



CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND SUBMISSION

- ▶ *Australian Consumer Law Review*
The Treasury – Australian Government

November 2016

Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Treasury on the *Australian Consumer Law Review* interim report.
2. It is critically important that the more than two million small businesses, whom collectively are the 'engine room of the Australian economy', are protected from anti-competitive behaviour and are protected from unfair contract terms.
3. With the release of the interim report, CCIQ reaffirms our position that small businesses need stronger protections due to the similar way to consumers in how they transact with larger businesses.
4. This need is underpinned by the lack of resources – including expertise, time and money - available to small businesses to adequately protect their own interests. While the interim report shows an increase of business understand of their obligations and responsibilities from 44 per cent of businesses in 2011 to 57 percent in 2016, this number is still very low.
5. This submission puts forth recommendations that urge the Australian Consumer Laws (ACL) to increasingly extend its protections to business-to-business dealings. This will be centred around the development of a clear, single overarching definition of 'consumer' applying to the entire ACL as a way to reduce uncertainty.
6. It is recognised that several small business concerns have already been addressed. From 12 November 2016, under the ACL existing unfair contract term protections given to consumers will extend to standard form small business contracts.
7. The change in protection has been long awaited by small businesses as it gives them the potential to significantly enhance their ability to provide services to big businesses. Previously, contracts were generally set by bigger businesses on a "take it or leave it" basis which left very little or no room for negotiation existing or future contractual securities.
8. These changes highlight the vulnerability of small businesses when dealing with larger businesses and highlighted the usually low levels of understanding around contract negotiation. This recognition of the small business context should now underpin future consideration of all fair-trading and competition laws.
9. CCIQ is of the view that extending protections to small businesses must become a top priority to avoid the misuse of market power by larger businesses and ensure that consumers and small businesses alike can gain from a beneficial and sustainable level of competition.

The \$40,000 threshold

10. Alongside other small business stakeholders, CCIQ believes the \$40,000 threshold set in 1986 should be significantly increased to sufficiently cover many common business purchases and reflect the modern characteristics of small businesses.

11. The 2016-17 Budget which saw small business entity turnover threshold increase from \$2 million to \$10 million in July this year, demonstrated the changing nature of transactions made by Australian small businesses.
12. While this increase reflects the growing yet small number of businesses who are achieving great financial success, the majority of small businesses have a turnover of less than \$2 million. In Queensland, 93 per cent of SMEs have an annual turnover of less than \$2 million (ABS, 2015).
13. As such, purchases of over \$40,000 are often significant investments for small businesses, and the implications of unfair dealings resulting in defective goods or services can sometimes lead to great financial hardship or even closure.
14. As such, it is recommended that the figure first be amended to reflect inflation which would amount to around \$100,000. A study could be undertaken in the near future to understand the effects of a further increase to \$500,000, which would reflect purchases of high value specialised equipment as well as mirror the five-fold increase in small business entity turnover.

Barriers in enforcing rights and accessing remedies

15. Small businesses face the same barriers – if not greater barriers – to consumers when attempting to enforce the ACL through private legal action.
16. Time and costs are highly sensitive for small business owners and often the processes for enforcing the ACL through private legal action is seen to be too difficult to manage. In most cases, going through the processes would result in the business owner being in a worse-off position due to the lost productivity, financial burden and time impost.
17. CCIQ backs the statements made by the SA Small Business Commissioner that while:
“this sort of issue is troublesome for an individual consumer, the time that a small business owner needs to take away from their small business to bring such litigation, and then enforce a remedy, can only result in further losses for that business.”
18. As such, we urge the government to adopt the review’s recommendation that the ACCC take a more active approach in connecting small business to alternative dispute resolution schemes where it considers complaints have merit.
19. Furthermore, CCIQ supports the recommendation that small business commissioners, small business offices and ombudsmen work with business stakeholder groups, such as ourselves, to raise awareness of their advice and dispute resolution services.

Consumer guarantees

20. CCIQ strongly argues that the definition of 'consumer' should cover goods acquired for re-supply, as well as goods to be used up in transformed in the course of a process of production or manufacture.
21. As outlined in the interim report, the exclusion of goods acquired for re-supply can acutely affect small business retailers who buy a product from a supplier or manufacturer. The purchasing of such goods does not currently have a remedy under the ACL's consumer guarantee provisions where there is an issue with the goods.
22. This type of transaction made by a small business in purchasing such goods is again made in a similar way to a transaction between a large business directly with consumers. The time and financial consequences of such goods being defective or unacceptable for re-supply or production purposes may be critical to the survivability of some small businesses.

Further enquiries

23. We thank the Treasury for the opportunity to provide comment and welcome any feedback. Please contact Catherine Pham, Policy Advisor, at cpham@cciq.com.au for matters relating to this submission.