

JOINT COMMUNIQUE

MINISTERIAL COUNCIL ON CONSUMER AFFAIRS
MEETING

FRIDAY 2 August 2002

The Ministerial Council on Consumer Affairs (MCCA) held its eleventh annual meeting in Adelaide today. MCCA comprises Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection laws, trade measurement and credit laws.

Members of the Council are:

Hon Michael Atkinson, MP (Chair, South Australia)
Mr Jon Stanhope, MLA (Australian Capital Territory)
Hon John Kobelke, MLA (Western Australia)
Senator the Hon Ian Campbell, (Commonwealth)
Hon John Aquilina, MP (New South Wales)
Hon Merri Rose, MP (Queensland)
Hon Christine Campbell, MP (Victoria)
Hon Dr Peter Toyne, MLA (Northern Territory)

Apologies were received from

- the ACT Chief Minister, Attorney General and Minister for Fair Trading, Mr Jon Stanhope, MLA. Mr Stanhope was represented by Mr Tim Keady, Chief Executive, Department of Justice and Community Safety.
- Senator the Hon Ian Campbell, Parliamentary Secretary to the (Commonwealth) Treasurer. Senator Campbell was represented by Mr Steve French, General Manager, Competition and Consumer Policy Division, Department of the Treasury.

Ministers from Tasmania and New Zealand were unable to attend the meeting for electoral reasons and were represented by Mr Roy Ormerod (Director, Tasmanian Office of Consumer Affairs and Fair Trading), and Ms Elizabeth MacPherson (General Manager, New Zealand Ministry of Consumer Affairs), respectively.

Outcomes of the meeting included:

Fringe Credit providers

Ministers endorsed the development of further regulatory options for fringe credit providers, including whether to place caps on interest rates, whether to require additional disclosure requirements for high cost loans, whether lenders be prohibited from taking security over essential household goods, and whether pawnbrokers should only be exempt from the Uniform Consumer Credit Code if they also meet the additional requirement that the amount of credit must be less than the value of any security provided. It is expected that a consultation document on the policy proposals will be released later in the year.

Review of Home Builders Warranty Insurance and Consumer Protection

Ministers today endorsed the release of a report on the National Review of Home Builders Warranty Insurance and Consumer Protection submitted by Professor Percy Allan, AM. The report is designed to stimulate discussion and explore the systemic issues in the home building warranty insurance industry with a view to identifying factors central to a competitive home warranty insurance scheme, which is viable in both the short and longer term and provides an appropriate level of protection for consumers. The report canvasses many options raised in the 85 submissions received. Ministers established a Working Party, that will be chaired by Victoria, to consider the recommendations of the Report, and directed the Working Party to present its findings and any other discussion documentation to Ministers by November 2002.

Temperature Compensation for Petroleum Fuels

At the last MCCA meeting in 2001, Ministers agreed in-principle, to introduce temperature compensation for petrol and diesel fuel loaded at refineries and terminals across Australia subject to completion of a regulatory impact assessment statement demonstrating that the proposal is in the public interest and approval by individual governments. Victoria has been working in consultation with Queensland (which has responsibility for amending the model Uniform Trade Measurement Legislation) to progress the introduction of temperature compensation. Temperature compensation of petroleum fuels is not an issue for New Zealand.

MCCA noted that the ACT introduced legislation on this issue in 1999.

MCCA considered that industry has been given sufficient notice of the introduction of temperature compensation to ensure that implementation should be possible by 1 December 2002. This decision aims to improve transparency and certainty within the petroleum industry and enhance the competitiveness of independent wholesalers and retailers compared with major oil companies.

All jurisdictions supported early implementation of temperature correction subject to individual Cabinet endorsement. Although all jurisdictions may not be able to achieve an implementation date of 1 December 2002 due to differing regulatory processes, all jurisdictions committed to implementation as close as possible to this date.

NSW Inquiry into Infomercials

The NSW Minister, the Hon John Aquilina, today released a report of an Inquiry on the use of television Infomercials and direct response advertising in promoting products for sale to consumers. The Inquiry was in response to a significant number of complaints from New South Wales consumers regarding Infomercials. The most common reason for complaints was the non-delivery of advertised products. Complaints also concerned misrepresentation of products, including supply of inferior quality goods and services, and deceptive methods of advertising.

The Inquiry was of special interest to broadcasters, advertisers, marketers, promoters, consumers, government agencies and relevant industry bodies, and generated considerable

media, industry and public interest. The Inquiry did not look at radio, cinema or print media promotions.

The Inquiry found that there had been some significant problems with certain Infomercial promotions in NSW and that, if there were no changes to existing arrangements, it was inevitable that another major scam would occur, potentially affecting thousands of consumers. To address this concern the Inquiry recommended a self-regulation scheme, which was also the outcome sought by the majority of industry participants.

It should be noted that the report's recommendations do not necessarily reflect NSW Government policy.

Electronic Commerce and Mobile Commerce

In response to issues raised by Victoria, Ministers established a Working Group (to be chaired by Victoria) to examine consumer and regulatory implications of e-commerce and 'm' or mobile commerce.

The Working Party will examine the advantages and disadvantages of whether jurisdictions should adopt further uniform statutory measures to protect consumers when engaging in e-commerce and determine whether state jurisdictions should adopt an extra-territorial regime for their Fair Trading Acts that catches all activities of e-tailers, wherever located.

The Working Group will also examine issues relating to web seals of approval.

While much of the regulation of telecommunications is undertaken at the Federal level, there are some important issues in relation to m-commerce that must be addressed by State regulatory agencies. Issues that State and Territory consumer and fair trading agencies will be particularly interested in include credit provision, billing and contractual arrangements, privacy implications and marketing issues.

Unfair Contract Terms

Fair Trading and consumer protection jurisdictions across Australia share a growing number of problems with unfair terms of consumer contracts in various areas of the marketplace. Ministers directed SCOCA to establish a working party to investigate policy options to address unfair terms of consumer contracts and the merits of adopting a more nationally consistent and effective regulatory regime and report to MCCA with recommendations by the end of February 2003.

Travel Compensation Fund

State Ministers today confirmed their commitment to the financial assistance package to the Travel Compensation Fund (TCF). The States and the ACT have matched the Commonwealth's offer of \$5 million to assist the TCF following unprecedented levels of consumer claims for compensation following the Ansett/Traveland collapse. As at the end of May 2002 the TCF had received more than 8000 claims, totalling approximately \$14 million. Ministers also noted that the TCF has established a Working Group to examine options for future funding.

Consumer Protection for Indigenous Australians

Ministers noted the matters raised at the recent National Workshop on Indigenous Consumer Issues in Remote and Rural Australia and agreed that this important issue should be included on the MCCA Strategic Agenda for further consideration.

Consumer Credit Code Comparison Rates

Ministers determined that new mandatory requirements for comparison rates in relation to fixed term credit commence on a national basis on 1 July 2003. This will enable consumers to access a schedule of comparison rates to help them shop around for a loan.

Overseas Mail Order Scams

Ministers agreed to expedite the development and implementation of a national strategy to address the detrimental impact on consumers of widespread overseas direct marketing scams. Agreed strategies to stem overseas scams included better use of investigation resources, a national public education program and formation of a working party to examine procedures to stop scam mail reaching its victims.

New Protective Measures for Babywalkers

MCCA agreed to bring forward new standards for Babywalkers including requirements for stability, a mechanism to help prevent babies falling down steps or stairs and safe use warning labels. Commonwealth, State and Territory Ministers agreed on a commencement date of 1 November this year for the regulation.

State and Territory Views Regarding the Review of Part IV of Trade Practices Act

State and Territory Ministers noted the current review of competition provisions of the Trade Practices Act being chaired by Darryl Dawson.

State and Territory Ministers would like to express the importance of maintaining strong and effective pro-competition laws and administration of those laws by the Australian Competition and Consumer Commission for the benefit of consumers.

State and Territory Ministers are concerned that proposals to the Dawson Committee especially from big business, may, if adopted, have the effect of reducing rather than enhancing the effectiveness of the ACCC.

State and Territory Ministers expressed general support for:

- 1) Criminal sanctions (jail terms) for “hard core” collusion ie price fixing and anti - competitive agreements between competitors affecting competition (subject to “big business” thresholds, namely only companies where a certain size/turnover will be caught).
- 2) The addition of an “effects” test for the misuse of market power provisions under section 46 which would enable action to be taken by the ACCC when abuse of market power occurs without a requirement to prove that it was intentional.

- 3) Maintenance of a robust public benefit test in relation to applications for authorisation of anti-competitive agreements.

State and Territory Ministers urged the Commonwealth to recognise MCCA as a key stakeholder in the consultation process following completion of the Report.

NSW Minister to be Next Chair of MCCA

As of 1 September 2002 the new Chair of the Ministerial Council will be the New South Wales Minister responsible for Fair Trading matters, the Hon John Aquilina, MP.