

Office of Multicultural Interests
Submission to the Australian Consumer Law Review
May 2016

Background

The Western Australian Department of Local Government and Communities' Office of Multicultural Interests (OMI) welcomes the opportunity to provide input into the Australian Consumer Law Review.

OMI's key role is to assist the Minister for Citizenship and Multicultural Interests and the State Government to achieve the full potential of multiculturalism.

OMI develops strategies that include everyone—culturally and linguistically diverse communities, the wider community, business and industry groups, government and non-government agencies—to help develop a society that values and maximises the benefits of its cultural diversity. Its strategies assist organisations to develop policies, programs and services that are accessible and responsive to the needs of a diverse community.

OMI provides information, advice, funding, training and support to communities and community organisations to help build strong communities that maintain and share their diverse cultures and participate actively in all aspects of Western Australian life.

Nearly thirty-one per cent of Western Australians were born overseas and 15 per cent were born in non-main English speaking countries. It is important that culturally and linguistically diverse (CaLD) communities can confidently participate in safe and fair markets. It is also important that they can access information to make informed purchasing decisions and know they have adequate rights and protections and access to remedies in cases of harm from unfair trading practices or unsafe or defective goods and services. Australian consumer law and the associated review are relevant to OMI in this regard.

The responses below relate only to the sections of the review with specific implications for Western Australia's CaLD population.

1.3 Australia's consumer policy framework objectives

1. Do the national consumer policy framework's overarching and operational objectives remain relevant?

OMI considers the Australian national consumer policy framework's overarching objective —'to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly'—is relevant in terms of supporting the participation and protection of consumers and business owners from CaLD backgrounds.

OMI notes the particular importance of the framework's operational objective 'to meet the needs of those consumers who are most vulnerable, or at greatest disadvantage' in relation to people from CaLD backgrounds. CaLD consumers may face challenges arising from language and cultural differences, a lack of familiarity with Australian laws and processes and a subsequent vulnerability to exploitation.

3. *Are there new approaches that could help support the objectives of the national consumer policy framework, for example, innovative ways to engage with stakeholders on ACL issues?*

It is important that communication and engagement with stakeholders include consideration of the cultural and linguistic diversity of consumers and business owners, and staff who also need to be aware of Australian consumer law.

Planning for communication strategies may include:

- identifying CaLD customers when defining the target audience for communication strategies by analysing relevant ABS data.
- defining areas of greatest need for information provision through consultation with target CaLD community groups and market research findings.
- developing targeted approaches to communicate the information—for example, by consulting with relevant multicultural service delivery organisations and networks and/or partnering with ethnic community organisations to seek their advice about how best to communicate and get the message and information into the community.
- identifying the most effective media and community channels for disseminating information and testing the suitability of certain media themes and/or messages to the target audience.
- identifying opportunities for partnerships with local multicultural service delivery organisations, associations and networks, other local governments, State or Commonwealth government agencies and non-government agencies that can assist with information dissemination.

It is important to consider a range of communication formats and channels, including using plain English and graphics such as international signs and symbols to assist people with low literacy skills.

A mixture of approaches such as print media, posters, television and radio commentary, social media and advertising is more effective than information programs which use only one or two communication methods. Face-to-face communication strategies have been found to be the most effective in reaching CaLD communities.

Communication strategies could include:

- information stalls at community festivals and events, community information sessions or workshops
- targeted distribution of written resources such as posters, stickers, cards, information sheets and pamphlets in languages other than English
- community language voice-overs and/or pre-recorded audio and audio visual materials and community messages and advertisements through government and community CaLD-targeted radio or television
- staffing of telephone lines and other referral points by bilingual and/or bicultural staff
- advertisements and articles in languages other than English in mainstream and ethnic print media.

2.1 Structure and clarity of the Australian Consumer Law

Structure and clarity of the ACL (2.1.1)

4. Is the language of the ACL clear and simple to understand?

OMI considers the language of the ACL to be clear and simple to understand for users who are proficient in English.

However, according to the 2011 Census, fourteen per cent of Western Australians spoke a language other than English at home, and 1.6 per cent of this group (more than 41,000 people) did not speak English well or at all.¹

National and State legislation and policies², underpinned by the Universal Declaration on Human Rights and related covenants, support a person's rights to language services. There are also substantial risks associated with not providing language services, particularly in legal contexts. For example, it is well recognised that a criminal trial cannot be fair if the accused does not understand the language in which it is conducted. The 1966 International Covenant on Civil and Political Rights (ICCPR) protects this right explicitly: the accused is entitled to 'have the free assistance of an interpreter if he cannot understand or speak the language used in court'.³

The *Western Australian Language Services Policy 2014* requires Western Australian Government to:

- plan for, fund and deliver language services that take into account relevant government policies, legal circumstances and the particular profile and needs of current and potential clients
- ensure clients who are not able to communicate in spoken and/or written English are made aware of:
 - their right to communicate in their preferred language
 - when and how to ask for an interpreter
 - complaints processes
- provide interpreters who are certified by the National Accreditation Authority for Translators and Interpreters (NAATI), or tertiary qualified (preferably both) to clients where required, free of charge and taking into account the particular service provided and/or the level of risk to clients' rights, health or safety
- ensure all relevant staff are able to identify when to engage an interpreter and how to work with an interpreter
- use multilingual communication strategies and the cultural and linguistic skills of employees where appropriate
- incorporate provision for meeting language services needs in contractual arrangements with service providers.

The Australian Government and other jurisdictions have similar policies.

OMI therefore recommends visible enactment of these policies to encourage improvements in service provision and equitable access to information regarding the rights and responsibilities of consumers and business owners, and to maximise the effectiveness of the ACL in recognition of the multicultural nature of the Australian community.

As noted above (1.3, Q.3), there are a range of strategies that may be employed to communicate information and engage CaLD communities.

3. Administering and enforcing the ACL

¹ Department of Local Government and Communities, Office of Multicultural Interests (2014) Western Australian Language Services Policy 2014 and Guidelines

² http://www.omi.wa.gov.au/publications/omi_lsp.cfm

³ International Covenant on Civil and Political Rights article 14(3) (f).

3.3 Access to remedies and scope for private action

Effective dispute resolution (3.3.1)

25. Are there any barriers to consumers and businesses enforcing their rights and seeking access to remedies under the ACL?

The ACL Review Issues Paper (Page 46) notes some considerations important for the accessibility of remedies by CaLD consumers and business owners, which reinforce the importance of appropriate language services to facilitate the access of consumers with particular needs:

- consumers need to be able to understand their problem, rights and protections, the remedies available and how to access them
- providing education and guides for consumers and businesses is important in preventing 'problems' in the first place
- parties can access dispute resolution information

Cultural differences in the perceived acceptability of making complaints should also be considered in relation to ensuring that all consumers are supported to enact their related rights. For example, conflict is actively avoided in some cultures, which has implications for the effectiveness of the ACL. The ways in which dispute resolution services are both promoted and administered should be sensitive to the diverse needs of clients.

OMI notes Case Study 15 in the Review Issues Paper relating to the 'Be Smart—Buy Smart' guide designed specifically for Indigenous consumers, and its targeted distribution, and recommends consideration be given to the potential benefit of a similar approach for CaLD communities in Western Australia.

4. Emerging Consumer Policy Issues

4.3 Emerging business models and the Australian Consumer Law

The Review Issues Paper (Page 57) notes the emergence of new business models as a result of technological developments such as widespread access to broadband internet and smartphones. OMI highlights the importance of appropriate and adequate promotion of the ACL to CaLD business owners, many of whom will have businesses with international dimensions and to whom the ACL applies.