

Submission to The Australian Treasury on

Protecting consumers from unfair trading practices Consultation Regulation Impact Statement, August 2023 ^{1, 2}

Submission lodged by email to consumerlaw@treasury.gov.au on Tue, 28 Nov 23 at 9pm.

Submission to:

The Director
Consumer Policy and Product Safety Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES
ACT 2600

Submitted by:

John P Meehan

Mobile:

Email:

Recommendations

1. Businesses should notify consumers before scheduled payments are withdrawn from financial accounts.
2. Businesses should send a receipt by email after each online withdrawal from financial accounts.
3. Terms and conditions for sales should be provided, easy to locate and remain fixed for each sale.
4. Debt collection agencies should check that a debt exists before demanding money.
5. Minimum standards and content of online sales webpages require defining.

Recommendation 1

Businesses should notify consumers before scheduled payments are withdrawn from financial accounts.

Businesses should send advice by email or text message at least 2 days before a scheduled withdrawal is made from a credit card or financial account.

The advice should include comprehensive information, such as:

- the date of intended withdrawal
- reference to the authority for withdrawal
- the amount to be withdrawn
- the conditions that apply for cancellation of any agreement
- the anticipated date of the next future withdrawal, and
- a valid communication contact number in case the intended withdrawal is incorrect or requires clarification.

This especially applies to regular automatic withdrawals from financial accounts and credit cards.

Advice that a scheduled withdrawal is to be made would:

- remind consumers of their obligations (many consumers forget about regular commitments to pay, especially annual commitments)
- enable consumers to reassess their financial commitments in a timely manner
- enable payers to ensure that sufficient funds are available for the intended withdrawal
- reduce disputes over payments
- facilitate the collection of payments by businesses.

¹ <https://treasury.gov.au/consultation/c2023-430458>

² <https://www.accc.gov.au/media-release/accc-welcomes-consultation-on-possible-unfair-trading-practices-regulatory-reforms>

Recommendation 2

Businesses should send a receipt by email after each online withdrawal from financial accounts.

Businesses should send a receipt immediately by email after withdrawal of any amount from financial accounts. This should include information like that included in an alert sent prior to withdrawal. Receipts should be in addition to a tax invoice included with goods when delivered.

Sending alerts and receipts would be automated and so not too onerous for traders.

Recommendation 3

Terms and conditions for sales should be provided, easy to locate and remain fixed for each sale.

The terms and conditions associated with any sale should be available at the early stage of any sale for customers to read and download. They should not be held until a later stage, often accessed via a check box or link when completing the sale.

Consumers should not need to ask for the terms and conditions to be provided.

A common item in 'Terms and Conditions' is: '(2) *We may change these Terms at any time ...*'

The terms and conditions should be held fixed at time of purchase so the seller (and buyer) cannot change the terms. The purchaser should be able to rely on a stable set of terms and conditions for a particular sale.

Recommendation 4

Debt collection agencies should check that a debt exists before demanding money.

Debt collection agencies should not approach or pursue a consumer for a debt until a comprehensive examination is carried out to ensure the debt is valid. A complete chain of documentation commencing from the original valid sales agreement should be held to prove the debt. Debt collectors should not simply act on instructions from sellers.

Debt collectors must not pester consumers with intimidating and threatening letters for debts that

are not proven by supporting documentation. The onus for ensuring a debt is valid should be on the debt collector, and this should be an explicit legal requirement.

Debt collection agencies should be held to the highest level of accountability.

Recommendation 5

Minimum standards and content of online sales webpages require defining.

The Australian Consumer Legislation (ACL) is dated 2010. Online sales over the Internet have increased dramatically since then and so comprehensive legislation on online sales needs to be included in the ACL to clarify terms used and responsibilities of companies that use web pages to sell products and services.

There needs to be a list of minimum detail that should be clearly visible on computer screens. Such details could include full price details, instalment charges, delivery details, warranty, cancellation, refunds, exchange and return of goods, refunds, etc. in obvious, clear and simple terms.

These details should not be left for consumers to delve into lengthy 'terms and conditions' in linked documents that may be difficult to locate or not exist.

Many online webpages become confusing with distractions caused by advertising additional products, such as insurance and other services spread over many pages (screens displays). This increases the risk of purchasing the same item twice, for example luggage and insurance when booking airline tickets.

A regular competition could be held to source well designed online sales webpages judged on clarity and completeness assessed from a balanced viewpoint.

These models could then be used as examples on which businesses can create better webpages.

Although there are explanation sheets on various government agency webpages such as the ACCC, the existing legislation is difficult to navigate for the average consumer and could be rewritten in clearer terms.

Conclusion

My involvement with unfair trading practices arises from ongoing complications from an attempted sale over the phone by Business A to my wife, now deceased, two and a half years ago.

The present stage involves Business B, a debt collection agency, threatening legal action and dire consequences.

My unfortunate and stressful experience managing the claims by Business A and Business B over two and a half years could have been avoided if these companies had been aware of their responsibilities when selling goods and collecting debts.

Both Business A and Business B have ignored virtually every aspect that I have detailed in numerous emails in my attempts to clarify and resolve matters.

A sale was alleged to have occurred from an unsolicited phone conversation with a 'virtual franchisee' based overseas.

And Business B pressed for payments without an 'Unsolicited consumer agreement' or sales agreement of any sort underpinning their demands.

It may be a business model though, where a friendly conversation is turned into a sale by dogged persistence including intimidation to cause worry and distress to force the buyer to comply with repeated demands for money.

It would have been easy, and still would be, for me to pay the amount demanded. Many people would have done so and saved many hours of

communication and research over a relatively small amount.

Legislation should be such that all types of sales processes are clear and reasonable, so that each party enters sales willingly and with full knowledge of the terms and conditions that apply. This did not happen with Business A.

The onus should be on businesses to be fully aware of their responsibilities when making sales. Consumers are not involved with buying full-time compared with sellers, and so are less aware of the rules involved and rights of consumers. This limited knowledge can be exploited by sellers, especially when chasing sales over the phone, and from overseas.

Thank you for providing an opportunity to submit these notes for the research and information gathering you are undertaking on the discussion paper concerning 'Protecting consumers from unfair trading practices'.

I trust that your review of unfair trading practices goes well.

Thank you.

John Meehan,
Original document Tue, 28 Nov 23
Removal of business names on Sat, 30 Dec 23