



CONSUMERS SA

[CONSUMERS' ASSOCIATION OF SOUTH AUSTRALIA INC.]

Member of Consumers' Federation of Australia Inc.

Patron: Ian Gilfillan

PO Box 328, Belair, SA 5052

Telephone: (08) 8227 1648

Email – consumerssa.asn@gmail.com

Webpage – www.consumerssa.com

<ACLReview@TREASURY.GOV.AU>

The Consumers Association of South Australia (CSA) strongly supports the Australian Consumer Law and its enforcement by the Australian Competition and Consumer Commission. Furthermore that law and the corresponding provisions of the South Australian fair trading laws have provided a valuable basis for enforcement of competition and consumer protection by the Consumer and Business Services section of the South Australian government.

Whilst CSA has some specific comments on provisions of the ACL, its significant comments are to general approaches of that law. In particular CSA submits that obligations towards consumers should be expressed as obligations to persons affected (thus more in the nature of tortious obligations) rather than as contractual obligations. Furthermore considers that rather than action on a party to party basis attention should shift to the use of social media, particularly with respect to the provision of information.

A good example of the undesirable limited scope of an obligation is provided by the landlord's obligation to repair; under tenancy laws this duty is owed to the party nominated in the tenancy agreement as the tenant; normally the heads of the household. Consequently much litigation has concerned the basis and scope of any duty to children living at the premises. CSA submits that the duty should be owed to those who can reasonably be contemplated as affected by breach of the obligation. This obligation is taken from laws beyond the ACL but the responsibility for safety arises with respect to many of the consumer guarantees of the ACL and the argument for extension of the obligations applies to them. Responsibility beyond contract has had to be faced in the framing of manufacturers' liability but CSA submits the issue should be confronted with respect to all obligations directly affecting parties beyond those in a contractual relationship. The definition of the duty with the relevance of negligence and responsibility for persons engaged to do work on a product are beyond the scope of this submission.

The example of the landlord's duty to repair does raise an issue of the overlap of the ACL and duties imposed by State and Territory statutes governing grants of use of land. Often these statutes impose limitations on the scope of obligations. In the repair example, duties to notify defects are often imposed and have been held to limit liability.

However the provision of accommodation is a contract for the supply of services under the ACL, at least in some circumstances. Responsibility for the standard of the service is therefore imposed by the ACL and cannot be excluded by contract or any inconsistent State or Territory law. CSA considers that such an obligation is an important safeguard and consideration should be given as to whether its impact should be expressed.

The scope of responsibility has been examined over much greater time period with respect to goods rather than services. It is however likely that in light of the general social trend service obligations will be more common than those with respect to goods. The extent of the responsibility can extend to professional services such as medicine, dentistry, psychology and law. Standards based on largely commercial dealings are not readily applied where social obligations such as universal care, privacy and confidentiality have to be respected. Litigation can be exceptionally expensive. In the medical area, CSA has been a member of panels reviewing qualities of service delivery and it expects that similar bodies are needed throughout service industry.

Identification of the source of obligations is particularly difficult with respect to repairs which merge services and products. The carrying out of repair work should in CSA's view be seen both as part of the obligations with respect to the original supply of a product and a separate basis of responsibility for work done. That separate liability should arise even if no separate contract is made with respect to the repairs. The work is often carried out by a separate body which should undertake a separate responsibility.

The contractual confines have also, in CSA's view, unduly constrained the forms of information provision and even performance of the contract. Whilst use of social media should not modify or exclude traditional communication with consumers, it should allow extended and more meaningful product information. For example, whilst product labels have been the primary means to disclose ingredient details, social media offer a means to explain the significance of the ingredients and limitations on use. Because access to social media is not universal, the balance between points of disclosure has to be framed with care. This balance means that many of the contents of social media are best left to the judgment of suppliers, but they can be a factor to be weighted in any formal assessment of supplier responsibility. Warnings of dangers may have to be contained on a label but be able to be expanded and illustrated on social media. Use of such media could be an acceptable basis for transaction details. Responsibility for product quality including safety should include having how to use directions on line. Consumers should have available on line references as to how to return products or avenues as to repair sources. If a supplier becomes aware of new material affecting use that information should be again available on line.

This approach has particular application to recall procedures. Current reliance on newspaper advertisements has clearly outlived its usefulness and causing risk of consumer injury. Advice of product danger and recall procedures can clearly be provided online and must be an essential part of statutory requirements. Computer records must also be used to identify customers at risk. The desire for information as to

customer preferences means that suppliers in many cases can identify a product that is subject to a recall notice and the purchaser. Those suppliers must be authorised and required to contact the customer directly.

CSA has a comment on one specific provision of the ACL. Section 48 requires disclosure of the total price if any part of the price is disclosed. This provision has itself been the basis of much consumer deception. Separate prices for different aspects of a product have become widespread; it is commented that a separate price can be charged for a cereal container. When such widespread derision exists, the law is clearly out of touch. Separate prices for normal product components must be prohibited. Evasive practices are not confined to the travel and associated industries. Much of television advertising for everyday products sets out a price for a trial period. No disclosure is provided of the price already impliedly agreed if the trial leads to rejection; moreover such prices are not readily discovered on an initial phone inquiry. Furthermore, even where a trial is offered and the full price disclosed, the terms of the procedures and their costs for product return are not disclosed. Where a product is available for a trial period the terms of return of the product must be adequately disclosed.