typographical, drafting or other changes that do not affect the substantive operation of the Australian Consumer Law or the attainment of its purposes;
- 'Party' means a party to this Agreement;
- 'State and Territory Ministers' means the State and Territory Ministers responsible for consumer affairs;
- 'States' means the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania;
- 'State and Territory Agency' means the agency or agencies designated in the relevant State or Territory Application Act, or regulations made pursuant to that Act, as the agency responsible for the enforcement and administration of the Australian Consumer Law;
- 'Territories' means the Australian Capital Territory and the Northern Territory of Australia.

IMPLEMENTATION

The Legislative Scheme

1. Each Party will use best endeavours to have its Parliament repeal, amend or modify any legislation that is inconsistent with or alters the effect of the Australian Consumer Law.
2. Except as agreed by the Parties, a Party will not submit a Bill to its legislature which would be inconsistent with or alter the effect of the Australian Consumer Law.

ALTERATION OF THE AUSTRALIAN CONSUMER LAW

Submitting a Proposal

3. Any Party may submit to the Commonwealth a valid proposal to amend the Australian Consumer Law. In doing so, the submitting Party shall provide a copy of that proposal to all other Parties. Amendments proposed by the Commonwealth must also meet the requirements of a valid proposal outlined in clause 4.

4. A valid proposal shall:
 - 4.1. include a description of the problem to be addressed by the proposal;
 - 4.2. include a description of the key features of the amendments proposed to address that problem;
 - 4.3. include a discussion of alternative methods of addressing the problem, including non-regulatory methods; and
 - 4.4. provide supporting material that, so far as practical, complies with the Commonwealth's best practice regulation requirements, including by provision of a draft Regulation Impact Statement, if required.

Consultation

5. The Commonwealth will commence consultation with all Parties within four weeks from the date of receiving a valid proposal. The Commonwealth will also consult with all Parties on any amendments it proposes to make to the Australian Consumer Law.
6. To commence consultation, the Commonwealth Minister will write to the State and Territory Ministers notifying them of the proposed amendment. All Parties, including the Commonwealth, will have three months from the date of the Commonwealth Minister's written notification (unless a different period of time is agreed by all Parties) to consider and respond to the proposal in writing.
7. The Commonwealth does not need to consult with the Parties before making minor or inconsequential amendments to the Australian Consumer Law, but must give the Parties sufficient notice of its intention to make such amendments.
8. Where the Commonwealth has notified the Parties of its intention to make minor or inconsequential amendments in accordance with clause 7 and four Parties advise the Commonwealth Minister in writing within 21 days that they believe the proposed amendments are not minor or inconsequential, then the Commonwealth Minister must submit the proposed amendments to a vote of the Parties in accordance with the procedure set out in clauses 9 to 13 of this Agreement.

Voting

9. At the end of the consultation period outlined in clause 6, or following the notification by four Parties that proposed amendments are not minor or inconsequential as outlined in clause 8, the Commonwealth Minister shall call a vote on the proposed amendment(s) by sending a written notice to the State and Territory Ministers.
10. The written notice will specify a voting date for the proposed amendments, which will be at least 35 days from the date of that notice. If a party does not vote, or does not abstain, on or before the voting date, that party will be taken to have voted in favour of the proposed amendment(s).
11. In exceptional circumstances, Commonwealth, State and Territory Ministers, by unanimous agreement in writing, may determine an alternative voting date (which is consistent with the consultation requirements set out above).
12. The only circumstance in which a Party may abstain from the vote is if a Party is in caretaker mode at any time between the date of the notice and the voting date.

13. The Commonwealth will not introduce a Bill into the Commonwealth Parliament to amend the Australian Consumer Law unless the proposed amendment is supported by:
 - 13.1. the Commonwealth; and
 - 13.2. four other Parties (including at least three States).

RESEARCH AND ADVOCACY

14. The Parties recognise the importance of evidence-based policy supported by robust research and effective stakeholder advocacy. To this end, the Parties will work together to develop further the effectiveness of consumer representation and consumer policy research nationally.

ADMINISTRATION AND ENFORCEMENT

15. Enforcement and administration of the Australian Consumer Law will be shared between the ACCC, ASIC and State and Territory Agencies under a multiple-regulator framework.
16. The ACCC, ASIC and State and Territory Agencies will maintain a Memorandum of Understanding for the purposes of the enforcement and administration of the Australian Consumer Law.
17. The Memorandum of Understanding shall include arrangements for communication, cooperation and coordination between the ACCC, ASIC and State and Territory Agencies, including, but not limited to:
 - 17.1. enforcing the Australian Consumer Law, including the exchange of information and intelligence;
 - 17.2. informing the general public and educating consumers and business about the Australian Consumer Law;
 - 17.3. monitoring of compliance with the Australian Consumer Law, including market surveillance;
 - 17.4. ongoing reporting and review of the enforcement and administration of the Australian Consumer Law, including arrangements for the ACCC, ASIC and State and Territory Agencies to report to CAF; and
 - 17.5. protocols for complaint handling and investigation.
18. Enforcement and administration arrangements will be reviewed by COAG seven years after the signing of this Agreement or at another time by agreement.
19. The ACCC, ASIC and State and Territory Agencies will continue to develop and publish common national guidance for businesses and consumers on the application, enforcement and administration of the provisions of the Australian Consumer Law.
20. Subject to the Commonwealth's agreement, any Party may confer its powers in relation to the enforcement and administration of the Australian Consumer Law on the Commonwealth.
21. Sufficient notice must be given to the Commonwealth of a Party's intention to confer its administration and enforcement functions on the Commonwealth.

PRODUCT SAFETY

Interim Product Bans and Mandatory Safety Standards

22. States and Territories will retain the power to develop and implement interim product bans within their respective jurisdictions.
23. Commonwealth interim product bans and mandatory safety standards will apply in each State and Territory automatically. However, State and Territory interim bans do not apply outside the relevant State or Territory.
24. Before implementing an interim ban, a Party will use best endeavours to consult with the ACCC and State and Territory Agencies.
25. A Party that imposes an interim product ban will as soon as practical endeavour to notify CAF before implementing the ban or at the latest, concurrently with implementing the ban.

Permanent Product Bans and Mandatory Safety Standards

26. Only the Commonwealth Minister may make, amend or revoke permanent bans and mandatory safety standards.
27. If the Commonwealth Minister decides to make, amend or revoke a permanent ban or a mandatory safety standard, the Minister will, as soon as practical, inform the Parties of the decision to do so.
28. The ACCC may submit a recommendation to make, amend or revoke a permanent ban or a mandatory safety standard to the Commonwealth Minister.
29. Before submitting such a recommendation, the ACCC will undertake any required regulatory impact analysis and consultation, including consultation with State and Territory Agencies.
30. Any Party may refer a proposal to the ACCC for the making, amending or revoking of a permanent ban or a mandatory safety standard. A proposal must be accompanied by supporting information, including a hazard risk assessment and market details.
31. Based on its own assessment, and having regard to consultation with State and Territory Agencies, the ACCC will decide whether to submit a recommendation to the Commonwealth Minister for a permanent ban or a mandatory safety standard of the sort proposed by a Party. The Minister will, as soon as practical, inform all Parties of its decision.

Recalls

32. Only the Commonwealth may require a supplier to conduct a compulsory recall where it is likely that the recall would affect three or more States or Territories.
33. Any Party may require a supplier to conduct a compulsory recall where the recall is likely to affect no more than two States or Territories.
34. A Party that requires a supplier to undertake a compulsory recall will endeavour to notify CAF before requesting the recall to be undertaken, or at the latest, concurrently with requesting that the recall is undertaken.
35. In cases where the supplier of a good is unable to be contacted, the Commonwealth Minister may order the ACCC to undertake a recall of goods. The Commonwealth Minister will inform all Parties of its intention to require the ACCC to conduct a recall.

Enforcement of Bans, Mandatory Standards and Recalls

36. The Parties will share responsibility for enforcement and administration of the product safety components of the Australian Consumer Law, including hazard identification, interim product bans, permanent bans, mandatory standards and recalls.
37. The Memorandum of Understanding referred to in clause 16 will cover the enforcement and administration of the product safety components of the Australian Consumer Law.
38. Any Party, with the agreement of the Commonwealth, may confer its powers in relation to the enforcement and administration of product safety on the Commonwealth.
39. Sufficient notice must be given to the Commonwealth of a Party's intention to confer its administration and enforcement functions in relation to product safety on the Commonwealth.

RELATIONS WITH NEW ZEALAND

40. Consistent with the objectives of the Australia/New Zealand Closer Economic Relations Trade Agreement, New Zealand is a signatory to the Memoranda of Understanding between Australian Consumer Law regulators referred to in clause 16, for the purpose of providing effective communication, cooperation and coordination between the administration and enforcement of consumer law in Australia and New Zealand.

WITHDRAWAL AND CESSATION

41. A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.
42. If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

REVIEW

43. The Parties will review this Agreement's operation and terms as required.

The Parties have confirmed their commitment to this agreement as follows:

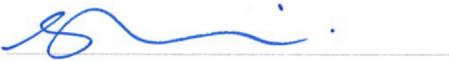
Signed for and on behalf of the Commonwealth
of Australia by



The Honourable Scott Morrison MP
Prime Minister of the Commonwealth of Australia

Date

Signed for and on behalf of the
State of New South Wales by



The Honourable Gladys Berejiklian MP
Premier of the State of New South Wales

Date 10/3/20

Signed for and on behalf of the
State of Victoria by



The Honourable Daniel Andrews MP
Premier of the State of Victoria

Date 11/3/20

Signed for and on behalf of the
State of Queensland by



The Honourable Anastacia Palaszczuk MP
Premier of the State of Queensland

Date 4/8/20

Signed for and on behalf of the
State of Western Australia by



The Honourable Mark McGowan MP
Premier of the State of Western Australia

Date 9 OCT 2020

Signed for and on behalf of the
State of South Australia by



The Honourable Steven Marshall MP
Premier of the State of South Australia

Date 5/5/20

Signed for and on behalf of the
State of Tasmania by



The Honourable Peter Gutwein MP
Premier of the State of Tasmania

Date

Signed for and on behalf of the Australian
Capital Territory by



Andrew Barr MLA
Chief Minister of the Australian Capital Territory

Date 12.11.20

Signed for and on behalf of the Northern
Territory by



The Honourable Michael Gunner MLA
Chief Minister of the Northern Territory of Australia

Date