



FCRC

Financial & Consumer Rights Council Inc.

Submission

**SCOCA Australian Consumer Law Consultation
Competition and Consumer Policy Division Treasury**

The Financial and Consumer Rights Council Inc. (FCRC) is the peak body for Financial Counsellors and community based organisations in Victoria who are concerned with the rights of low income and vulnerable consumers.

The FCRC is an independent not-for-profit organisation which is primarily funded by the Department of Justice and has been in operation since 1996.

The FCRC provides a support network for approximately 160 member Financial Counsellors, primarily through ongoing training, education and professional development seminars. Additionally the FCRC is active in promoting the rights of consumers and seeks to achieve this by the provision of consumer information and community education, as well as effective casework, support, and advocacy.

Introduction:

Unfair trade practices affect numerous consumers throughout Australia, remedies for which are often complicated by consumer protection laws that differ from state to state. Consequently the FCRC strongly supports COAG'S agreement to implement a new national consumer law, and the application of the new law to financial services. We acknowledge that the Australian Consumer Law will be introduced with the possibility of producing multiple benefits such as enhancing consumer protection, reducing regulatory complexity for businesses, and encouraging the development of a seamless national economy. The FCRC will focus this submission specifically on the Australian Consumer Law's potential to enhance consumer protection. We believe that a strong legislative framework is required to support consumers in what has become a competitive and somewhat aggressive marketplace. In particular it is imperative that such a framework takes into consideration the needs of low income earners and those most vulnerable to unfair trade practices. The FCRC will provide recommendations on unfair contract terms, door-to-door trading, and telemarketing provisions which could be adapted in the best interests of low income and susceptible consumers.

Unfair Contract Terms:

Q. Please set out any views on whether the types of terms described in this chapter should be banned in the initial text of the Australian Consumer Law.

The FCRC supports COAG's agreement to include a provision addressing unfair contract terms into the Australian Consumer Law.

As suggested in the supporting documentation provided, unfair terms are prevalent in standardised contracts and leave little or no bargaining power to consumers. Consequently the proposal to ban certain types of unfair contract terms will ensure that all consumers, especially those who are most vulnerable to unfair practices, have confidence entering into contracts whilst being protected by the Australian Consumer Law.

The FCRC recommends that consumers will benefit most if the following terms are banned from being included in standardised contracts:

- Terms retaining title for suppliers in goods that cannot be removed from consumers' premises without damage; terms allowing suppliers to repossess such goods.

The repossession of goods for any consumer is a frightening and an intimidating act. Consequently the same act in the home of a more vulnerable consumer can have more of a devastating impact. Consumers from non-english speaking households, those with a disability, single parents, the elderly or low income earners are more susceptible to being intimidated into paying debts owed through the act of repossession by the supplier. The FCRC acknowledges that title retention clauses and repossession rights are necessary to ensure payment from consumers and consequently protect the supplier; however we do not endorse clauses allowing suppliers to enter a consumer's home to remove such fixtures. The FCRC recommends that such clauses are banned from being included in standardised contracts and that a provision be included into the Australian Consumer Law stating that the removal of consumer goods only be permitted with an appropriate Order from a Court or Tribunal.

- Terms denying the existence or validity of pre- or post-contractual representations made to consumers; 'entire agreement' terms; terms deeming something a fact.

The FCRC recommends that such terms are banned from standardised contracts as they are instrumental in lowering the bargaining power of vulnerable consumers. Consumers with poor English skills and low literacy levels may have the terms of the contract communicated to them orally and may trust that the written contract will mirror the terms that have been discussed. The benefits of banning such terms are that consumers will be given the opportunity to express their understanding of the contract that was agreed orally and dispute any discrepancies that arise within the written contract.

- Terms under which consumers acknowledge that they have read or understood the contract

Similar to the previous recommendation, the FCRC supports the banning of this term in standardised contracts in order to ensure the rights of consumers, in particular those most vulnerable to unfair practices, are protected.

Consumers frequently come across standardised contracts which state that the contract is to proceed only if and when it is signed as being read and understood. This poses a dilemma to many consumers, in particular those with low literacy levels, non-english speaking consumers, and the elderly who may not fully understand the terms of the contract but in good faith will sign it, as they have no other option, in order to receive the service or goods. Low income earners in situations where they require a utility service, communication service, or banking and financial service, among other things, may sign such contracts regardless of whether or not they understand the terms as

they may not be able to afford alternative products which initially may seem more expensive. Therefore if such a provision is to exist in a contract then consumers should be able to readily and easily access further information or customer service assistance to fully explain the terms of the contract. However, even then it cannot be certain that the consumer understands the contract as they may simply sign to avoid frustration or embarrassment in seeking further clarification of the terms. Hence it is suggested that such a term not be permitted to exist at all in order to avoid such situations and to maximise the protection of consumers.

- Flat/fixed early termination fees and those requiring the paying out of the contract

In the event that a low income earner is unable to continue with a contract due to financial strains it can be appreciated that asking the consumer to pay the remainder of the contract or a flat/fixed early termination fee will apply more financial hardship to their situation. It is agreed that the consumer must be liable for any loss the supplier will incur due to the early termination, however we believe that it would be unfair for the consumer to be made to pay any additional fees.

Contract terms should state clearly the amount of any cancellation or termination fee that becomes due where a contract is terminated early. However, in the event that a consumer can reasonably demonstrate that they are seeking to terminate a contract for reasons of financial hardship, any cancellation fees ordinarily payable under the contract should be made void.

- Terms mandating arbitration of disputes or otherwise inhibiting access to courts or tribunals

The FCRC deem such terms in standardised contracts as being unfair due to the onus on consumers to pay a portion of the arbitrator's costs and on the basis that this would inarguably constitute a denial of natural justice. In the majority of circumstances with low income earners this will become a further hardship and an option they would not pursue thus resulting, to the detriment of both parties, in the dispute remaining unsettled.

Door-to-door trading and telemarketing:

Q. Should the Australian Consumer Law include a provision regulating door-to-door sales? If so, having regard to the principles of best practice regulation, what aspects of current regulation should this provision reflect? What other approaches might be used?

Door-to-door selling techniques may be detrimental to consumers in that alternative product/service options are not readily available to them to make a comparison. Accordingly, consumers, in particular those mentioned earlier as being more vulnerable, may feel forced into a contract when faced with a persuasive door-to-door sales person, especially when payment is

requested upfront. The FCRC suggests that the Australian Consumer Law should include a provision regulating door-to-door sales by drawing on the most beneficial parts of each of the States' current legislation.

In particular the FCRC recommend imposing a cooling off period of a minimum of 10 days and that consumers are provided with information clearly outlining their rights to cancel and the method of how to do so during the cooling off period. In the event that English is not the consumer's first language, or if there is any other impediment to the consumer's understanding of the contract terms, then complete information detailing the consumer's rights and obligations under the contract should be supplied to the consumer in a manner and form that is easily understood and the ten day cooling off period should not commence until such information has been supplied.

Q: Should the Australian Consumer Law include a provision regulating telemarketing? If so, which aspects of current regulation should this provision reflect? What other approaches might be used?

The Australian Communications and Media Authority (ACMA) introduced the Do Not Call Register in 2006, allowing consumers to register their telephone numbers in order to regulate unsolicited telemarketing calls. The FCRC recommends that a similar provision be incorporated into the Australian Consumer Law in order to regulate unwanted telemarketing and research calls for all consumers rather than just those who register. The FCRC believe that this will protect consumers who may not be aware of the do not call register, such as the elderly or non-english speaking consumers, so all benefit from such protection. By including a provision in the Australian Consumer Law which covers all consumers, businesses too would not be required to constantly seek updated consumer listings and breaches would be vastly reduced.

The FCRC understands that the effectiveness of the register is questionable, as the majority of Financial Counselling clients (who are on the register) report little if any difference in the number of telemarketing calls received. The FCRC also understands that ACMA has not successfully prosecuted any breaches. In March 2008, the ACMA advised that they were receiving approximately 2600 complaints per month of alleged breaches of the Do Not Call Register. With such a large number of alleged breaches, this raises significant questions about the effectiveness of the ACMA's enforcement powers. The Australian Consumer Law would be an opportunity to strengthen the effectiveness of the register, as well as the statutory authority which is responsible for it.

Conclusion:

The FCRC makes recommendations based on those issues that face low income and vulnerable consumers. The FCRC has made suggestions regarding the elimination of specific terms in standardised contracts, door-to-door trading and telemarketing provisions. The FCRC hopes that this submission is valuable in enhancing consumer protection and minimising unfair trading practices.