

Australian Consumer Law Review

Comments on the Interim Report

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Subject	Questions	Comments
1.2.3 Fundraising activities and the ACL	1-3	<p>I support the comments in the text, as follows:</p> <p>All fundraising legislation should be reviewed and either strengthened or subsumed by the ACL, so that it meets at least the consumer protection standards of the ACL. The focus should be on donations without any associated benefit, since it is in the area of donations- not “goods and services” - where the problems lie. Is an explicit definition required, to avoid doubt whether “services” including donations?</p> <p>Extending the ACL to all defined fundraising activities is certainly necessary and desirable to facilitate potential state and territory fundraising reforms.</p> <p>A consolidated approach under the ACL <i>would</i> enhance public trust and confidence in the sector and ‘provide a national and consistent protection against the worst fundraising practices’. I agree that there should be a broad definition of ‘fundraising activities’ in the ACL, and that the provisions on misleading or deceptive conduct, unconscionable conduct and harassment or coercion should be applied to fundraising.</p> <p>The state legislation on reporting and governance should be consolidated and strengthened. The reporting requirements (at least in NSW) are simplistic and provide wide scope for misleading allocation of costs and, for example, include government grants within the category of donations / funds raised.</p> <p>Charities’ fundraising appeals frequently contain extreme statements about their need for funds that would be grossly misleading and dishonest in any commercial context.</p> <p>I would like telephone and house cold-calling by charities to be banned, as the do Not Call register is ineffective.</p>
1.2.5 Exemptions under the ACL	6	Energy utilities are notorious for their misleading marketing and confusing billing practices. This

		exemption must be repealed as a priority, as should the insurance contracts exemption.
1.2.6 Interaction between the ACL and ASIC Act	7 & 8	<p>YES: the ASIC Act should be amended explicitly to: apply its consumer protections to financial products., and address any lack of clarity;</p> <p>increase consistency with the corresponding provisions in the ACL ; and</p> <p>ensure that any consumer protections for financial services would also apply to financial products. It is imperative that the eight protections stated on P33 relating to the conduct outlined in the ASIC Act be explicitly applied to financial products</p> <p>Banks should be much more open about the application of foreign transaction fees, on their websites and in paper communications with customers. For example I was charged a 3% “foreign fee” on a Westpac credit card, on the grounds that the merchant’s bank was located outside Australia, <u>even though</u> the transaction was billed in Australian dollars at my request by the European bank (which had already imposed another 3% fee to convert from Euros to A\$). This is tricky and completely unjustifiable. This practice may be widespread, and is at the least confusing- and arguably misleading. If a finance professional can be caught by this, how many other customers are?</p> <p>The text in section 2.3.4 appears pertinent to this point.</p>
2.3.3 Unconscionable conduct and publicly listed companies	39-40	On balance I think that extending the scope to include listed companies could create more problems than it was trying to solve. Any such potential change should be very rigorously assessed for the public interest, especially the consumer interest, to ensure that changes could not have the result of weakening consumer protections, in the process of normalising coverage. I assume that ‘listed’ companies would be restricted to those listed in Australia on the ASX, and would include trusts – not only bodies corporate.
2.3.4 Unfair trading	41-2	I would support a general unfair trading prohibition, for the reasons cited by CALC et al and FCA on pages 113 and 114. The financial services sector, at least, strongly requires it.
2.4.2 Unfair terms in insurance contracts	43	Should the ASIC Act’s unfair contract terms protections be applied to contracts regulated under the Insurance Contracts Act?

		YES - the grounds given by the industry for exclusion are unmerited and out of date.
2.4.6 Monetary penalties	44	<p>Should the use of terms previously declared 'unfair' by a court be prohibited? YES</p> <p>If so:</p> <p><input checked="" type="checkbox"/> What should be the extent of the prohibition? For example, would it only apply to identical or similar standard form contracts, within a particular sector, or more broadly? MORE BROADLY</p> <p><input checked="" type="checkbox"/> Would this increase the deterrent effect of the unfair contract terms provisions? YES</p>
3.2.3 Maximum financial penalties	63-5	<p>The maximum financial penalties for breaches of the ACL should be increased to the level of the competition provisions. However, I would like the (maximum) penalties for breaches by individuals to be the same, to deter avoidance. Since they are maxima, the court can always impose lesser amounts, where appropriate. I would like the major fixed and criminal penalties to be increased.</p>