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**SPEECH TO THE SOCIETY OF CONSUMER AFFAIRS
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Principles of consumer policy

I welcome the opportunity to share with you today the Rudd Government's reform agenda for Australian consumer regulation.

As Minister for Competition Policy and Consumer affairs, I follow four guiding principles in consumer policy:

First, government policy should empower consumers to make their own informed choices and provide protection when necessary – the consumer is sovereign;

Second, measures to overcome consumer problems should be as light touch as possible, applying specific solutions to identified problems rather than generalised solutions that may have wider unintended consequences;

Third, regulatory structures should encourage competitive, innovative markets, not ones that stifle competition and innovation and impose heavy compliance burdens on businesses and consumers; and

Fourth, reform should be undertaken in the broader context of increasing national productivity through the development of a seamless national economy.

The Government is applying these principles in a number of policy areas ranging from practical solutions to improve the information customers receive when making purchasing decisions to the work we are undertaking to overhaul national consumer regulation.

Today I would like to outline the work we are undertaking in three areas:

- Unit pricing in supermarkets;
- The review of statutory implied conditions and warranties; and

- The introduction of the Australian Consumer Law.

Unit pricing

Australian consumers will soon have access to nationally consistent unit pricing information at all large supermarkets and online grocery retailers. The *Retail Grocery Industry (Unit Pricing) Code* will become mandatory on 1 December 2009.

Unit pricing is a practical measure to enable consumers to make easy price comparisons.

It will allow customers to choose the cheapest packet size for a particular brand. And it will allow customers to compare different brands in different package sizes by reference to their price or unit.

The introduction of unit pricing is an important part of the Government's response to the ACCC Grocery Inquiry. Submissions to the ACCC Grocery Inquiry estimated that unit pricing could save households on average \$96 a year.

Price-conscious shoppers could gain much more than \$96 a year – it all helps.

We have endeavoured to ensure that the Code is as flexible and light touch as possible. Rather than imposing the measure on industry we have worked together to develop a system that provides useful information to consumers without excessive regulatory burdens.

The Unit Pricing Code applies to food selling retailers with a floor space of 1000 square metres or more. Smaller supermarkets can participate voluntarily, but if they decide to do so they must comply with the Code.

The ACCC will be responsible for enforcing the Code once its provisions become enforceable later in the year. The ACCC will also develop educational material to assist consumers and retailers in understanding the new scheme.

Review of implied warranties

Another practical measure the Government is undertaking is a review of the Trade Practices Act's implied statutory warranties regime.

Many consumers do not understand their legal rights to refunds on defective goods, believing they can be overridden by retailers that display signs such as 'no cash refunds', 'no refunds after 30 days' and 'all care but no responsibility'.

The low level of awareness about consumers' rights is adding to the cost of buying goods. It is estimated that problems relating to warranties and refunds are costing Australians around \$12 billion a year!

The Government has commissioned the Commonwealth Consumer Affairs Advisory Council (CCAAC) to undertake a review looking at:

- The adequacy of the current laws on implied terms and whether they need updating;
- The need for 'lemon laws' in Australia to protect consumers who purchase goods that repeatedly fail to meet expected standards of performance and quality;
- How implied warranties might apply to new forms of selling including online auctions; and
- How best to ensure that there are adequate levels of consumer awareness of their implied rights.

The Advisory Committee will also look at the issue of extended warranties that are offered at retail stores. I am concerned that consumers buy extended warranties in the mistaken belief that they have no rights when the manufacturer's warranty expires.

In fact, implied warranties, provided through federal and state consumer laws, can operate well beyond the expiry date of a statutory warranty. For example, if a dishwasher has a one-year warranty and collapses in its 13th month of use, the consumer could still be protected by the implied warranty.

The final report is due on 30 October 2009 and I will work with the states and territories with aim of delivering a unified national system of regulation.

The Australian Consumer Law

In preparing our economy for a long-term, high-growth future, the Rudd Government is working with all levels of government to move Australia towards a seamless national market.

A National Partnership Agreement on the Seamless Economy has been signed that commits the state, territory and commonwealth governments to a reform program covering an unprecedented 27 areas of overlapping and inconsistent regulation across Australia.

The introduction of a single Australian Consumer Law is one of the most important of these 27 reforms.

At present there are 13 consumer laws in force across Australia. Broadly speaking, they look similar, but there are significant areas of inconsistency, leading to higher costs for business and consumers.

This maze of consumer laws needs rationalising. We must reduce confusion and complexity for consumers, and we must reduce compliance burdens for business.

The Productivity Commission estimates that the creation of one nationally-consistent Australian Consumer Law could deliver a net annual gain to the Australian community of as much as \$4.5 billion a year.

I am pleased to say that, over the last 18 months, we have made good progress in developing a coherent, national approach to consumer protection.

In October 2008, the Council of Australian Government agreed to establish a national consumer law that is based on the existing consumer protections in the *Trade Practices Act*, draws on best practice in existing state and territory laws and includes a national unfair contract terms law.

Several attempts to create a single consumer law had already been made.

In the late 1980s, the Australian and state and territory governments agreed to create harmonised consumer protection laws. This initiative succeeded in creating harmonised laws for a time, but consistency was all too soon lost as individual jurisdictions amended and augmented their laws over time.

COAG's decision of 2008 differs from previous attempts at harmonisation in that it establishes an application legislation regime where the states agree that Commonwealth legislation will apply to their jurisdiction. As a result, amendments to the Commonwealth's consumer protection legislation will automatically apply in all states and territories.

In addition, all jurisdictions have agreed to be bound by the *Intergovernmental Agreement for the Australian Consumer Law* that sets out the manner in which changes to the consumer law will be made in future.

The process of introducing Commonwealth legislation for the Australian Consumer law will take place in two steps.

First, the Government has introduced the Trade Practices Amendment (Australian Consumer Law) Bill 2009 that will put in place a national system for regulating unfair contract terms.

This legislation also provides for more effective enforcement of existing provisions in the TPA relating to unconscionable conduct and misleading representations.

Further, the Bill introduces new, enhanced enforcement powers for consumer laws.

For example, the ACCC will have new powers such as the ability to seek substantiation of claims made by businesses, and the ability to issue public warning notices about persistent wrongdoers.

Second, in early 2010, the Government will introduce a second piece of legislation, which will bring together and rationalise existing consumer protection provisions of the Commonwealth's Trade Practices Act and the states' and territories' fair trading legislation and set out provisions for a new national product safety regulatory framework.

When completed, the introduction of the Australian Consumer Law will be the most far-reaching consumer law reform undertaken in a generation.

It will deliver useful protections against inappropriate business practices and it will iron out inconsistencies across jurisdictions, providing savings to businesses and consumers.

Unfair contract terms

The first piece of legislation is currently before the Commonwealth Parliament.

I referred it to the Senate Economics Committee to undertake a detailed public enquiry.

The public hearings were held last week and the Senate Committee is expected to table its report on 7 September.

The most significant proposal in the legislation is the introduction of a national system of regulation to protect consumers against unfair contractual terms in standard form contracts.

This legislation is modelled on the Victorian legislation introduced in 2003.

Without the agreement to develop the unified Australian Consumer Law, other states and territories were looking to introduce their own unfair contract regimes.

By introducing Commonwealth legislation we have avoided the development of a number of potentially inconsistent unfair contract regulations across Australia.

The Government acknowledges the many benefits that flow from using standard-form contracts in business-to-consumer transactions.

They keep costs down and save time.

But they can often be used as a means of shielding a business from risk in a way which is detrimental to consumers.

The national Unfair Contract Terms (UCT) law prohibits the use of unfair terms in standard-form consumer contracts.

A term is unfair if it would cause a significant imbalance in the rights and obligations between the parties arising under the contract, and the term is not reasonably necessary to protect the legitimate interests of the supplier.

To deliver certainty and flexibility, the upfront price is excluded from the unfair contract provisions.

The unfair contract terms provisions will not apply to business-to-business contracts.

The Government responded to the concern that, in the context of business-to-business contracts, a general notion of unfairness that is subject to interpretation by the courts may have the effect of increasing risk and costs faced by small businesses in particular.

It is important to note that the Government is currently considering how best to deal with specific instances of blatant unfairness in business-to-business contracts.

In particular, the Government is considering the recent report of the Joint Parliamentary Committee on Corporations and Financial Services inquiry into the Franchising Code of Conduct, and the report of the Senate Economics Committee inquiry into the unconscionable conduct provisions of the Trade Practices Act.

Conclusion

The Australian Consumer Law represents a generational change in Australia's consumer laws.

It introduces reforms designed to make Australia's markets work better, to improve protection for all consumers and to strip away layers of legislative and regulatory complexity from our laws.

This will save Australian business time and money and make an important contribution to the delivery of a seamless national economy.

For the first time, all Australian consumers will be able to count on the same protection: wherever they are, whatever they buy, wherever they live.