

**NATIONAL  
CONSUMER CONGRESS  
2010**

**The Hon Dr Craig Emerson MP  
Minister for Competition Policy and  
Consumer Affairs**

**Opening Address:**

***Taking Action -  
Australian Consumer Law***

**Monday, 15 March 2010**

**Sydney NSW**

Thank you for inviting me to address the National Consumer Congress 2010 today, particularly at such an exciting time for consumer policy in Australia.

And congratulations to CHOICE on 50 years of informing and empowering Australian consumers and on presenting this Congress as part of its 50<sup>th</sup> anniversary year.

### **Consumer action**

The theme for this Congress is ‘Consumer Action’.

Through their choices, consumers promote competition, innovation and efficiency.

The Rudd Government is committed to empowering consumers to make markets work for them.

That can only be achieved by promoting competition and better informing consumers.

Competition is the consumer’s friend; anti-competitive behaviour is the consumer’s enemy and a threat to the public interest.

When I was studying at the University of Sydney in the 1970s, we did courses on consumer sovereignty versus producer sovereignty.

Back then, today, and for the rest of my life I will be barracking for consumer sovereignty.

It has long been my view that public policy should be about doing the greatest good for the greatest number – instead of being about protecting producers from competition.

Yet governments are constantly under pressure to support producerism over consumerism.

Producers organise for themselves powerful and articulate business lobby groups, while consumers are far more dispersed and too busy just getting on with their lives to organise into powerful groups.

That’s why the consumer advocacy groups represented by you here today have a vital role to play in representing the interests of consumers.

One message I would like to convey to you today is let's keep the focus on consumers and let's not mix up producer interests with consumer interests.

A case in point is the coverage of survey results I released over the weekend showing consumers could get 50 per cent off by choosing unbranded products over the branded alternative when the contents of the packaging are the same.

I was referring to items like milk and eggs, sugar and basic salt and I asked why pay double just for the packaging.

And every one of the items on my list was made in Australia.

The Food and Grocery Council, on behalf of the manufacturers – many of them multinational corporations – attacked the survey.

When you google the Food and Grocery Council you'll read these words: *'The Australian Food and Grocery Council is the national body representing the nation's food and grocery products manufacturers'*.

That's fair enough.

And it's fair enough that the Food and Grocery Council is happier when supermarkets sell branded products over unbranded items.

That's their role as an organisation representing producers.

In fact, the Government is working constructively with the Food and Grocery Council to reduce unnecessary, overlapping state and territory regulation to improve the competitiveness of its members who employ more than 300,000 Australians.

I would, however, challenge Food and Grocery Council head, Kate Carnell, to a blind taste test on the branded and unbranded varieties of sugar, eggs, milk, butter, salt and soda water.

If the branded item is superior, then Kate will have no trouble in identifying it without the benefit of the labelling.

If she is prepared to put her views where her mouth is – literally – I suggest we assemble a small panel of consumers, picked at random, to taste these products alongside her.

We can settle the details if and when she agrees to this challenge and I really hope she does. Kate, I will be waiting for your call.

It didn't surprise me that the Food and Grocery Council attacked our survey.

But what did surprise me was that the Food and Grocery Council was joined by Choice in attacking me for suggesting unbranded products might constitute better value for money for consumers where the contents of the packaging are identical.

Choice declared that: *'We would be concerned if there was an approved by treasury logo on every home brand product. I mean, there is a cost to using home brands. They do entrench the supermarkets' power and profitability'*.

This, of course, is a total fiction – there is no proposal to apply a treasury logo to home-brand products.

And why would a consumer organisation not want consumers to save money?

When supermarket prices rise, Choice is rightly annoyed, but when supermarket prices fall, Choice is even more upset because they say low prices will drive out rivals.

Well, I'm for low prices *and* more competition.

That's why the Government is tearing down the barriers to entry into grocery retailing: relaxing the foreign investment laws to encourage the Aldi's and Costco's into Australia; working with the ACCC which is stripping away the restrictive provisions in leases that have prevented rivals setting up in major shopping centres; and reviewing anti-competitive provisions in planning and zoning laws that protect incumbents from the entry of competitors.

It's why the Rudd government strengthened the predatory pricing laws and the laws on unconscionable conduct and false and misleading representations.

And it's why we are empowering consumers through the introduction of unit pricing which is proving very popular.

Coles and Woolworths have nominated the competitive pressure being applied to them by newer rivals like Aldi as driving the grocery price war currently underway.

In my view, competition is good for consumers and more competition is better.

## **The Australian Consumer Law**

What better time than on World Consumer Day to be able to outline to you developments in the formulation of a single Australian Consumer Law.

### **The current situation**

At present there are myriad national, state and territory consumer laws with a lot of duplication and complexity imposing heavy costs on consumers, slowing down dispute resolution and making markets inefficient.

The new Australian Consumer Law will begin to sweep all of this away.

Where a national business may now have to comply with nine slightly different sets of obligations, spread across 17 different Commonwealth, state and territory Acts, there will be just one law – if we can persuade the Senate that this is important and urgent.

The new law will give all Australian consumers the same rights – and impose the same rules on businesses – wherever they are in Australia.

We are increasingly operating in a borderless, national economy and the cost of complying with state-based rules and regulations is having a greater impact on the cost of doing business, and therefore on consumer prices.

The Productivity Commission estimates that the Australian Consumer Law and its associated reforms would reduce consumer detriment by \$1.2 billion a year.

### ***Greater certainty for consumers and business***

Shonks and rogues will find it harder to hide when the Australian Consumer Law is in force.

The new law will introduce a single set of enforcement powers, criminal sanctions, civil penalties and remedies to help consumers and the regulator to take effective action.

### **The main features of the Australian Consumer Law**

The Australian Consumer Law will apply to every part of the economy, either directly, or – as is the case of financial services – through mirror provisions in the ASIC Act.

Lawyers and consultants will be covered in the same way as retailers and tradespeople.

The Australian Consumer Law uses the consumer provisions of the *Trade Practices Act* as a base, with some improvements drawn from state and territory laws.

#### ***General protections***

The Australian Consumer Law will have three general conduct provisions.

First, traders must not engage in misleading or deceptive conduct.

Second, traders must not engage in unconscionable conduct.

And third, traders must not use unfair contract terms in standard form consumer contracts.

These basic business rules make clear the boundaries of acceptable behaviour.

#### ***Some specific protections***

##### ***Consumer guarantees***

A new system of consumer guarantees will replace the current statutory conditions and warranties and will be backed by effective consumer information and stronger enforcement.

Research has shown that very few Australian know about – let alone understand – their statutory rights.

While this is alarming in itself, I was even more concerned about the lack of knowledge on the part of businesses – 57 per cent of retailers did not know that consumers had general rights to repairs or a refund beyond the terms of specific warranties.<sup>1</sup>

The new system of consumer guarantees will greatly improve this situation and I would like to express my appreciation for the valuable work of the members of the Commonwealth Consumer Affairs Advisory Council, supported by Treasury officials, on this part of the new law.

### *Unsolicited consumer agreements*

The Australian Consumer Law will also include a new national framework to regulate unsolicited selling, replacing the array of existing laws on door-to-door sales and other unsolicited marketing activities.

### *Lay-by sales*

A single set of basic rules will also apply to lay-by sales contracts.

### *Product safety*

The Australian Consumer Law will introduce a comprehensive new legal and enforcement framework for product safety.

The ACCC will assume responsibility for bans, recalls and standards.

This will streamline disparate product safety laws that currently operate around Australia, ensuring that a child in Devonport is protected from a dangerous toy in the same way as a child in Rockhampton or Bunbury.

### *Enforcement powers, penalties and remedies*

To be effective, the Australian Consumer Law must be enforced robustly.

A powerful and comprehensive toolbox of enforcement powers will be provided to enable effective action to be taken against bad business practices.

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<sup>1</sup> NEIAT 2009, *National Baseline Study on Warranties and Refunds*, Research PaperNo. 2, Melbourne, page 53.

For the first time, all consumer agencies will have a set of identical powers to enable them to take action against those willing to harm and exploit Australian consumers.

Regulators will be able to put those making dodgy claims on the spot by issuing a notice requesting evidence to substantiate the claim.

Persistent offenders and fly-by-night operators can be named and shamed with public warning notices.

Regulators will be able to seek serious criminal sanctions for many specific breaches of the law – with penalties of up to \$1.1 million for companies and \$220,000 for individuals.

Civil pecuniary penalties of the same quantum will also apply, along with orders disqualifying people from managing companies and wide ranging injunction powers.

Individual consumers around Australia will have the same legal rights to seek redress for breaches of the law that cause them loss or damage regardless of where they live.

Courts in every state and territory – and federally – will have the same powers to throw the book at those who breach the law.

These powers will also be available to state and territory courts and tribunals which provide low-cost services – meaning that mums and dads will be able to take effective action.

### **A new policy environment under the ACL**

When the Australian Consumer Law is implemented, we will have taken great strides in tackling bad business behaviour across Australia and providing remedies to consumers.

But implementing the Australian Consumer Law is only the first step.

The Australian Consumer Law will be a living law, evolving to meet the needs of Australians over time.

Cooperative policy development, and effective decision making processes, will allow emerging issues to be dealt with quickly through the Australian Consumer Law, without the delays and deadlocks of the past.

Greater cooperation and coordination in enforcement across Australia will foster earlier detection of problems, and a clearer appreciation of their national or local effects.

### **A new, national approach to credit**

I also want to take some of your time today to cover the new, national consumer credit law which is being delivered by my colleague, Chris Bowen.

This reform will remove the deficiencies and complexities that have long existed in Australia's consumer credit laws.

The new national regime for consumer will cover all consumer credit – mortgages, credit cards, and some investment lending – activities which affect over 5.7 million Australian households.

It will extend the scope of existing state and territory laws, and replace the current Credit Code.

There will also be national standards for all credit service providers: lenders, mortgage brokers, managers, aggregators and credit advisers.

### ***The first phase of the credit reforms***

The Government is close to finalising the first phase of these reforms.

A comprehensive national licensing regime for those involved in credit activities is being established.

Industry-wide conduct obligations for responsible lending have been developed and ASIC, as the national regulator has been armed with strong enforcement powers.

Consumers will receive clearer information about credit when they are thinking about borrowing and lenders that fail to meet the responsible lending requirements will face criminal sanctions, including being gaoled for up to five years.

ASIC will also have powers – like those for the Australian Consumer Law – to seek criminal and civil financial penalties of up to \$220,000 for an individual and \$1.1 million for a corporation.

Consumers will have access to a wide range of remedies, including compensation, when they suffer loss or damage resulting from a credit providers' conduct.

They will enjoy new streamlined court procedures – particularly for hardship cases – and will have access to an external dispute resolution scheme, which will cover all credit providers and linked operators, including fringe lenders.

### ***The second phase of credit reform***

The Government is also embarking on a second phase of credit reforms to make our credit laws even more effective.

These reforms will deal with specific types of unfavourable lending practices and will extend credit regulation to strengthen market integrity and consumer protection.

### **Conclusion**

So, as you can see, 2010 is shaping up to be a landmark year in consumer policy.

The Rudd Labor government is engaged in the single biggest reform and modernisation of Australian consumer laws since the inception of Trade Practices Act by the Whitlam Labor government 35 years ago.

I want to thank you representing Australia's consumer advocacy groups here today for championing these reforms and, if we somehow can persuade the Senate to debate the proposed laws, you will have the satisfaction of knowing that consumer protection will have been greatly strengthened for the lasting benefit of Australian consumers.