



## NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

24 April 2012

S12.11

### **Submission to the Commerce Committee on the Consumer Law Reform Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 150 other societies as well individual members. NCWNZ's function is to represent and promote the interests of New Zealand women through research discussion and action.

This submission has been prepared by the NCWNZ Consumer Affairs Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

#### **General Comments**

Since 1993 when the Consumer Guarantees Act was introduced, technology has changed and that has left consumers at risk from outdated legislation. Many of the proposed amendments and inclusions adapt existing laws to modern needs and some changes will require a renewal of business practices. Many of the changes included in this reform package were strongly recommended in the submission written in August 2010 by NCWNZ to the Ministry of Consumer Affairs.

The Consumer Law Reform Bill deals with a number of outstanding areas – including the Door to Door Sales Act and internet auctions. NCWNZ supports the changes in the Bill and agrees that consumer protection needed improving in these and other areas such as extended warranties. NCWNZ has welcomed, as long overdue, the extension of key protections for buyers of goods from traders on the internet auction sites.

As the reforms will amend and consolidate 7 pieces of legislation into three – the Consumer Guarantees Act, the Fair Trading Act and the Weights and Measures Act - and introduce a New Auctioneers Act, it was agreed by the NCWNZ membership that the changes will bring much needed clarity into an area of on-line shopping, extended warranties, layby sale and uninvited direct sales.

There was also general agreement that one of the Bill's objectives – to align New Zealand and Australian consumer law - will help achieve the government's aim of having a single economic market.

One area of concern for the consumer and not included in the Bill is “unfair contract terms”. There was concern expressed by NCWNZ members that many contract terms were definitely considered to be unfair eg. car rentals, gym membership, and mobile phone contracts. Analysis of power company contracts carried out by Consumer NZ showed they were also an area of concern regarding unfair terms. The terms may not allow consumers to withdraw from contracts if the supplier varies services without reasonable notice or the consumers' circumstances change.

## **COMMENTS ON THE BILL**

### **Part 1: Amendments to Consumer Laws**

#### **Clause 9.12A Unsubstantiated Representations**

Members agreed with the introduction of the concept called “unsubstantiated representations” as it will make it an offence for any person in trade to make a representation in respect of goods, services or land without having reasonable grounds to make it. The outcome will mean businesses will not be allowed to make claims they are unable to substantiate regardless of whether a representation is actually false or misleading. This was considered to be beneficial as claims will be made on the basis of sound information or evidence.

#### **Clause 11 Unsolicited Goods and Services**

##### **New sections 21A to 21D**

Members agreed with the changes in the new sections dealing with the liability of the recipient of unsolicited goods and services and the proposal to reduce the time period for collection of goods from 3 months to 10 working days. After that time the goods would become the recipient's property without charge if not collected. The Bill also makes it clear that recipients of unsolicited services are not liable to pay for them and it will remain an offence for payment to be demanded, but the recipient must make the goods available for collection within the 10 working days allowed.

#### **Clause 12 Consumer Information Standards**

Members agree with the new subsections that require consumer information standards to meet all the regulations as proposed in respect of goods and services. Members also supported changes in the new law that will make it more difficult to make false claims in advertisements and that businesses will have to provide an evidential basis for their assertions that related to their goods and services.

## **Clause 13 Product Safety**

### **New sections 30A and 30B**

It was agreed that the new sections would make provision for the issue of product safety policy statements and allow the Minister to issue, amend, revoke or replace a product safety policy document.

## **Clause 14 Unsafe Goods**

### **New subsections 1A and 1B**

Members agreed that a new power relating to unsafe goods, which would enable the Minister to declare goods of any description or any class or classes of goods to be unsafe if use of the goods would or may cause injury to any person, would increase protection and safety for the consumer or user.

## **Clause 15 Recall of Unsafe Products**

### **New section 31A**

As overseas trends show the number of unsafe consumer goods is increasing – members' responses considered that regulators should have the power to recall products when the supplier has failed to act. Suppliers, it was agreed, should also be required to notify authorities when recalls are issued as a mandatory and not just voluntary requirement. This would avoid goods left sitting on shop shelves and increase public awareness concerning the recall. A description of the goods should be in plain language or contain relevant information to enable the consumer to readily identify the goods, and include a description of the danger that led to the goods being recalled.

## **Clause 16 Compulsory Product Recall**

It was agreed that Section 32 should be amended by inserting "1(A)" 1(B) after subsection (1)

## **Clause 18 "Part 4A Consumer Transactions and Auctions Clause 18"**

### **Subpart 1 – Layby Sales**

Members support the proposal that under the new law, a written agreement will be required to clarify the terms of layby sales and buyers will be able to cancel without being penalised. This will ensure that the seller keeps the goods in good condition and close holes in layby agreements that have left buyers at risk of losing their money or receiving poor quality products. It was agreed that mandatory formal agreements for laybys will protect the consumer and they (the consumer) will be able to cancel a layby at any time and sellers will have a limited ability to cancel a layby agreement.

### **Clause 18 “Subpart 2 – Uninvited Direct Sales”**

Members were strongly supportive of regulations that would control “uninvited direct sales”. Sales negotiated outside a seller’s usual business premises, and sales by phone where the customer has not invited the seller to visit or call were considered to be an invasion of personal privacy. It was also agreed that the cooling off period in which the customer can cancel a sale should include cash and credit card sales not just credit agreements.

### **Clause 18 “Subpart 3 – Extended Warranties”**

Members have strongly supported a review of the regulations that presently regulate extended warranties. The changes – if enacted – will require retailers and manufacturers to explain to customers what their extended warranty covers over and above the protections under the Consumer Guarantees Act. A consumer will have the right to cancel within five working days of receiving disclosure of the terms. The bill proposes to incorporate these new changes into the Fair Trading Act. This was seen to be a significant change as it means the Commerce Commission will have new powers to enforce compliance with the new laws. Any breaches of the law will be heard by the Disputes Tribunal which will have jurisdiction

Members further recommended that information should be included in the retailer’s printed advertising material and on their websites. Also the contracts should require retailers to give consumers clear information about their legal rights to a replacement, repair or refund if a product fails. All information should be written in plain English and where possible in several languages.

### **Clause 18 “Subpart 4 – Auctions”**

As the Consumer Guarantees Act does not give rights to any person buying goods by bidding on an online auction site at present, changes to the law were supported by NCWNZ members. This would exclude a growing number of traders using auction websites to advantage and exploiting loopholes in the current law. Under the Bill sales by professional traders using Trademe- style auctions would now be covered and traders (full and part time) would need to offer refunds on any unsatisfactory new and second hand goods. Members agreed that this change in legislation was necessary and timely.

### **Summary**

NCWNZ members support the policy objective of the Bill which revises, updates and modernises consumer law so that it is principle-based, enables consumers to transact with confidence, protects suppliers and consumers from inappropriate market conduct and is easily accessible to those who are affected by it.

Provision in the Bill for new and aligned purpose clauses for the Fair Trading Act, Consumer Guarantees Act and the Weights and Measures Act recognise that

consumer law affects both businesses and consumers. If enabled in its present state, the Consumer Law Reform Bill will introduce changes requiring a timely review of business practices and provide an enforcement regime that ensures there will be consequences for those who do not comply with new regulatory provisions.

NCWNZ is supportive of the changes in the proposed legislation and thanks the committee for the opportunity to make a submission on the Consumer Law Reform Bill

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