



Australian Government



Australian
Small Business and
Family Enterprise
Ombudsman

24 April 2018

Manager
Consumer Policy Unit
The Treasury
Langton Crescent
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By email: australianconsumerlaw@treasury.gov.au

**CONSULTATION REGULATION IMPACT STATEMENT: CLARIFICATION,
SIMPLIFICATION AND MODERNISATION OF THE CONSUMER GUARANTEE
FRAMEWORK**

Thank you for the opportunity to comment on the above. Please accept this submission as part of the consultation process on the impact statement. The Australian Small Business and Family Enterprises Ombudsman (ASBFEO) considers that it is essential that issues surrounding the Australian Consumer Law (ACL) Review (the Review) need to be clarified, simplified and modernised.

However, we are concerned that the proposed changes to the ACL will impact the financial stability of small business as a supplier, and these impacts have not been considered and/or quantified in the Review.

We consider that an increase in the threshold in the definition of 'consumer' is justifiable since it has not changed for 32 years. However, the proposed threshold increase does not recognise the potential financial impact inflicted on small business as a supplier.

We consider that utilising the Consumer Pricing Index to calculate the suggested increase is a too broad approach, when other factors should also be considered, e.g. the business size, type of good/service provided, and the financial impact from the supplier's perspective. Further calculations and engagement with the small business industry could contribute to the determination of an alternative threshold for small business.

We are concerned that the impact of redefining non-major failures to collectively amount to a major failure under the consumer guarantees regime, will weigh heavily on small business. We consider that the consumer should in these instances engage early with the supplier and identify any issues associated with the goods and services provided, determining a viable remedy: repair, refund or replacement.

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We agree that when goods or services fail to meet acceptable quality and fit-for-purpose standards required by the consumer guarantees, consumers are entitled to a remedy. However, when there is no major failure associated with the goods and services the remedy should be determined by the small business as the supplier. Small business might not have the financial backbone or capability and capacity to refund, repair or replace a good or service, at a point in time. Small business should not be penalised because of being the 'underdog' in the marketplace.

Furthermore, exceptions should be considered when providing a remedy for 'major failure' regarding essential goods/services required for a business versus luxury goods/services purchased. For example, when specific machinery is critical to produce beverages by a small business owner, 'major failure' should be instant as the reliability on the good is indispensable to a small business. The disproportionate amount of time and resources to determine whether a major failure has occurred, and negotiating with the supplier to obtain a remedy, will upset the small business' ability to continue with their revenue funding activity.

We consider it appropriate to enhance disclosure for extended warranties by providing a legislative amendment, comprising a cooling-off right, oral and written disclosure. We also agree to the modernisation of the 'sale by auction' exemption from the consumer guarantees by ensuring the consumer guarantees apply to all online auctions.

However, we are concerned there are not enough education and/or educational tools addressing small business' rights and obligations as a purchaser and as a supplier, and they might find themselves liable and financially exposed. Small businesses do not have the depth of resources, in time or money, to counter reprisals or detrimental outcomes.

I hope these comments assist you and I would be happy to discuss these matters further. Please feel free to contact either myself or Ms Jill Lawrence on 02 6263 1558 jill.lawrence@asbfeo.gov.au

Yours sincerely



Anne Scott
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Australian Small Business and Family Enterprise Ombudsman