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By email: contractlaw@ag.gov.au

Assistant Secretary
Business Law Branch
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Dear Assistant Secretary

Reforming Contract Law

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on Government's discussion paper on the scope for reforming Australian contract law (**the discussion paper**).

Briefly, this submission:

- highlights the significance of consumer contracting (which is estimated by the Productivity Commission to amount to 60 per cent of GDP) and argues that consumer contracts, not only contracts between businesses, need to take prominence in the Government's review;
- argues that consumer contracting and consumer protection policy has a significant effect on competition and productivity, and any reform seeking to reduce costs for business and encourage foreign investment would be counter-productive if it erodes the ability of consumers to participate effectively in markets;
- argues that the widespread use of standard form contracts means that the realities of modern consumer contracting are very different to the classical conception of contract as a bargain negotiated by two informed parties on equal footing. Unconscionable conduct and unfair contract terms provisions have partially responded to this development. However, we recommend that any future contract law reform should also include a rule to the effect that if a merchant has reason to believe a consumer would not enter into a contract if they knew it contained a particular term, that term is not part of the agreement.
- recommends that the Government consider the following as part of any broader reform of the contract law:
 - model contracts in particular industries;
 - 'double opt-in' requirements for particular transactions;
 - a general requirement in the Australian Consumer Law that consumer documents be clear and transparent, and that terms be of at least a minimum font size; and
 - a general 'unfair trading' prohibition.

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Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

The significance of consumer contracting and the need for consumer-friendly contracts

The Productivity Commission's review of Australia's consumer policy framework noted the considerable influence of consumer consumption:

...in enabling consumers to operate more effectively in markets, successful consumer education policies can increase the potency of competition and productivity-oriented policies. In this vein, the direct leverage exerted by consumers on economic activity is huge: final household consumption accounts for about 60 per cent of GDP. Hence, many inquiry participants pointed to the important role of effective consumer policies in 'activating' competition and thereby enhancing productivity and growth.¹

Despite the significance of consumer contracting, it attracts little comment in the discussion paper, which appears to us to focus far more on how contract law may create costs for business and what impact this could have on competition and productivity.

However, as the Productivity Commission again notes, competition is not simply driven by active and unrestrained suppliers to the benefit of passive consumers. Rather, informed and active consumers are also a *precondition* to effective competition.

In seeking the 'best' value (the good or service and price/quality combination most appropriate for them) consumers not only advance their own self-interest, but also provide signals to suppliers on the product characteristics they require. Competition between suppliers, who respond to these signals, can variously lead to lower costs, improved product quality, greater innovation and higher productivity (see, for example, OECD 2007b, p. 8).

However, poorly informed consumers send weak and confused signals to the market, limiting the benefits they receive from transactions and reducing gains from competition more generally. As pointed out by Vickers (2003), informed choice has two dimensions — knowing the alternatives on offer and having the ability to judge their price and quality differences.

...

¹ Productivity Commission (2008) *Review of Australia's Consumer Policy Framework*, Final Report, Canberra. Vol. 2, p 3.

It is also important to note that good consumer policy benefits good businesses (and their shareholders) as well as consumers. To the extent that consumer policy makes it more difficult for rogue operators to survive, those who do the right thing benefit.²

This means that effective competition will not necessarily arise just because the supply side of a market is competing vigorously. Nor does reducing business costs necessarily lead to more efficient markets or even to lower prices. Instead, achieving genuine competition requires that consumers must also be able to locate, understand and choose between the options available in a market in a manner that genuinely reflects their interests and preferences.

The relevance of this discussion to contract law is that a sound contract law framework will increase the likelihood that prices and conditions are transparent and reasonable, meaning in turn that consumers are more likely to understand the bargain they are entering. Where terms are not transparent or understood when a bargain is struck, contract law should protect consumers from terms which are unfair or anti-competitive. In this way, contract law can promote informed decision-making by consumers which encourages competition, bringing benefits to the economy more broadly.

It should follow from the above that any reform of contract law should be made with the interests of not only business but also consumers in mind. Reducing costs for business and encouraging foreign investment are worthy aims, but they will be counter-productive if they erode the ability of consumers to participate effectively in markets. In any event, we do not believe that consumers and business have mutually exclusive interests. Improving accessibility and simplicity of contract law, for example, offer clear benefits to both.

As the Government continues to consider reform options, we recommend that it take more time to consider the significance and role of consumer contracting, and how contract law can encourage effective market participation by consumers.

The realities of consumer contracting and responses by the law

The realities of modern consumer contracting are very different from when contract law was first developed. Contract law is based on the idea of a bargain between two parties, and in the classical sense, a bargain between parties on equal footing. The assumption is that contracts represent a bargaining process between parties that leads to a mutually beneficial outcome. It is for this reason that courts are reluctant to provide relief to parties who have struck an unfair bargain (as opposed to bargains struck through unfair pre-contractual processes).

However, the widespread use of mass-marketed standard form contracts means that every day thousands of Australian consumers sign or agree to long, densely-worded contracts that they never read, and cannot reasonably be expected to understand. The discussion paper mentions the example of ticking a box to agree to a contract online, but the same thing occurs across the whole economy. Standard form contracts can be incomprehensible even to well educated consumers and permit no bargaining or negotiation, and yet they are the norm for necessary or essential services such as energy, insurance, telecommunications and consumer credit. Despite

² Productivity Commission (2008), Vol. 2, p 28.

their shortcomings, businesses will continue to offer these contracts because it is cheaper than entering a new contract with every customer, and almost all consumers accept them because to do so is a necessary part of participating in the modern economy.

Responses by the law

Case law and legislation have developed to protect consumers from contractual unfairness. Courts have, for example, developed doctrines preventing a business from enforcing an unfair contract, or at least an unfair part of a contract—for example there are a range of vitiating factors recognised such as mistake, misrepresentation, duress, undue influence and unconscionable conduct. Statutory provisions also exist under the Australian Consumer Law (**ACL**), most notably prohibitions against unfair contract terms.³

Before the development of unfair contract terms provisions, unconscionability was the primary doctrine to protect consumers. But unconscionability suffers from a number of weaknesses:

- it is focused on procedural issues, for example the consumer's lack of capacity to understand transactional details, the use of undue influence or tactics, non-disclosure of intended conduct or risks that affect consumer interests;
- a tendency of courts to interpret statutory unconscionability narrowly; and
- unconscionability is generally applied on an individual basis, which means it has been unsuccessful as a catalyst to improve contracting practices generally.⁴

The development of the prohibition against unfair contract terms was driven by the increased use of non-negotiated standard form contracts by business and the failures of unconscionability to respond to the problems this created. The prohibition against unfair terms also addresses the lack of competition on contractual terms—consumers have very limited opportunity to compare and shop around on contract terms (apart from price).

Limitations of this response and suggested reform

These reforms have unquestionably benefited consumers and competition more broadly. However, they are limited in that they address only the unfair terms themselves and do not deal with the fact that consumers frequently do not read and consider terms in contracts they sign. In many cases, consumers are likely to agree to enter contracts that includes terms that may not fall foul of unfair terms prohibitions, but have still not been read or considered (and hence may be surprised the consumer later).

The US restatement of contract law recognises this problem at subsection 211(3) by providing that:

[w]here the [merchant] has reason to believe that the [consumer] would not [assent] if he or she knew that the writing contained a particular term, the term is not part of the agreement.

³ in Part 2-3 of the Australian Consumer Law.

⁴ We note that changes to the statutory definition of unconscionable conduct in section 21 of the ACL attempt to overcome some of these weaknesses, for example by removing the need to establish a 'special disadvantage' and the ability to respond to unconscionable processes even if no victim is identified. These changes are yet to be tested, however. See ACCC, 'Unconscionable conduct - harsh and oppressive practices to consumers': <http://www.accc.gov.au/content/index.phtml/itemId/716807>

US academic Wayne Barnes argues that although courts and commentators have criticised the subsection for 'running afoul of the traditional duty to read a contract before signing'

...in fact the rule is quite sensible. It is squarely grounded in the objective theory of contracts, which provides that a party's manifestations of assent are taken to mean what a reasonable party would think they mean.⁵

Barnes argues that the US restatement also recognises that contracting parties often fail to make rational choices (in the sense that they do not act in a way that maximises welfare or utility) because of normal limits of cognition, social factors or limited literacy.⁶

Regarding cognitive limitations, Barnes⁷ argues that consumers may fail to make optimal choices because of

- 'bounded rationality': people realise that their ability to assess information is limited, and so people faced with a complex decision may opt for a 'satisfactory' outcome rather than an optimal one;⁸
- 'disposition limits': people can be overly optimistic and underestimate the likelihood of negative outcomes;⁹ and
- 'defective Capability Limits' or Heuristics: people react to complexity by making decisions based on cognitive short cuts or 'rules of thumb' rather than by assessing all of the relevant factors.¹⁰

The effect of these factors is summarised by MA Eisenberg in *The Limits of Cognition and the Limits of Contract*:

Faced with preprinted terms whose effect the [consumer] knows he will find difficult or impossible to fully understand, which involve risks that probably will never mature, which are unlikely to be worth the cost of search and processing, and which probably aren't subject to revision in any event, a rational [consumer] will typically decide to remain ignorant of the preprinted terms.¹¹

In addition to cognitive limitations, social factors also affect the behaviour of consumers when faced with a standard form contract.¹² Social pressures can encourage consumers to sign such contracts quickly (for example, signing a car hire contract when there is a line of other customers behind you).

As argued by Barnes, literacy is also a significant factor. The Australian Bureau of Statistics' 2006 Adult Literacy and Life Skills Survey of Australians found that 47 per cent of 15 to 74-year-olds, or some 7 million people in this country, do not have the minimum standards of literacy

⁵ Wayne R Barnes (2007) 'Toward a Fairer Model of Consumer Assent to Standard Form Contracts: In Defence of Restatement Subsection 211(3)', *Washington Law Review*, Vol 82, 227-274, p 227.

⁶ Barnes (2007), pp 227, 252-260.

⁷ Citing Melvin Eisenberg, *The Limits of Cognition and the Limits of Contract*.

⁸ Barnes (2007) pp 254-256.

⁹ Barnes (2007) pp 256-257.

¹⁰ Barnes (2007) pp 257-258.

¹¹ Cited in Barnes (2007) p 259.

¹² Barnes (2007), p 260.

necessary to understand documentation such as job applications, maps and payroll forms.¹³ It is likely that this illiteracy would extend to most consumer contracts.

As well as the points argued by Barnes (with which we agree), we believe subsection 211(3) is an appropriate response to the attitude of resignation or despair felt by consumers in the face of a possibly unfair standard form contract: there is little point in reading or challenging terms because they are unavoidable in any event. We think that many consumers would at least occasionally find themselves grudgingly agreeing to a term they find unreasonable because they have no choice but to enter into that type of contract (energy, for example), have no power to negotiate the term and have no faith that the terms of any other provider would be any better.

The US restatement recognises the limitations of consumers presented with standard form contracts and reasonably holds that businesses should not be allowed to exploit them unfairly by inserting grossly unfair terms into their contracts.¹⁴ As Barnes concludes,

Although the unconscionability doctrine is an important fail-safe protecting consumers entering standard form contracts, subsection 211(3) is also needed to resolve the dissonance between the fictional duty to read on the one hand, and the reality of cognitive limitations and the objective theory of contracts on the other.

We recommend that, regardless of whether the Australian contract law is codified or restated, it should contain a provision similar to subsection 211(3) in the US restatement. To do so would not be to overrule the 'traditional duty' to read a contract before signing, it would simply acknowledge that the classical conception of a contract—an agreement negotiated by two parties on equal footing—no longer represents the reality of modern consumer contracting. If the contract law is to remain relevant, it needs to acknowledge this reality and build the law around it, rather than clinging to the fiction that consumers are free to negotiate contract terms (or even that they are necessarily aware of those terms).

Other possible reforms

Model contracts

We believe there would be considerable benefit in creating model contracts for particular industries, particularly where one or more of the following factors apply:

- standard form contracts are typical in the industry;
- the subject matter of the contract is a necessity or essential service;
- contracts or the subject matter of the agreement are complex and are not well understood by non-specialists;
- disputes or consumer confusion over contracts are common.

The terms of model contracts could be negotiated between business and consumer groups to ensure there is broad agreement that the contracts are reasonable. Where model contracts already exist (for example, the Law Institute of Victoria's sale of land contract) there are relatively few disputes and there is a sense that the contract is fair and can be relied upon. Model terms and conditions are included at Schedule 1 of the new National Energy Retail Rules and provide a good practice example on which retail energy suppliers can base their

¹³ Pp 4-5.

¹⁴ Barnes (2007), p 227.

contracts.¹⁵ Similar approaches could be taken to other services like telecommunications or home services (such as plumbing or building).

One advantage of model contracts is that they could expressly set out terms or rights which the common law (unknown to many consumers) presumes to apply to certain transactions.

An example is the lien which protects motor mechanics and panel beaters (among other service providers). In the example of a mechanic or panel beater, the lien allows the trader to retain the consumer's car if the consumer refuses to pay for the services rendered. The lien is a reasonable protection for the trader, but there is likely to be an information imbalance because traders will be aware of this right and many consumers (who are less experienced with this kind of contract) will not be. While the lien is not a contract term in the strict sense, it is effectively part of the bargain struck by the two parties and there may be benefits to outlining its effect in a model contract.

The lack of awareness of the lien and in particular a lack of awareness about when it applies can in our experience lead to consumer disputes. We have seen a number of cases where mechanics or smash repairers have charged in excess of quoted amounts for repairs (often after carrying out unauthorised repairs) and relied on the lien to enforce payment of the additional charges. While it is arguable that the repairer would not be entitled to rely on the lien in these circumstances, many consumers could not manage without their car while they sought legal advice and would have little choice but to pay the extra charges.

Mentioning the lien in a model contract may not eliminate this conduct entirely but may prevent some disputes by clearly setting out when it is reasonable to rely on a lien and when it is not.

A further extension of the model contract idea might be to allow traders to display a 'fair contract' trust stamp where an independent body has determined that the contract complies with the model and is otherwise fair. The stamp could be used in marketing to attract customers and so could create incentives for fair contracting.

Double opt-in

We believe a double opt-in requirement may be a useful consumer protection in transactions which involve significant power imbalances, use of pressure sales techniques or transactions where terms are least likely to be properly disclosed or considered in detail—unsolicited sales, for example. The approach might be adapted to apply to online terms and conditions, a question specifically considered in the issues paper.

This kind of requirement would oblige a consumer to confirm their agreement to enter into a contract after a certain period has lapsed, or the contract would be made void.

For example, a consumer signs a contract to purchase a product following an in-home sales presentation. If a double opt-in requirement applied to this kind of transaction, the consumer would then need to contact the trader after a certain time (perhaps no earlier than 24 hours after the sale) to confirm that they understood the terms of the contract and wished to go ahead. If

¹⁵ See: <http://www.aemc.gov.au/Media/docs/National-Energy-Retail-Amendment-21036f8f-6b56-4458-ab25-dce58188bd4f-2.PDF>

the consumer did not contact the trader, the sale would be treated as if it had never occurred. The trader would not be permitted to contact the consumer to encourage confirmation.

A double opt-in would not prevent a trader marketing any product, nor would it prevent consumers from making a purchase. It would, however, encourage at least some level of reflection on the product, price and conditions which is often absent where purchases are made under pressure or where there is poor disclosure of terms. A similar requirement has been imposed on premium SMS 'subscription services' following widespread consumer complaints that the cost and terms of these products were not properly disclosed.¹⁶

Clarity and transparency of contracts

While the discussion paper discusses possibilities for simplifying and clarifying the contract law, it does not consider whether there is a need to simplify contracts themselves. We think this would be a simple consumer protection reform which could be easily achieved.

Subsection 163(3) of the *Fair Trading Act 1999 (Vic)* (now superseded by the ACL) contained a general requirement that consumer documents (which included consumer contracts as well as other statements and notices)

- a. must be easily legible; and
- b. to the extent that it is printed or typed, must use a minimum 10 point font; and
- c. must be clearly expressed.

The ACL contains a similar requirement but only for specific documents, namely:

- unsolicited consumer agreements;¹⁷
- lay-by agreements;¹⁸ and
- proofs of transaction and itemised bills.¹⁹

The ACL also provides that the transparency of a contract term is relevant to whether it is an unfair contract term²⁰ and also to whether goods are deemed to be of an acceptable quality.²¹

We believe the ACL should require all consumer documents—including contracts and disclosure material—to be transparent.

We also suggest that the ACL's definition of 'transparent' should be expanded. At present, 'transparent' means that a document is

- expressed in reasonably plain language; and
- legible; and
- presented clearly.²²

¹⁶ See ACMA, Mobile Premium Services Code, available at: http://www.acma.gov.au/WEB/STANDARD/pc=TEL_PUB_CONS_PREMIUM

¹⁷ Paragraph 79(f).

¹⁸ Subsection 96(2).

¹⁹ Subsections 100(5) and 101(5).

²⁰ Subsection 24(3).

²¹ Subsection 54(4)-(5) provide that goods which are not of acceptable quality are deemed to be of acceptable quality if relevant faults were brought to the attention of the consumer in a way which is transparent.

In relation to a consumer contract—that is, for the purpose of considering whether a contract term is unfair—an extended definition applies and 'transparent' means that the term is:

- expressed in reasonably plain language; and
- legible; and
- presented clearly; and
- readily available to any party affected by the term.²³

We suggest that each definition of transparent should also include a minimum font size, as was included in the Victorian *Fair Trading Act*.²⁴ Although font size would be considered by a court when assessing whether a document or contract term is legible, nominating a minimum font size would simplify this process. A minimum font size need not create any additional burden for business. We doubt that any reasonable trader would include font smaller than (for example) 10 point in their contracts in any case.

A general unfair trading prohibition

Finally, we think the review should consider supporting the development of a general prohibition on unfair trading. An unfair trading prohibition would allow a court to strike down a contract considered to be unfair, but the prohibition would involve consideration of elements of a transaction outside of the contract terms such as advertising, sales practices and the product itself.

The purpose of this kind of prohibition would be to address trading models which when assessed as a whole are clearly unfair or unreasonable, even if the constituent parts of the transaction (marketing, contract terms) may not be unlawful when viewed in isolation. We have argued in previous submissions that some private car park models and unsolicited sales practices demonstrate the need for a general unfair conduct prohibition. An extract from one such submission is attached to provide more detail.

An example of a similar prohibition currently in place is the European Union's Unfair Commercial Practices Directive. The directive includes a general prohibition on 'unfair commercial practices', defined as those practices which

- do not comply with the principle of 'professional diligence'—that is, a reasonable standard of skill, care, honesty and good faith; and
- 'materially distort or are likely to materially distort the average consumer's economic behaviour'.²⁵

²² Section 2.

²³ Subsection 24(3).

²⁴ We are aware that different fonts are different sizes than others so, for example, 10 point text in one font could be smaller than 10 point text in another and 10 point text in some fonts may be unreasonably small. This problem could be avoided by the ACL requiring that text is of a certain height stated in millimeters.

²⁵ European Commission (2006) *The Unfair Commercial Practices Directive: New Laws to Stop Unfair Behaviour Towards Consumers*, pp 10, 14-15. Accessed from http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/ucp_en.pdf

As well as the general prohibition, the directive contains two specific categories of unfair practices: 'misleading' and 'aggressive'. Like the general prohibition, these practices must be assessed against the effect they have, or are likely to have on the 'average consumer'.²⁶

Finally, the directive creates a 'black list' of practices deemed unfair which are banned in all cases without the need to apply the 'average consumer' test. These practices include bait and switch techniques, false claims about curative properties of a product, falsely creating the impression of free offers or that an offer is 'today only', and certain pressure selling techniques.²⁷ While many of these practices are prohibited under current provisions in the ACL, a general unfair trading prohibition can respond to new forms of unfairness as they arise, rather than wait for the legislature to enact specific laws in response to particular practices. Such an approach can prevent detriment occurring from the outset.

As noted above, a general prohibition on unfair trading may provide consumers with confidence in contracting, and go some way to protect consumers where they do not read or consider contractual terms and conditions.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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²⁶ European Commission (2006), p 10.

²⁷ European Commission (2006), pp 20-25

Attachment

Unfair trading prohibition - Extract from Consumer Action's Additional Submission to the Productivity Commission Review of Australia's Consumer Policy Framework 25 March 2008²⁸

A general provision relating to unfair practices

In the Draft Report, the Commission noted a broad provision against unfairness (along the lines of the EU *Unfair Commercial Practices Directive*) is attractive because it can avoid prescription of specific types of unfairness and does not need to be continually adapted as new commercial expressions of unfairness are discovered. However, the Commission also noted that there is little evidence that there are major gaps in Australian consumer laws and, as such, did not recommend introducing such a general provision.

We contest the assertion that there is little evidence about such major gaps. Our Centre regularly deals with complaints about business conduct which may not involve misleading or deceptive conduct or unconscionable conduct, but may be unfair for consumers. Two examples are provided below.

Business models which seek to exploit customers' behaviour – the case of private car parks

Consumer Action has received numerous complaints from consumers who have been 'fined' by private car parks for failure to obtain and/or display a parking ticket. This occurs in circumstances where the parking is generally free for an amount of time (generally at least two hours). Most consumers who are issued payment notices and complain to our Centre instruct us that they utilised the car parks for less than the allowed free parking time.

The situation is compounded by the fact that:

- Such pay and display car parks are usually in proximity to supermarkets, and are parking areas that previously operated without the requirement to obtain a ticket.
- There is no boom gate system in operation that would require consumers to obtain a ticket prior to entry.

Private car parks do not have the power to issue fines – fines can only be issued pursuant to statute. Instead, they issue payment notices (which look like fines) demanding liquidated damages for breach of contract. The conduct is arguably not misleading as the payment notices do not include the word 'fine', but use 'demand for payment'.

Despite this, it is nevertheless unfair to raise revenue from consumers who merely forget or do not realise they are required to obtain a ticket. The fines are generally around \$60-\$80 and the amount payable increases if it is not paid within a certain period of time (usually 14 days).

We have made representations to the companies involved that fair business practices could involve the installation of a boom gate, which would require a consumer to obtain a ticket on

²⁸ The full submission can be accessed at <http://www.consumeraction.org.au/downloads/ConsumerActionadditionalsubmissiontoPC250308.pdf>

entry. As with other car parks, payment could be made upon exit depending on how long the consumer used the car park. This would be a fairer and more equitable way in which to ensure the cost of running the car park is spread across all consumers. This proposal has been rejected by the businesses concerned.

High pressure sales – the case of door-to-door sales of educational software

Consumer Action has also received many consumer complaints about the tactics of door-to-door salespeople selling educational software. Commonly, consumers are approached in a shopping centre and asked for their contact details (perhaps through a competition). A sales consultant then contacts the consumer to make a presentation in their home. Once in the consumer's home, the salesperson will often use high pressure sales tactics to convince the consumer to buy the program or software. Some of the tactics that are commonly used include:

- implying that a parent is neglecting their children or damaging their chances at future success if they do not purchase their products;
- testing the consumer's child and telling them that they are underperforming and will suffer without the assistance of the program (despite the salesperson not being a teacher);
- asking a series of questions where the answers are obviously 'yes' and which make consumers feel that they need the product for sale;
- praising the amazing yet unrealistic benefits of the product;
- trying out a consumer's sympathy by claiming that they are one sale short of either losing their job or winning a prize;
- claiming that the consumer has wasted the salesperson's time and money by listening to their sales presentation, if they then say that they are not interested in buying the product;
- calculating the price, then offering a discount if the consumer signs that day;
- spreading the cost over 12 or more years of schooling, and emphasising the weekly cost of the product; and/or
- after the demonstration, the sales person repeatedly contacting the consumer.

We are also aware that in many circumstances, the salesperson will not discuss the price of the software, or the terms of the credit contract to purchase it, until after the consumer has signed the contract.

It is our view that this sort of business conduct, especially when it is sold to low-income and vulnerable consumers, is unfair and should be proscribed at law. A general prohibition on unfair trading could address such diverse behaviour as outlined above and remain responsive as new examples emerge.