



**Consumer Electronics Association New Zealand**  
**Level 3, 159 Khyber Pass Road,**  
**Private Bag 92-066, Auckland**  
Telephone: (64-9) 3670913  
Fax: (64-9) 3670914  
Mobile 021-649900  
E-Mail ceanz@ema.co.nz

# **Consumer Electronics Association of New Zealand**

## **Submission to Ministry for Consumer Affairs**

**On**

## **Consumer Law Reform Discussion Paper**

Prepared on 31 July 2010

## Contact Details

**Submitter:** Garth Wyllie  
**Title:** Executive Officer  
**Organisation:** Consumer Electronics Association of New Zealand  
**Postal Address:** Private Bag 92-066 Auckland  
**Telephone:** 09-3670913  
**Facsimile:** 09-3670914  
**Mobile:** 021-649900  
**Email:** ceanz@ema.co.nz  
**Web Site:** None presently

## Background Information

The Consumer Electronics Association (CEANZ) represents all major “brown ware” brand distributors operating within the New Zealand market.

At present the brands holding membership total 10 members with major broadcasters also holding associate non voting membership to allow interface issues to be addressed.

Equipment distributed includes Televisions, Video players/recorders DVD players/recorders, Stereo and audio equipment and peripheral equipment associated to these categories of equipment such as Satellite and terrestrial decoders, connection equipment and controls.

The market for consumer electronics in New Zealand is highly competitive with pricing often close to worlds best pricing making margins extremely thin. Competition comes from house brands and retail discounting making compliance costs reduction particularly important

There are no televisions or associated equipment manufactured in New Zealand with the exception of highly customised business solutions and even in those instances all the major components are imported for assembly for the client involved. The majority of televisions and consumer electronics sold in New Zealand are made in Asia in such countries as Malaysia, Singapore, Korea, Taiwan, Thailand, Indonesia, Japan and Mainland China

Most consumer electronic are made to adhere to international standards such as IEE and that imported into New Zealand must meet New Zealand or Joint Australian New Zealand standards including Minimum Energy Performance and safety standards.

### 3. SUBMISSION

#### Summary

CEANZ is keen to ensure that the law changes that come from this review retain the Principles basis set out within paper. Any movement towards a prescriptive compliance regime such as those within the Australian Consumer Law Review should not enter the New Zealand legislation irrespective of harmonisation where this would add compliance cost to New Zealand business and no cost benefit has been identified.

We believe that if this is followed then not only will adequate protections be in place for all consumers but business will be able to meet the obligations with minimal disruption to business and within good ethical guidelines such as the industry Codes of practice.

We endorse the Fair Trading Act as being the prime vehicle of law to deliver a simplified but effective law for all business and all business transactions.

The CEANZ has focused its submission on the areas that have impact on member companies and hence has chosen not to comment on areas that have been adequately covered by specific industry submissions such as that of the Direct Selling Association and CTFA

We have also read and support the content of the Business New Zealand submission.

The key aspects that CEANZ would like to re-enforce are:

1. That the prescriptive nature of the merged laws not be taken into the Fair Trading Act or the Consumer Guarantees Act and instead the reference that would replace these laws, be a set of principles that must be met with particular emphasis on code of practice
2. There is no need for an unfair contracts provision to be included as this would add to compliance law and existing laws are adequate in this area.
3. Substantiation orders as applied in Australia not be applied for New Zealand as this breaches the principle tenant of law that one is innocent until proven guilty however mandating the requirement to hold substantiation of claims should be a provision within the act.
4. That a 10 day cooling off period for all Direct Sales be should only apply to Door to Door Sales made to end consumers and not to other forms of selling included Business to Business sales
5. The threshold should be higher for direct sales and we recommend this be set at \$1000 as this is more consistent with the relative thresholds established under the Door to Door Sales Act in 1967 when compared to the average wage at that time.
6. That no changes to the definition of refusing to be made to the Consumer Guarantees Act as this would create considerable ambiguity in the market without justification
7. That layby provisions if moved to the Fair Trading Act or Consumer Guarantees Act allow reasonable costs to be recovered for seasonal stock and that a code be established by the retail sector to address this rather than a prescriptive inclusion with either Act.
8. If the Carriage of Good Act is to form part of the Consumer Guarantees Act that this will require extension to ensure business continues to have access to the same provisions outside of the normal coverage of the Act.
9. This review should also take into account the "fairness" in the disputes tribunal process under the CGA

# Detailed Responses:

## Principles and Purpose Statement for Consumer Laws

### Question 1.

What are your views on including purpose statements in the Fair Trading Act, the Consumer Guarantees Act, and the Weights and Measures Act along the following lines:

- Fair Trading Act – “To promote consumer well being by fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly and in good faith.”
- Consumer Guarantees Act – “To promote consumer well being in markets by:
  - a) defining rights that give consumers confidence that their reasonable expectations about a good or service provided by a supplier or manufacturer will be met, including expectations about the good or service’s performance, quality, purpose, or safety.
  - b) defining rights for consumers to seek redress from a supplier or manufacturer where those reasonable expectations have not been met.”
- Weights and Measures Act – “To promote consumer and business confidence and effective market competition through ensuring goods are exchanged using accurate measurement, and regulating measuring instruments in use for trade.”

### Response

We are happy with the insertion of a purpose statement similar to that proposed as they provide a level of consistency across the consumer legislation and state clearly the intent however our response to question 3 applies.

### Question 2.

Are there other principles or objectives you think should be referred to in the consumer law(s)?

### Response

Providing the principles established under the law that impact on Direct Sellers are truly principles based then we would not see any additional requirements.

### Question 3.

Should any purpose statement in the Fair Trading Act include a reference to consumers and suppliers trading in good faith, and for what reasons?

### Response

The term good faith may however be contentious as it can be difficult to establish outside of the court system what this should be interpreted as. We would consider that if this were being interpreted at the lowest level of the court system in a disputes tribunal then the outcome of cases may be prejudicial to business on this basis and not on the basis of the specific principles set out within the law. Some clear guidance would be necessary to explain what is actually intended if this term is to remain.

## **Unfair Practices: Unfair Contract Terms**

### **Question 4.**

Do you support including unfair contract terms provisions in the Fair Trading Act along the lines of the Australian Consumer Law, and for what reasons?

### **Response**

We oppose this provision as unnecessary and while the Australian Consumer Law review has applied it only applied to end consumer transactions or agreements (goods or services). We see this as adding to existing law which already addresses this issue. We also note there are other laws that might be in conflict to such a change being included. These laws may include the Contractual Remedies Act 1979 and the Contractual Mistakes Act 1977

### **Question 5.**

Is it appropriate to include a "good faith" element in the definition of an unfair contract term (like the United Kingdom and Victorian legislation, and the Productivity Commission recommendation), or is the approach used in the Australian Consumer Law preferable?

### **Response**

Should this proposal proceed, the term good faith raises issues in terms of the definition of what is good faith and therefore we believe this should be left out of the New Zealand legislation and while we do not endorse unfair contracts provisions this would also be more consistent with Australia.

### **Question 6.**

Do you think the approach used in the Australian Consumer Law of providing examples of unfair contract terms would be appropriate for New Zealand law?

### **Response**

If this is to proceed then those areas identified under the Australian legislation may be reasonable to consider unfair when applied to an end consumer transaction.

Use of examples within the law however we believe may not be principled basis law but do give guidance as to what may be expected of traders within their contract terms. We believe that this guidance should be outside of the law and within enforcement agencies education brief.

## **Unsubstantiated Claims**

### **Question 7.**

Should there be a general prohibition on unsubstantiated claims under the Fair Trading Act, and for what reasons?

### **Response**

Having considered existing law coverage and whether this inclusion would provide additional benefits we have concluded that there is no identifiable benefit in increasing legislative coverage when existing clauses within the Fair Trading Act are more than adequate to address this issue.

### **Question 8.**

Should any general prohibition on unsubstantiated claims (or any other preferred approach) be enforceable by the Commerce Commission and/or privately under the Fair Trading Act?

### **Response**

Should this clause is inserted, there is little evidence that private enforcement would be applied under the Fair Trading Act. While the option might be present, we believe this would be primarily a tool for the Commerce Commission. Consumers are more likely to use the Consumer Guarantees Act post purchase should the claims of performance not meet those advertised to address their rights under the suitability for purpose provisions. As with our earlier response we do not believe this is a necessary addition to the legislation.

We believe that most suppliers attempt to use descriptions that are consistent with industry best practice however we believe that industry guides or codes in defining what is acceptable is a preferred option and more likely to achieve the outcomes that this proposal is outlining as an issue.

## **Door to Door and Other Direct Selling**

### **Question 9.**

What direct selling (door to door sales, telemarketing, other defined direct selling), if any, should be regulated, and for what reasons?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard however we would particularly endorse the need to either define Direct Selling as we believe most strongly that this should not apply to our representatives selling on a business to business basis

### **Question10.**

Should direct selling law only apply to purchases above a particular value (for example, \$100)?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard.

### **Question 11.**

Do you support a cooling-off period of 7 days, 10 days or another timeframe?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard.

### **Question 12.**

Should the supply of the goods or services be prohibited during the cooling-off period, and for what reasons?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard.

### **Question 13.**

Should there be any regulation of the hours when direct marketers may call on consumers? Why, and if you think there should be regulated hours, what hours?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard.

### **Question 14.**

What are your views on moving regulation of direct selling to the Fair Trading Act?

### **Response**

This does not affect our members and while some of our members may supply Direct Sellers products we would endorse the EMA submission in this regard but would reiterate our point about ensuring that Direct Selling should not include Business to Business selling such as our members representatives who sell to retail or businesses or government.

## **Unsolicited Goods and Services**

### **Question 15.**

Do you support unsolicited goods and services provisions along the same lines as those in the proposed Australian Consumer Law, and for what reasons?

### **Response**

For the purpose of harmonisation with Australia there is some argument for alignment in this area. This does not affect our members we would endorse the EMA submission in this regard.

### **Question 16.**

What are your views on moving regulation of unsolicited goods and services to the Fair Trading Act?

### **Response**

This does not affect our members we would endorse the EMA submission in this regard.

## **Unconscionability**

### **Question 17.**

Is it appropriate to include a prohibition on unconscionable conduct in the Fair Trading Act, along the lines of the Australian Trade Practices Act and the proposed Australian Consumer Law?

### **Response**

There is no need for this in New Zealand law and existing case law under the current provisions of the Fair Trading Act provides adequate coverage in this area. Most occasions where this might occur would be related to credit contracts and consumer finance and we believe that adequate coverage is already provided under the Credit Contracts and Consumer Finance Act.

### **Question 18.**

Should any remedies for unconscionable conduct be restricted to consumers or also available to businesses, and for what reasons?

### **Response**

While we oppose the need for the law, should it be implemented it should be across the board and not restricted to just consumers.

### **Question 19.**

Would it be more effective to amend the Fair Trading Act by applying the broader concept of "oppression" from the Credit Contracts and Consumer Finance Act to the supply of goods and services generally, rather than amending the Fair Trading Act to extend the application of the case law concept of unconscionability?

### **Response**

We see no need for this option to be used as our response to question 17 also covers this question.

## **Product Safety**

### **Question 20.**

A range of provisions exist under the Consumer Guarantees Act and the Fair Trading Act in relation to consumer product safety. Do you think these provisions are sufficient, and if not, what changes do you suggest?

### **Response**

We believe this is adequate and we note that other laws have specific coverage relating to safety such as Electrical goods, Gas Appliances, Cosmetics, household cleaners and chemicals. It is more appropriate to only mandate standards or require regulation within the Fair Trading Act when there is no specific coverage exists and health and safety is an issue.

### **Question 21.**

What are your views on New Zealand adopting a "reasonably foreseeable" test of product safety regulation along the lines being considered for the Australian Consumer Law?

### **Response**

We are cautious in the adoption of this option as it can be subjective. For example if a television fully complies with all emission regulations and the electrical regulations but a report suggests that this television or type of television emits a hazardous emission based on a random sample, then to act in this regard would be erroneous. This could be done if internationally action was being taken in regard of that product however any of our member companies would immediately act to ensure they removed products ahead of any regulatory recall if a hazard was found.

We already have a range of laws that are product specific in terms of standards and mandatory requirements which can affect recalls being made and we do not believe that this provision will actually be one that could be used in isolation.

### **Question 22.**

What are your views on the regulator being able to initiate a product recall itself where a supplier fails to undertake a compulsory recall?

### **Response**

This is the ultimate fallback however every effort should have been made to get the supplier to undertake the recall of products when this is required. We have no objection in allowing this provision providing those efforts are also required and can be demonstrated before the action of a regulator initiated recall is commenced.

### **Question 23.**

What are your views on mandatory notification to the regulator of voluntary recalls and incidents where products are associated with serious injury or death?

### **Response**

In most sales channels the notification of a recall to the regulator is essential irrespective of whether serious injury or death occurs. We support the voluntary notification in all instances but question how many recalls are not notified now. The addition of this requirement may have little impact or benefit but places businesses in jeopardy of prosecution for failure to notify when in fact all reasonable steps to recall the product may have already have been taken.

We agree that where there is a genuine public health and safety risk of serious injury or death, that recalls must be undertaken quickly and efficiently by companies affected and only on failure to act must the regulator have the power to take action. As our goods are all electrical they are covered by the Energy Safety Service as the primary regulator and any action to notify would need to be lodged there under existing law.

We do not support this notification being mandatory even in these instances.

**Question 24.**

What are your views on the Fair Trading Act including provisions for the Minister to issue Government product safety policy statements?

**Response**

This is basically a standard which is being mandated. The issuance of such statements should for the most part not be necessary as development of a standard in consultation with industry which is then mandated under the Fair Trading Act should be a preferred option.

If this option is provided it must be on the basis of urgent need, be temporary of nature until such time as a mandatory standard can be developed in full consultation with industry.

We see this power as high risk to industry where on the recommendation of officials that may not necessarily have access to the full data available to the industry, the Minister could effectively ban products.

Any such statements should always reflect best practice internationally and have a full cost benefit analysis associated to it with the limitations outlined above. We would recommend that statements have effect for no more than 6 months for the date of issue and have the requirement that a standard be developed to replace the statement which may then be mandated under the existing provisions under section 29 of the Act.

## **Consumer Information**

### **Question 25.**

The Fair Trading Act provides for consumer information regulations. Do you think these provisions are sufficient, and if not, what changes do you suggest?

### **Response**

We believe the existing provisions are adequate and no additional regulations are necessary.

### **Question 26.**

What are your views about adding testing requirements to the consumer information regulation-making powers?

### **Response**

The issue of mandatory testing requirements being added is of concern and we see this an area where additional costs could be imposed on business when it is not necessary. Any requirements that would mandate 3<sup>rd</sup> party testing for example as required for a range of products in Australia inevitably adds cost and delay to market for products and in a small market such as New Zealand will see some products dropped by importers for New Zealand.

If testing were to accept international norm's and international testing this may not be such a concern however as this would not normally be part of a legislative requirement we have concerns that to add this requirement would open the door to prescriptive testing regimes being established under the powers.

New Zealand has successfully removed many of these non tariff barriers to trade over the years and failure to accept international testing done by company's presents as being a non tariff barrier.

Our members products are made in production runs for the world and form in some cases just 6 hours of the entire annual factory production. Anything that moves away from allowing international products being available here through 3<sup>rd</sup> party testing outside of the existing mandatory testing required under the Electricity regulations and standards would be additional cost.

### **Question 27.**

What are your views on including specific disclosure requirements in the Fair Trading Act concerning third party collectors fundraising for charities?

### **Response**

This is not unreasonable in principle although we question how far this might go. Many businesses have a charity to which they subscribe and use that fact as part of their marketing. Most are clear about the percentage contributed from each sale of products however this provision could be interpreted to also include them when they are not seeking direct donations for a charity but have decided to contribute a portion of sales for either a set period or a specific product type.

It may be possible for example to state a percentage of a product being sold as going to the charity but that could not be done when the business contributes in another way and is recognised for the contribution. Eg: in kind donations or company sponsorship of a child through save the children may be undertaken but for which there is no direct calculation possible to the consumer in terms of information that could reasonably be provided.

The definition of who or what is a third party collector of fundraising for charities will be necessary to avoid capturing businesses who just provide additional sources of revenues to the charity and claim in their marketing to sponsor or that their industry charity is that charity.

We believe that this option must be very carefully worded or it will provide a disincentive to business to contribute to charity or to provide a fundraising option to charities in conjunction with businesses.

For example if a company rebadges a product in Pink to support breast cancer awareness and donates a percentage or set amount of the sale to the charity and the charity is happy with that percentage, we do not believe it should be necessary for the company to have to include this information as if enough units actually are sold the percentage or amount has the desired effect of funding the charity.

## **Trader Obligations**

### **The Laybys Act**

#### **Question 28.**

Do we need detailed provisions regulating layby sales or would a more principles-based approach be better?

#### **Response**

Yes this is a reasonable approach to take however it is important to ensure that this does not prejudice either the trader or the consumer and would address some to the prescriptive nature of current Laybys Act.

#### **Question 29.**

Should the definition of a layby sale be amended so any transaction with less than three instalments (i.e. a deposit and later payment in full) is not a layby sale under the Act, and for what reasons?

#### **Response**

This would be consistent with the Australian proposals so we would support that becoming the case for New Zealand.

#### **Question 30.**

Is it appropriate that sellers can recover all their costs on the cancellation of a layby sale or should the seller's costs be limited to specific costs associated with the layby transaction?

#### **Response**

It is reasonable to cover all the costs associated with the purchase. While Layby is still extensively used at retail, consumers do have more options for finance and so are not locked into using Layby necessarily.

Our members supply retailers who would be adversely affected where products they sold quickly become last week's model and would not be able to recover the real cost of the loss in value of those products. It is important that the seller have this right retained and not just the transactional costs or fee that applies to that sale.

For consumers this is a service the retailer provides to facilitate the sale and anything that makes this option an additional cost will effectively see this option dropped.

#### **Question 31.**

What are your views on moving regulation of layby sales to the Fair Trading Act?

#### **Response**

This provides a simplification of law and providing it retains the rights of traders within the new principles based wording, then this is a sensible option.

We believe this movement will also provide greater protection for consumers from unscrupulous traders and enable the Commerce Commission to act in cases where a clear and deliberate breach of those rights has occurred.

It also brings the consumer rights in line with the Disputes Tribunal thresholds although the suggestion of \$7500 is not unreasonable to cap the provisions in line with the statistics that show very few products sold above this level on layby.

## **Weights and Measures**

### **Question 32.**

What are your views on the Weights and Measures Act remaining standalone or moving to the Fair Trading Act?

### **Response**

We are ambivalent on this change. We do not see any direct benefit however such a move does offer to provide simplification of the total laws governing traders.

### **Question 33.**

Are there any other areas within the Weights and Measures Act that you think could be improved? Please provide details and supporting explanation.

### **Response**

We are not aware of any improvements or changes that could be undertaken.

## **Carriage of Goods Act**

### **Question 34.**

Is it appropriate for consumers to have rights under the Consumer Guarantees Act in relation to carrier services?

### **Response**

Yes it is appropriate however currently the Carriage of Goods Act also provides a remedy for business at a low level when goods are lost or damaged in transit. We believe that this is not a consumer only protection and that the rights to claim for traders must also be protected which is not currently the focus of the Consumer Guarantees Act.

We would question whether this is the right legislation to move it to given that 90% of claims under the current act would be business related and not consumer related.

We also believe that there is a genuine need to lift the threshold for claim to at least \$7500 which would be the inflation adjusted level from when the current law was applied. Maintenance of inflation adjustment is however essential for any future adjustments.

In many cases our members have been out of pocket under the current thresholds and with some televisions reaching figures well above the inflation adjusted level above, we believe this figure should go higher to at least \$10,000 which would make carriers take seriously the safety and security of our products they transport.

## **Auctioneers**

### **Questions 35, 36, 37**

This law needs to be modernised to reflect the use of Trademe and newer forms of electronic trading that employ auction like practices.

There is no need to overly regulate however some form of licensing and controls should exist within the bounds of the Fair Trading Act and on a principled basis.

## **Consumer Guarantees**

### **Question 38.**

If there is a valid distinction between a traditional auction conducted online and a Trade Me style auction, should purchasers from Trade Me style auctions have the benefit of the guarantees under the Consumer Guarantees Act?

### **Response**

Where the product is new it should not matter what medium it is sold through for the Consumer Guarantees Act to apply. A new television sold through trademe is still a new television and therefore the consumer should not have any less rights.

We would believe this is a given in terms of changes to this Act and may even be implied within the current legislation for mainstream traders who use Trade Me to sell their retail products.

### **Question 39.**

What are your views on the suggested ways to clearly identify auctions exempted from the Consumer Guarantees Act (a new definition of auction; that auctions must be conducted by a licensed or approved auctioneer; that online auctions must meet certain requirements)?

### **Response**

The principle reason for exemption of Auctions is the sale of second hand goods and therefore out comments under question 38 should apply.

Online auctions and licensing is one for the businesses that are involved in that sector to consult on. It is clear that to license every single person who places goods in an online auction with trademe or ebay is neither practical nor possible. Therefore it must be the site operator who is licensed. However the licensing process must be simple in terms of established obligations and suitable persons vetting.

Any licensing needs to be national in nature and have a central register whether this is facilitated through local councils or not!

## **Extended Warranties**

### **Question 40.**

What are your views on specific regulation of extended warranties?

### **Response**

This should be treated on the same basis of contracting out of the Act which is already prohibited. Therefore if the warranty provides the same or less rights than those provided under the Act then it should effectively be treated as contracting out by trying to negate the actual rights of the consumer.

Whether this needs more provisions within the law to explain this provision is open to debate, however our view is that the existing law needs to be enforced in this regard and should not require additional legislation.

However where additional benefits are provided, then this is not contracting out.

### **Question 41.**

What are your views on requiring greater disclosure of information to consumers on extended warranties?

### **Response**

It may be appropriate to require disclosure of what additional benefits are actually provided by the warranties that would not be available to the consumer under the Act. False or misleading statements of these would be breaches of the Fair Trading Act.

### **Question 42.**

What are your views on requiring a "cooling-off" period for cancelling an extended warranty?

### **Response**

If this provision were to proceed, then cooling off and cancellation of a similar nature to financial transactions should not be more than the 3 days under that law. This would ensure that where finance is being provided the cooling off was consistent with the right to cancel the finance.

It is up to the retail sector to justify why a cooling off period for cancellation and money back should not apply and we support future direct consultation with the Retailers Federation in this regard.

### **Question 43.**

What are your views on providing an "opt-in" period for buying an extended warranty?

### **Response**

While this might be of benefit, it is unlikely that most consumers would take up an opt-in unless they were already experiencing an issue with the product they had purchased. In such circumstances it is likely that the Consumer Guarantees Act would apply.

We therefore see little value in this being provided and do not support it. If this was to be an alternate to the cooling off period and mandated as the only way an extended warranty could be sold then sales of extended warranties would effectively cease.

### **Question 44.**

Should any law regulating extended warranties be enforced by the Commerce Commission under the Fair Trading Act, and for what reasons?

### **Response**

Our response under question 40 and 41 covers this point. The Commerce Commission already has power to act under the Fair Trading Act in the aspects outlined in our question 40 response.

## **Bonds to assess faulty goods**

### **Question 45.**

What are your views on the Consumer Guarantees Act providing that a requirement for any bond for assessment of a faulty good must be disclosed to the consumer in writing before the good is purchased?

### **Response**

We believe this would be extremely difficult to apply in practice.

In a retail sector however ownership can change, meaning that while the original owner may have stated that it would not apply a bond, a subsequent owner may choose to apply this rule.

Conversely the retail outlet that sold the product states they will not apply a bond and then closes down so the recourse is only to the manufacturer or wholesaler who does apply a bond due to the service agent they use provides a dilemma in how you might reasonably bring that to the attention of a consumer.

If the customer chooses to take the faulty goods straight to a repair facility who requires a bond but the retailer would not have done so, then again this poses a significant difficulty for compliance. Whether the effect of that repairer taking a bond while seeking authorisation from the Manufacturer for repair approval would be a breach of the law requiring this to be advised by the retailer or manufacturer is not clear but we believe poses an issue that would need to be addressed.

Most repair facilities outside of warranty will repair only once a deposit is taken however when something is within warranty, it may not be reasonable to take a bond providing there is clear evidence of a fault. Eg plug it in and it does not work.

This would be a more principled approach to this issue however we due to the complexity this proposal would raise we do not support it proceeding.

## **Supplier unresponsive to Consumer**

### **Question 46.**

Is it appropriate that "refusing" to remedy a failure under the Consumer Guarantees Act also includes "refusal by words or conduct", and for what reasons?

### **Response**

This extends the consumer right however it should not be unreasonable for the supplier to expect a reasonable level of contact to rectify the failure.

Allowing this wording opens the door to conduct being quite minor but a reason for the consumer to have the problem rectified elsewhere. Eg. Where perhaps the store was closed on the day the consumer wanted to take it back or the product was a large item which the consumer wanted the retail store to provide pickup but the store felt it was reasonable for the consumer to bring it in.

The example of the consumer striking a call centre operator who is perhaps having a bad hair day and is a bit rude to the customer could effectively be interpreted under the conduct provision as refusal when in fact the manufacturer may be quite prepared to fix the problem at a lower cost.

We see this change of definition as likely to cause dispute and ultimately harm to retailers or manufacturers who in most industry opinions are acting reasonably.

What is meant by conduct may need to be defined if this is to be included however we cannot support this definition being amended given the current evidence of disputes tribunal decisions.

Interpretation of the current CGA has already meant questionable decisions made in the disputes tribunal have resulted that if tested in a high court may not have occurred. The cost settlement versus the cost of appeal to the High Court however rules out any expedient company taking this action.

We have seen decisions that were significantly outside what industry were led to believe would be "Fair" when the act was first discussed and enacted.

At times companies request consumers to write their complaints/requests etc. This is to provide clarification of facts and ensures that the correct information is acted on. Many times the facts do not support what consumers state are the facts over the phone.

This includes information such as:

- Date and place of purchase
- Any previous repairs to the product
- Additional information which is requested to ensure that the product has been installed or used correctly
  
- This also helps to ensure that consumers are not requesting for requests sake which is too easy on a simple phone call.
- Written information by the consumer is also used as an "audit" type process so that the support person can justify their decision in assisting the consumer on a case by case basis.

However, requesting this information or for it to be in writing could be "interpreted" as being "unresponsive" when in fact it is about ensuring good processes are maintained.

## **Rejection of Goods and Collateral Credit Agreements**

### **Question 47.**

What are your views on including the equivalent to section 89(2) of the Motor Vehicle Sales Act in the Consumer Guarantees Act for situations when goods are rejected and there is a collateral credit agreement?

### **Response**

If the goods are not able to be supplied then any credit agreement needs to be voided. It may therefore be appropriate to set down the legal position as a matter of clarity.

## **Application of Consumer Guarantees Act to Electricity**

### **Question 48.**

What are your views on amending the Consumer Guarantees Act to provide that both an electricity retailer and a lines company would be liable for the quality guarantees set out in the Act?

### **Response**

This area is fraught with issues ranging from the effects of weather on service to accidents and human error. If a gross fault or error on either the part of the electricity retailer or lines company causes a significant issue for a consumer then some liability should exist however acts of god through weather or accident should be excluded from any quality guarantees that might be established.

The definition of what might be a gross fault or error would need to be agreed with the electricity retailer and lines companies if this amendment is to proceed. Without this agreement we do not recommend proceeding.

## **Enforcement**

### **Question 49.**

What are your views on including in the Fair Trading Act provisions for court enforceable undertakings?

### **Response**

This is consistent with international practices in the US and Australia.

### **Question 50.**

What are your views on including enforcement orders in the Fair Trading Act for the banning of recidivist traders from certain activities?

### **Response**

We do not support this as this should be subject to court processes only.

## **Consolidation of Consumer Law**

### **Question 51.**

What are your views on a single, enhanced Fair Trading Act that also incorporates the Consumer Guarantees Act and/or the Weights and Measures Act?

### **Response**

We see this as an option to reduce legislation however little direct benefit and this change may require some extensive modification of these Acts to accommodate the insertion. We believe that such changes could have other implications and therefore care would need to be taken before accepting them into law.

### **Question 52.**

What are your views on continuing to have a separate Consumer Guarantees Act and/or a Weights and Measures Act?

### **Response**

Keeping the Consumer Guarantees Act separate is sensible as there is as yet no comparable legislation in Australia where this is included in the Trade Practices Act. Our comments on the Weights and Measure Act are covered in Question 51 and questions 32 and 33.