



3 January 2017

Consumer Affairs Australia and New Zealand
C/- Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO Box 3648
SYDNEY NSW 2001

FILE No:
DOC:
MARS/PRISM:

Dear Mr Sims

Please accept this letter as a late submission to the Consumer Affairs Australia and New Zealand (CAANZ)'s Australian Consumer Law (ACL) Review.

This submission is made by the Service Trades Council (STC) which is an independent statutory authority established in 2016 by the Queensland government to represent the plumbing, drainage, fire protection and air-conditioning and mechanical services trades comprising approximately 20,000 Queensland licensees.

A significant number of these licensees run their own business or may do so once they qualify for a contractor licence. They form part of the more than two million small businesses actively trading across the country. These traders, like many other small businesses, are sometimes exposed to consumers who do not pay for goods/services provided by the licensed trader.

The STC has been advised by its Office of Fair Trading member that there are no ACL provisions that protect traders in such circumstances. The only way these traders can attempt to recover unpaid accounts is via civil court or Queensland Civil and Administrative Tribunal action. Both methods are time-consuming and costly, two resources which most small businesses cannot afford.

These traders are already experiencing payment issues through protracted and unjustified delays in receiving payment for work performed through contracts with head contractors. The Queensland government is dealing with this issue through a Security of Payments review, which is welcomed by the service trades. However, the proposed Security of Payments Queensland framework will only provide protection for projects between \$1 million to \$10million with a focus on government projects. It will not provide protection for small value work performed on behalf of a consumer such as maintenance work or small supply goods and services such as the installation of a hot water or air-conditioner system.

The Queensland government introduced a Minimum Financial Requirements (MFR) policy in 2014 which applies to contractor licensees. This policy is to promote financial viability for businesses and foster professional business practices in the Queensland building industry. Contractor licensees are required to comply with the MFR to qualify for a licence to trade. Under the MFR, contractor licensees must have sufficient net tangible assets (NTA) in their own right sufficient for the degree of revenue being earned. Unpaid debts forms part of the contractor's liabilities which negatively affects their NTA position. Therefore it is paramount that consumers owing money to traders pay their debts.

The STC understands that currently the ACL provides various remedies to protect consumers. This includes section 237 of Schedule 2 of the *Competition and Consumer Act 2010 (Cwth)* which enables applications to be made to a court by either an injured person (the consumer) or the regulator to enable the injured party to receive compensation for goods/services supplied or not supplied contrary to the ACL.

The STC requests that CAANZ give consideration to expanding the ACL framework to also protect traders who have met their ACL obligations to, but who are injured by, consumers not paying for the goods/services supplied. The STC notes that the Terms of Reference for the ACL Review includes reviewing the effectiveness of the ACL provisions and whether these provisions are operating to address the risk of consumer and business detriment at an appropriate level of regulatory burden. To that end, the STC requests CAANZ give consideration to expanding section 237 and other relevant provisions to protect traders who may be injured parties within the consumer affairs environment.

Should you wish to clarify this submission or require further information in relation to its content, please contact Mrs Esther Blest, Assistant Commissioner, Queensland Building and Construction Commission who assists the STC.

In the meantime, I look forward to hearing from your office.

Yours faithfully



Penny Cornah
Chairperson
Service Trades Council