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Transcript
5AA Mornings with Leon Byner
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E&OE

Subjects: The New Australian Consumer Law.

BYNER: A story now that's a bit of good news for you on subjects that this program and myself have been campaigning on for a long time. Australian consumers are about to be better protected from businesses and corporations that offer contracts that are one-sided, advantaging the seller, not the buyer. Now in mobile phones and airline ticket sales there are clauses that put all the onus and risk on the customer, and these conditions deny even basic service delivery as a right of the contract. Further, the contract offered for phone service won't guarantee the phone works, that there's adequate reception, and in some cases demands the customer accept all liability if the phone fails while it's under contract.

Now with the cheap airlines, their conditions don't guarantee a flight, and if it's cancelled it's at the discretion of the carrier to refund you and in their timeframe.

Now these conditions are akin to the rights of customers in Latin-America, where gangs and corrupt officials run entire cities. But this is all about to change in Australia. There will be massive fines for unconscionable conduct; misleading and false information about a product or service will attract a 'name and shame' provision.

I've got to tell you, there'll be a stack of retailers, particularly phone retailers that will fall under this category because they tell

customers that statutory warranties don't exist. The ACCC will oversee this and I think that's probably a good thing because frankly in this State, consumer affairs are a toothless tiger, and that's why David Schomburg, who was on the show last year, took another job.

But it is to the credit of the Rudd Government that this vandalism against your rights by large businesses and corporations be reined in. So Craig Emerson I have to say congratulations, a bit of good policy.

EMERSON: Thank you very much Leon and thank you for your ongoing support for consumer protection. You've been a long and strong champion of consumer protection in South Australia and I listen to or see the transcripts of your many campaigns and I think it's all to the common good.

BYNER: Craig, can you give us some examples of what situations you saw, and you kind of said to yourself as Consumer Affairs Minister "Now this isn't on".

EMERSON: Really in the unfair contracts are that you're talking about, where the nasties, if you like, are buried in the fine print, at the back, they're not reasonably necessary for the commercial viability of the business. They put all of the onus, as you say, onto the customer, the customer signs this document or just pays for it. In the case of phone contract or maybe an airline contract, they don't really know what their rights are, it's buried at the back and I think a good way of giving an example is in some of these contracts you have to pay for the service even if the service provider is not providing it. That's pretty far out there isn't it?

BYNER: But Craig isn't that already illegal?

EMERSON: Well it hasn't necessarily been illegal and to the extent that even if you are doing the wrong thing you'd basically get a slap on the wrist Leon, and therefore we'd say "don't do it any more". Now, if you behave unconscionably under this new law, and that's really conduct if you like that it's so odious that any reasonable person would find it deplorable, then the fines are up to \$1.1 million for companies. Similarly, as you said in your introduction, for people or businesses that make false and misleading statements and dupe people into believing a product has got some particular feature that in fact it never had, again a \$1.1 million fine. So the tiger is going to get some teeth and it is going to be the ACCC as you say. I would commend the Rann South Australian Government on its cooperation in moving to a single Australian Consumer Law because that's then needed to strengthen protections and to have one law for all Australians.

BYNER: Can I ask you, are you going to resource the ACCC? Graham Samuel, who comes on this program a lot, he's often said to people "If you have an issue that glaringly to you is unfair, we want to know", and he said on this show, "If you've got a two

year contract and your phone doesn't work, and they deny statutory warranty, come and talk to us". I'll tell you now, you will get heaps of complaints, where do people go?

EMERSON: Yeah, well we do need to resource the ACCC, and I'm talking and this is budget-sensitive I suppose, I'm talking with the ACCC about that. There's no point having a national regulator on these sorts of matters and then the regulator is so badly under-resourced it can't enforce the new laws that have passed through the Senate just yesterday. And Leon, there's a second instalment on these that we just put into the House yesterday and that will provide also for a national system of product safety so that kids who are subject to or might be using unsafe products in Queensland, those protections are extended to people in South Australia and every other place, rather than again have State-based systems of product safety.

BYNER: Craig, some of your Federal colleagues, Tony Zappia, Steve Georganas have told me about some deplorable circumstances, and some of them have been reported from interstate where people have bought cheap airline tickets, and they might have done it for a whole suite of family, or other members, and through no fault of theirs, the flights don't happen and they can't get their money back?

EMERSON: These sorts of things need the closest attention. If I could say that Steve Georganas and Tony Zappia and other South Australian MPs have been in my ear all the time about this sort of thing and I think it's important that consumers know that they've got very strong consumer advocates in the form of these MPs.

BYNER: Let me put this scenario to you; you say the laws have passed the Senate, they have to be gazetted, so what is that going to mean? Because I doubt whether, there's a lot of recalcitrants out there among the corporates. They play this game, they play poker with the consumer until the last, final moment, and when they're taken on they will then renege. But up until that time, they'll sit there pan faced and say "No such thing as a statutory warranty, that's all rubbish, doesn't exist, hasn't been tested". So when that happens now what do you do?

EMERSON: Well then we would take them on for false and misleading representation, and Graham Samuel is all hot-to-trot on this take it from me, because we will have that single national regulator rather than the fragmented system. I honestly think for what it's worth, the State Fair Trading Departments often do their best but they too can be under-resourced so let's have this single national system and what we will have by the end of the year Leon is that Australian consumers will know their rights in terms of warranties. We're adopting the New Zealand system, where New Zealand consumers are very, very aware of their rights and don't get duped by businesses saying "no refunds". If a business

has sold you a defective product they are obliged to give you a refund or a replacement of that product. If they say that the warranty is three months on say a refrigerator, well consumers have protection under the Trade Practices Act that that fridge is supposed to be sold fit for purpose and is not to collapse in three months time. Ahead of Christmas, at the end of this year we will have out into the public arena, into shops, information about what consumers' rights really are; not only for the businesses but for the consumers to exercise those rights.

BYNER: Okay, so these contracts now that are being offered that you talked about where they get you to sign a document to say that they'll charge you for the service even though they are not providing it, does that mean that it is illegal for them to offer that to the customer? Or do they have to change those contracts?

EMERSON: They will have to now comply with the law and it will depend on the details of individual contracts, but they will now be reviewing their contracts to make sure that they are compliant with the new law and that will start on 1 July. It has just gone through the Senate, as you said, yesterday. The start-up date is 1 July and I know for example Leon, that banks are very busily going through their contracts to make sure that they comply with the new Unfair Contract Law.

BYNER: I've got to say, to the banks' defence, they probably haven't been the major offenders in all this. It's actually been the industries that are relatively new such as telecommunications.

EMERSON: I think that's right, that's a fair comment but banks are deservedly or rightly anxious to make sure that they do comply because it really is a black mark on their reputation if they are seen to be issuing unfair contracts. These as you know Leon are standard form contracts, not a negotiated deal, but where there's a standard form and as they'll say very often "the detail is buried in the back", and that's where the nasties are and often consumers are just completely unaware and unsuspecting of this.

BYNER: And this will include building contracts too won't it?

EMERSON: Yes it will.

BYNER: Because that's the other point. Because often people will be given sometimes, what is called a standard contract for a purchase of a property that is about to be built, and again, if it contains, let's just get this out there so that we all understand what we're talking about, you're saying that if there's anything in the fine print which takes away an assumption of a right that ought to be basic, that contract is illegal?

EMERSON: It certainly would be subject to ACCC scrutiny. There are some guidelines on what constitutes unfairness so we can't have a situation for example Leon, where someone says "Well I signed this contract for a mobile phone and now I've found a better

deal, so I'm going off to the ACCC to get this contract torn up".
It's not about the price, it's about the terms and conditions that
are buried in the back.

BYNER: All right. Craig, thank you again, and a piece of good policy.

EMERSON: Thanks very much Leon.

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