

EASY AND TRANSPARENT TRADING

SUBMISSION | AUGUST 2018



Contents

Introduction3

Recommendations4

Ensuring a robust policy development process6

Making it easier to do business 10

Notice of key terms in a consumer contract 12

Other transparency proposals 16

Introduction

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the *Easy and Transparent Trading – Empowering Consumers and Small Business* consultation paper (the consultation paper).

The Chamber is one of Australia’s largest business support groups, with a direct membership of 20,000 businesses and providing services to over 30,000 businesses each year. The Chamber works with businesses spanning all industry sectors including small, medium and large enterprises. Operating throughout a network in metropolitan and regional NSW, the Chamber represents the needs of business at a local, State and Federal level.

The Chamber welcomes the initiative to reduce red tape for the businesses of NSW. It is estimated that NSW businesses encounter \$10.6 billion in annual compliance costs every year. The Chamber further notes the contentious nature of reform and encourages perseverance with an evidence-based approach.

While supportive of the consultation paper, the Chamber notes some proposals have the potential to give rise to new regulatory burdens for business imposing additional expense without being clear about the benefits to business or consumers. As echoed by the Greiner Review, regulatory impact analysis is essential to meeting this standard.

In view of these concerns, each proposed initiative that gives rise to new regulatory burden should be examined in detail to ensure the intended benefits or specific protections do not exceed their costs.

The Chamber encourages evidence-based policymaking, informed by stakeholder consultation, to optimise and refine the policy options presented in the consultation paper. To this end, the Chamber’s submission expresses some concerns about consequences that may arise should a general disclosure requirement be implemented as proposed.

Given NSW consumers and businesses operate in a national market, it is important that changes to consumer law are progressed in a nationally consistent manner to maintain the integrity of Australia’s consumer policy framework.

The Chamber is also reluctant to support a general power to make information standards until recommendations from the Greiner Review have been fully implemented.

More substantive review and consultation, in the form of robust regulatory impact analysis, will ensure NSW businesses and consumers don’t incur unnecessary additional expense by optimising regulatory environment with regard to the objectives set out in the consultation paper.

Once again, the Chamber appreciates the opportunity to contribute to this consultation.

For more information contact:

Mark Frost
Chief Economist
NSW Business Chamber

Tel: 02 9458 7259

Email: mark.frost@nswbc.com.au

Recommendations

Recommendation 1

Next steps in this consultation process should be guided by the following principles:

- Prioritise non-contentious red tape reduction measures in Part One for implementation following consultation.
- Policy issues raised in Part Two should be considered and assessed through CAF and CAANZ with policy decisions informed by robust regulatory impact analysis.
- To the extent there are new regulatory proposals unsuitable for consideration by CAF and CAANZ, the Chamber considers robust regulatory impact analysis should be modelled on the PPE approach outlined in the Greiner Review. This should serve as a pilot to inform the full implantation of the recommendations from the Greiner Review.

This approach is summarised in Figure 3 above.

Recommendation 2

The Chamber urges further work to:

- Identify the consumer problem, including evidence on its nature and magnitude, and the regulatory gap to be addressed.
- Examine evidence on the extent to which lengthy terms and conditions produce either structural or personal consumer detriment.¹
- Clearly articulate a working definition of “substantially prejudice” (or any alternative concept to be used), including examples of terms that would meet the definition under the consultation paper’s preferred option.
- Set out how suppliers would be expected to provide “*clear, upfront [and] explicit notice*”, including how this concept would be defined and how it would be achieved in practice, under the consultation paper’s preferred option.
- Explore whether the problem is better addressed via industry specific approaches or targeting specific conduct that can be demonstrated as commonly producing consumer detriment.

Once these issues have been considered, NSW should only pursue policy options further as a national project via CAF. Upon being refined, any regulatory interventions should only be accompanied by robust regulatory impact analysis (with stakeholder consultation) demonstrating the benefits of intervention outweigh any costs.

¹ The Toolkit contains definitions of these concepts.

Recommendation 3

Further consideration on the merits of information standards should be considered on a case by case basis and passed through Parliament accompanied by robust regulatory impact analysis and consultation providing confidence that benefits outweigh any costs.

The Chamber is strongly opposed to an information standard making power until the recommendations of the Greiner Review are fully implemented.

Recommendation 4

The Chamber would not support a portal that provides unverified complaints made against a business noting businesses do not have the opportunity to defend themselves against vexatious or false allegations.

Ensuring a robust policy development process

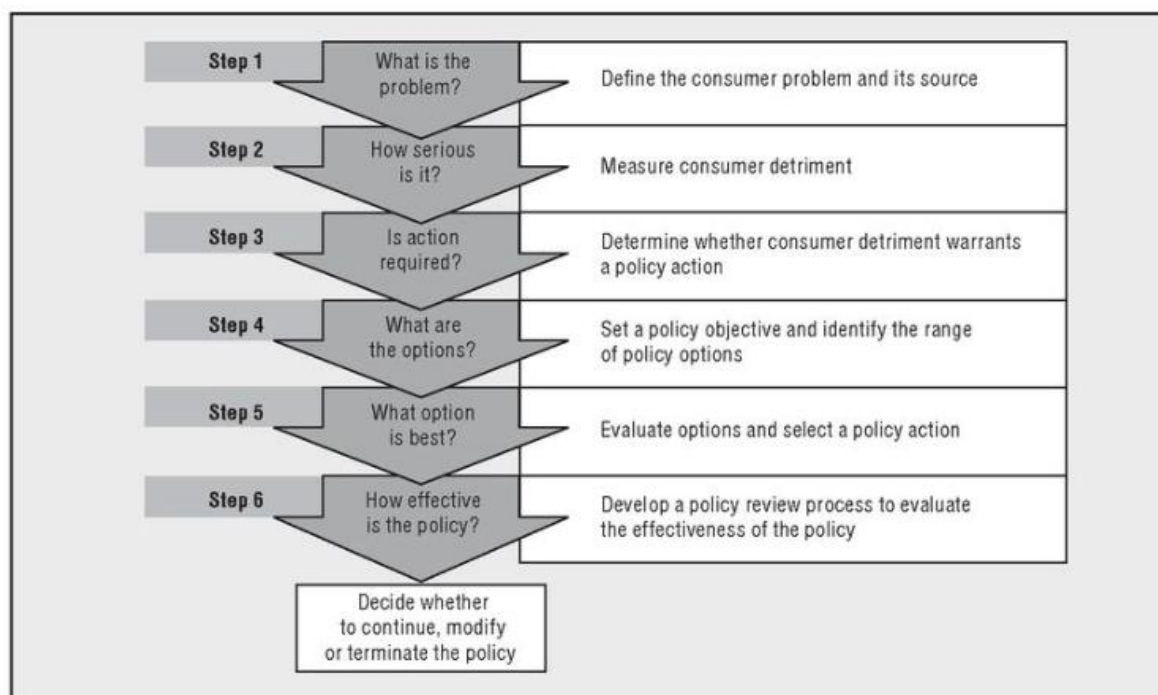
Regulatory impact analysis

The consultation paper distinguishes proposals into those “making it easier to do business” (Part One) and those “increasing transparency and consumer choice” (Part Two). Proposals in Part One are presented with the objective of reducing the costs of doing business; while proposals in Part Two identify potential market interventions intended to improve consumer outcomes though they may give rise to new regulatory burdens.

The Chamber is a strong supporter of best practice frameworks of regulatory impact analysis² which support the development of options to address problems which may warrant a policy response. These approaches are particularly important where policy responses give rise to additional or amended regulatory obligations. The role of regulatory impact analysis is to assess the benefits and costs of a policy response so that an optimal policy response is pursued.

Other policy frameworks are useful when dealing with policy problems. For example, the OECD’s Consumer Policy Toolkit (the Toolkit)³ provides a useful approach to consider consumer problems and to identify potential policy actions in response (see Figure 1). The Chamber supports application of the Toolkit because it supports policymakers in identifying and calibrating policy instruments to address consumer detriment in an effective and efficient manner.

Figure 1 – Approach to consumer policymaking outlined in the Toolkit



Source: OECD Consumer Policy Toolkit, p11.

² Such as those adopted by the Commonwealth Government, those proposed in the Greiner Review, and those promoted by the OECD.

³ OECD Consumer Policy Toolkit (2010) available at https://read.oecd-ilibrary.org/governance/consumer-policy-toolkit_9789264079663-en

The Chamber welcomes the consultation paper as a preliminary step toward identifying the key issues prior to commencing more detailed analysis and further consultation where policy options are to be pursued.

While appreciating the consultation paper is a first step of a broader process, the Chamber is concerned the consultation paper does not clearly set out how these proposals will be taken forward. Proposals giving rise to new regulatory burdens, such as those identified in Part Two, should not be advanced without a detailed and consultative regulatory impact analysis. At minimum, the Chamber considers this should include:

- Examination of the evidence base on the nature and extent of the problem underpinning the policy objective.
- Identification of a range of policy options designed to meet policy objectives including a precise explanation of how those options would work in practice.
- Detailed impact analysis on the identified policy options, including an assessment of likely costs and benefits (quantified where possible).
- Consultation on the specific options and an opportunity for feedback to be incorporated into an assessment of the preferred option.
- Assessment of how proposed measures will affect the competitiveness of the business environment in NSW relative to other states and territories.

The Chamber is also concerned that options in the consultation paper are presented as 'preferred options' without presenting a full appreciation of what those options entail and prior to consultation on the options with key stakeholders, including the NSW business sector. Judgements about preferred options should only be made once proper analysis, including consultation, has been completed.

The Chamber considers regulatory impact analysis concerning consumer policy issues, including the identification of options, should be informed by the Toolkit.

National approach needed

Many of the proposals, particularly those in Part Two, are not NSW specific issues. For this reason any further efforts to pursue these proposals should be at a national level. Implementing NSW-specific approaches creates national inconsistency and confusion for businesses operating cross state boundaries. Unilateral changes to the consumer policy framework risks jeopardising the benefits of national consistency achieved through the ACL, which the Productivity Commission has estimated could amount to \$1.5 to \$4.5 billion per annum.⁴

As NSW businesses and consumers operate in a national market, where regulatory changes are assessed as necessary, they should be progressed in a nationally consistent manner. The Chamber notes Consumer Affairs Australia and New Zealand (CAANZ) is still working through recommendations from the review of the ACL which concluded only recently. In line with the Government's commitment to make NSW the easiest place to do business, the Chamber strongly urges for any subsequent consumer policy proposals from Part Two to be pursued through the Legislative and Governance Forum on Consumer Affairs (CAF).

Further, the Chamber is concerned at the prospect NSW might implement unilateral changes prior to them being fully considered by CAF. This would not only risk a

⁴ Productivity Commission (2008), Review of Australia's Consumer Policy Framework, p323.
<https://www.pc.gov.au/inquiries/completed/consumer-policy/report/consumer2.pdf>

suboptimal policy response to the issues raised in the consultation paper, but undermines national cohesion and goodwill that has underpinned the national consumer policy framework since the introduction of the ACL.

Next steps

The Chamber supports an approach allowing the non-contentious red tape reduction measures contained in Part One to be prioritised for implementation following consultation. However, as previously noted, the Chamber maintains policy issues raised in Part Two should be considered and assessed through CAF and CAANZ with policy decisions informed by robust regulatory impact analysis.

To the extent there are new regulatory proposals unsuitable for consideration by CAF and CAANZ, the Chamber considers robust regulatory impact analysis should be modelled on the Policy Proposal Evaluation (PPE) approach outlined in the Greiner Review. Specifically, this would require an additional consultation paper prior to pursuing policy proposals any further. This is essential given many of the proposals are not well-defined in the consultation paper. Until more concrete proposals can be presented, it is challenging for stakeholders to provide proper feedback on their potential impacts.

The Chamber proposes using the PPE model as a pilot to inform adoption of the new regulatory policy framework while ensuring regulatory quality is achieved. While recommendations from the Greiner Review are yet to be implemented, this does not preclude an evidence-based policy approach being utilised. Indeed, the Government's existing better regulation principles (see Figure 2) and the NSW Government Guide to Cost-Benefit Analysis⁵ require a high standard of analysis which could be met by a model-PPE.

Figure 2 – Better Regulation Principles

The principles should be applied when designing and developing regulatory proposals. This ensures that each proposal is required, reasonable and responsive to the economic, social, and environmental needs of business and the community.

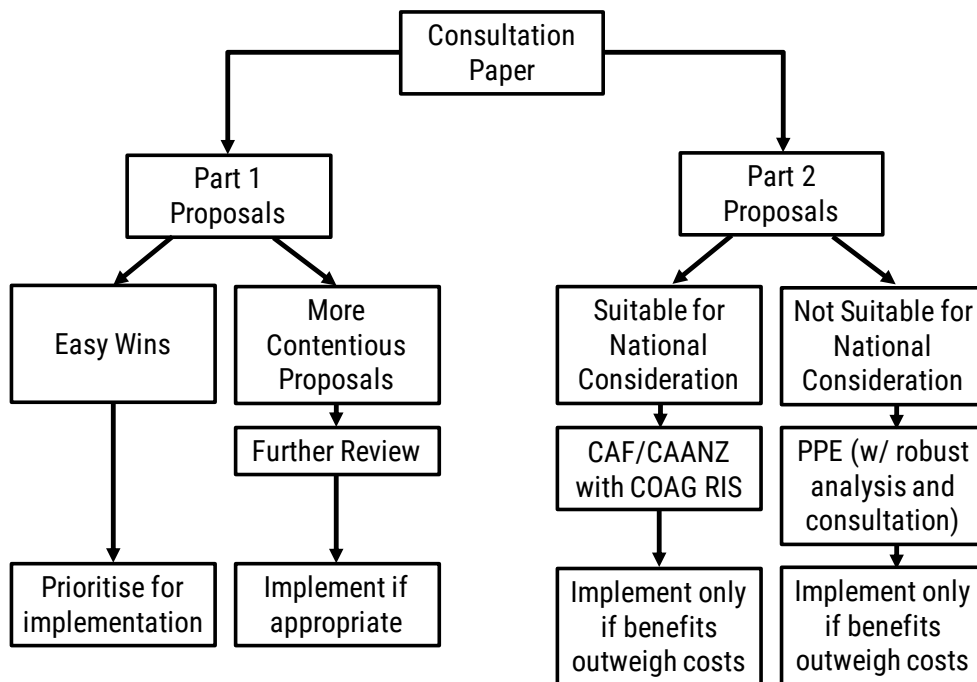
1. The **need** for government action should be established
2. The **objective** of government action should be clear
3. The **impact** of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
4. Government action should be **effective** and **proportional**
5. **Consultation** with business and the community should inform regulatory development
6. The **simplification**, repeal, reform or consolidation of existing regulation should be considered
7. Regulation should be periodically **reviewed**, and if necessary reformed to ensure its continued efficiency and effectiveness

Source: <https://www.finance.nsw.gov.au/better-regulation/regulatory-impact-assessments>

⁵ https://www.treasury.nsw.gov.au/sites/default/files/2017-03/TPP17-03%20NSW%20Government%20Guide%20to%20Cost-Benefit%20Analysis%20-%20pdf_0.pdf

Figure 3 summarises how the Chamber considers the proposals outlined in the consultation paper ought to be taken forward in order to mitigate the potential for suboptimal policy outcomes.

Figure 3 – Next Steps



Recommendation 1

Next steps in this consultation process should be guided by the following principles:

- Prioritise non-contentious red tape reduction measures in Part One for implementation following consultation.
- Policy issues raised in Part Two should be considered and assessed through CAF and CAANZ with policy decisions informed by robust regulatory impact analysis.
- To the extent there are new regulatory proposals unsuitable for consideration by CAF and CAANZ, the Chamber considers robust regulatory impact analysis should be modelled on the PPE approach outlined in the Greiner Review. This should serve as a pilot to inform the full implantation of the recommendations from the Greiner Review.

This approach is summarised in Figure 3 above.

Making it easier to do business

Licensing

The Chamber welcomes the consultation paper's examination of ways to reduce compliance costs through adjustments to the state's licensing arrangements.

The Chamber is unable to provide feedback on all of the issues raised, however, the Chamber is broadly of the view that there is significant scope to reduce costs faced by NSW businesses due to current licensing arrangements. Costs to business from current licensing arrangements emerge from a number of requirements including:

- License fees and associated costs (such as the cost of obtaining required documents) with acquiring a license.
- Administrative costs (such as time and effort) associated with applying for a license.
- Costs incurred by businesses in meeting the requirements of a license.
- Competitive pressures faced by compliant businesses competing with non-compliant businesses or interstate rivals facing less onerous obligations.

At the same time, the Chamber acknowledges the complexity of consumer safety and quality assurance issues underpinning current licensing arrangements. Licenses can offer benefits to business by enabling them to demonstrate their capacity to meet standards required by a license. This benefits consumers as they are better able to ensure their suppliers are able to meet acceptable industry practice and safety standards. While licensing arrangements have costs, the Chamber accepts caution is needed when considering changes which would relax current standards.

Any efforts to reform licensing arrangements should be intended to reduce unnecessary requirements which do not contribute to improved safety or quality outcomes for consumers. In this respect, the Chamber proposes the following guiding principles for reform:

- Reduce competitive irregularities in markets where it can be demonstrated that a significant volume of work is undertaken by unlicensed suppliers. This should be achieved by reducing the requirement for other suppliers to satisfy license requirements which do not need to be met by all. In circumstances where relaxing standards would have the potential to give rise to consumer detriment, the scope of existing license coverage should be reviewed to ensure these risks are mitigated for unlicensed work.
- To the extent licenses are a useful instrument to meet policy objectives, further exploration should be given to the optimal design of those licenses including with regard to continuing professional development and other features of licensing regimes. Any license features that do not improve outcomes should be removed.
- Consideration should be given to whether some modes of consumer engagement could be opened to unlicensed providers in circumstances where risks are unlikely to materialise (such as when performed in commercial context or where a consumers have performed due diligence). More risky modes of engagement could continue to be restricted to licensed providers (such as the ability to make unsolicited offers for work or participating on sharing economy platforms).
- Exploration should be given to the role that other policy instruments, such as accreditation schemes, could play as an alternative to mandatory licensing.
- Licensing categories should also be reflective of the skill and industry requirements noting that industry training and skill requirements are constantly

evolving and statutory licensing arrangements often struggle to keep pace with business and industry requirements.

Other proposals

The Chamber also welcomes the consultation paper's efforts to consider other opportunities to reduce red tape by streamlining uncollected goods regulation, repealing redundant statutes and streamlining ID requirements.

Notice of key terms in a consumer contract

Overview

The consultation paper seeks feedback on options to support consumers in better understanding terms and conditions when engaging in the marketplace.

More complex terms and conditions emerge as goods and services become more complex. The consultation paper observes that it can sometimes be impractical for consumers to comprehend the nature of terms and conditions they must accept before agreeing to purchase a good or service.

Existing protections and the regulatory gap

Existing regulation and market incentives are robust in protecting consumers from potential consumer detriment that might otherwise arise due to the presence of complex terms and conditions.

The potential for consumer detriment⁶ is mitigated by the general prohibition of misleading and deceptive conduct in section 18 of the Australian Consumer Law (ACL). The prohibition of misleading and deceptive conduct is further bolstered by section 29 of the ACL which protects against false and misleading representations. A contravention of section 29 is subject to pecuniary penalties of up to \$1.1 million.

In practice, this means that under existing laws suppliers are prohibited from providing 'inaccurate information' as suggested by the consultation paper. The ACL provides for remedies in circumstances where this occurs. The prohibition of misleading and deceptive conduct is also capable of applying where consumers are misled by omission, such as where a consumer is not presented with relevant information the supplier ought to have provided and are induced into making a decision they would not otherwise have made. The operation of the provisions are contingent on what a reasonable consumer would expect in the circumstances and a supplier cannot discharge their responsibilities by obscuring critical terms in a lengthy set of terms and conditions.

It is also worth noting the ACL contains additional protections against unfair contract terms. Terms in standard form consumer contracts are void if a court or tribunal finds a term to be unfair. Under the ACL, a term is unfair if it causes a significant imbalance between the rights and obligations of the consumer and supplier, isn't reasonably necessary to protect the legitimate interests of the supplier and would cause detriment (financial or non-financial) if it were enforced. The transparency of a term, including the extent to which it is brought to the attention of a consumer, is also a relevant consideration when considering whether a term is unfair. This means pernicious terms may be deemed unfair if they are not brought to attention.

A further safety net is provided by the prohibition on unconscionable conduct for which contraventions may attract penalties of up to \$1.1 million. The unconscionable conduct provisions are capable of protecting consumers in circumstances such as where terms and conditions are deliberately drafted to take advantage of consumers in an unconscionable manner.

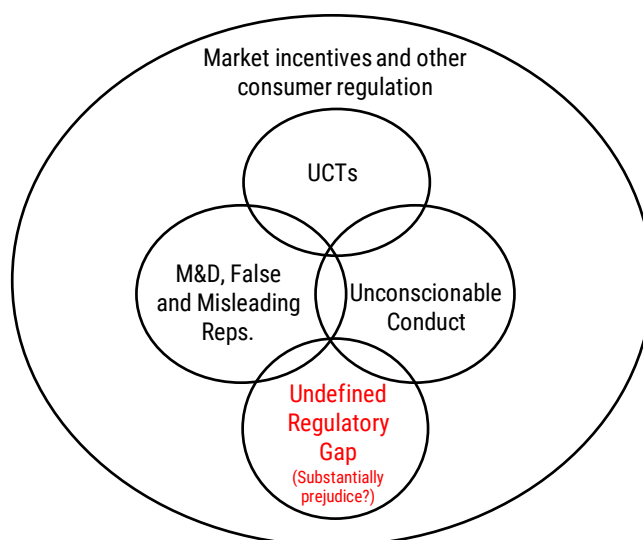
While the ACL provides robust protections for consumers, market incentives play the most important role in regulating the conduct of market participants. Businesses acting contrary to the best interests of consumers are held to account by market incentives

⁶ The OECD Consumer Policy Toolkit (P.52) provides a thorough guide as to the nature and causes of consumer detriment.

such as reputation. While these incentives are imperfect (justifying the need for the consumer protections outlined above) they are the driving force ensuring the success of the vast majority of agreements which are mutually advantageous (rather than any legal obligation to do so).

To support the development of policy options, the Chamber urges for the precise regulatory gap to be identified. Developing policy responses without understanding the regulatory gap is akin to playing darts blindfolded.

Figure 4 – Undefined Regulatory Gap



The preferred option

The consultation paper expresses a preference for a regulatory intervention requiring:

...traders to provide clear, upfront, explicit notice of terms that may substantially prejudice a consumer's interests, with a list of examples to provide more clarity as to the meaning of "substantially prejudice".

The definition of "substantially prejudicing a consumer's interests" lies at the heart of the proposal. While the consultation paper suggests a list of examples would provide clarity, it does not define the concept or provide any indication of what such a list of examples might include. The absence of a working definition of the key terms to be disclosed makes it difficult to provide feedback on the proposal and invites a further question as to how it would differ from current concepts associated with misleading and deceptive conduct, unfair contract terms and unconscionable conduct. The definition of "substantially prejudicing a consumer's interests" (or whatever alternative concept is used) should be linked to the regulatory gap, which as previously noted, is undefined.

If the threshold were significantly high, such that it only applied to the most egregious terms⁷ it could be argued that it wouldn't capture any conduct that isn't already protected under the ACL. On the other hand, a relatively low threshold would create considerable ambiguity as to whether a term were caught or not.

To be clear, the Chamber is not opposed to the objective of improving the quality of information where the benefits are large while unnecessary costs are avoided. For example, it is appropriate that consumers are protected from suppliers who mislead

⁷ But even in this case, it is a subjective exercise open to the different interpretations of the supplier and consumer.

consumers. Protecting consumers in this way ensures a level playing field for businesses that do the right thing. On the other hand, there are limitations as to what policy interventions can achieve without imposing significant and disproportionate costs on suppliers. Noting that existing provisions can be leveraged to protect against terms which have the potential to substantially prejudice consumers, a relevant consideration is whether the meagre gains in consumer protection afforded by the preferred option would exceed the regulatory burden imposed.

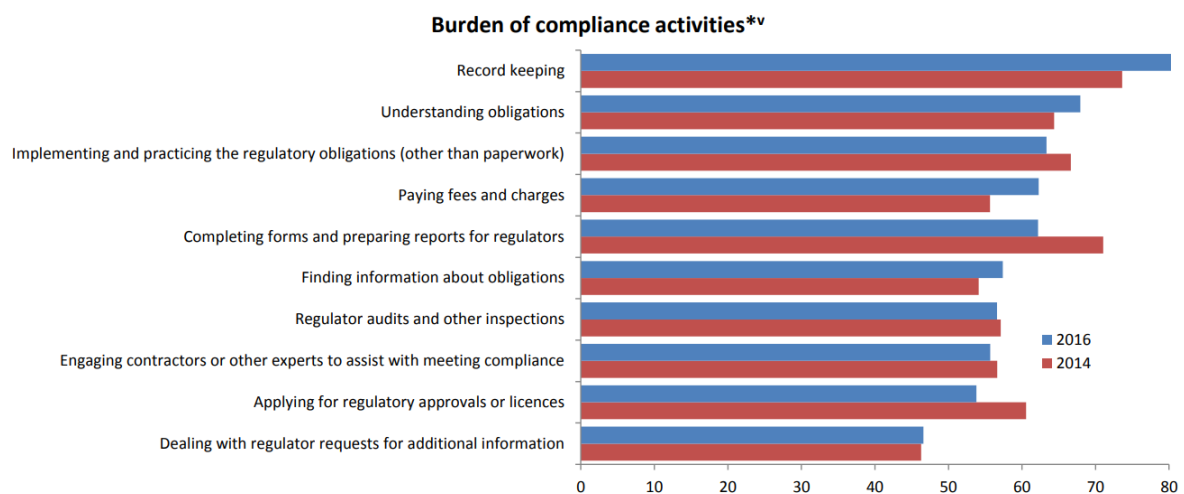
Challenges with a generic disclosure requirement

In pursuit of improved consumer outcomes and a more level playing field, it is not uncommon for consumer policy frameworks to mandate disclosure requirements when selling goods and services, including in Australia. Australian examples include mandatory product disclosure statements, the unit pricing code and the component pricing provisions of the ACL. International examples include the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (UK) which mandates specific information requirements for distance or off-premises sales (such as a description of goods and details of who pays for the cost of returning items).

However, it is not commonplace for there to be a generic, principles-based requirement to bring specific attention to terms that may prejudice consumers. This may be for good reason. Whereas a requirement to make specific disclosures is relatively easy to implement – as requirements are unambiguous – a principles-based obligation is open to subjective interpretation. Indeed, the consultation paper does not provide any examples where this approach has been adopted anywhere in the world.

The Chamber is concerned with the potential of legal ambiguities fuelling unnecessary costs for business. Legal ambiguity may result in substantial new expense in the form of reviews and revisions of existing consumer agreements and higher ongoing costs (time, effort and professional advice) associated with ensuring ongoing compliance. Further ambiguity could arise without clarity as to the requirements of providing “clear, upfront [and] explicit notice”. While there are existing conventions such as requirements relating to font size when making price representations, it is unclear what conventions could be used to ensure clarity for more complex terms.

Figure 5 – Understanding obligations an increasing concern



*Normalised score (based on 2014 percentages) of respondents who rated as 'Very large' or 'Somewhat large'

Source: https://www.nswbusinesschamber.com.au/NSWBC/media/Policy/Survey-Report_1.pdf

Feedback from the Chamber's members indicates understanding regulatory obligations is a huge concern for business with more than half of respondents to the Chamber's 2016 Red Tape Survey, see figure 5, revealing it to be a large or very large concern (the second biggest issue of concern among 10 different compliance activities assessed).⁸

For these reasons the Chamber could only support options under which there is certainty as to what is required. The Chamber reinforces that robust regulatory impact analysis would support the policy development process to identify and explore such options.

Further analysis is also needed to optimise any policy response from the consumer's perspective. If a large number of terms are within the threshold of terms requiring additional disclosure, it could be asked whether this would necessarily offer an improvement. This suggests a relatively high threshold would be more beneficial than one that is too low. The consultation paper's advice that businesses could err on the side of caution if they are unsure may also risk a perverse outcome for consumers if they are bombarded with more information than is necessary, resulting in information overload. The potential emergence of a patchwork of disparate consumer laws across the country may also disadvantage NSW consumers as regulatory costs are passed on through higher prices or if suppliers opt to avoid supplying to NSW consumers given incompatibilities with existing processes.

Recommendation 2

The Chamber urges further work to:

- Identify the consumer problem, including evidence on its nature and magnitude, and the regulatory gap to be addressed.
- Examine evidence on the extent to which lengthy terms and conditions produce either structural or personal consumer detriment.⁹
- Clearly articulate a working definition of "substantially prejudice" (or any alternative concept to be used), including examples of terms that would meet the definition under the consultation paper's preferred option.
- Set out how suppliers would be expected to provide "*clear, upfront [and] explicit notice*", including how this concept would be defined and how it would be achieved in practice, under the consultation paper's preferred option.
- Explore whether the problem is better addressed via industry specific approaches or targeting specific conduct that can be demonstrated as commonly producing consumer detriment.

Once these issues have been considered, NSW should only pursue policy options further as a national project via CAF. Upon being refined, any regulatory interventions should only be accompanied by robust regulatory impact analysis (with stakeholder consultation) demonstrating the benefits of intervention outweigh any costs.

⁸ https://www.nswbusinesschamber.com.au/NSWBC/media/Policy/Survey-Report_1.pdf

⁹ The Toolkit contains definitions of these concepts.

Other transparency proposals

Disclosure of broker commissions and referral fees

Consumers should not be misled about the basis for which brokers recommend certain suppliers over others. If a broker creates an impression they are recommending a supplier based on what is in the consumer's best interest when this is not the case, then there are reasonable grounds to suspect this conduct may contravene section 18 of the ACL.

Commissions and referral fees underpin business models, such as comparator services, which provide substantial benefits to consumers. By enabling these services to be free for the consumer, they are more likely to be used as a tool to assist in their decision-making. On the other hand it is important their integrity is maintained so that consumers can be confident about the recommendations they make. While the general prohibition on misleading and deceptive conduct is capable of ensuring a reasonable consumer's expectations are met, it is appropriate for consumers to be informed of the existence of fees or commissions. The Chamber observes this is already common practice.

As previously noted, the Chamber encourages further work be undertaken by the NSW Government to assess whether this an issue requiring further attention and from this, and only the basis that action is required, consideration of the preferred approaches noting costs, benefits and unintended consequences.

Non-disclosure agreements

The Chamber is not opposed to the preferred option of voiding terms within a non-disclosure agreement which constrain a person from reporting an alleged breach of NSW consumer laws to the regulator. However, the Chamber considers suppliers should have the right for related information to be treated as commercial-in-confidence where such agreements are in place. Alleged breaches should not be reported on the NSW Complaints Register where a consumer has accepted remedies offered by a supplier. Further, the potential for the preferred option to have a chilling effect on the ability of consumers to obtain redress should be considered.

Trailing commissions

The Chamber is unaware of the prevalence of trailing commissions outside of financial services. The consultation paper notes it appears to be an emerging remuneration model in the IT sector, however further detail or evidence is not provided.

The Chamber accepts, in-principle, some of the arguments against certain business models considered in the consultation paper. However, without specific knowledge of whether or how trailing commissions apply outside of the financial services industry, the Chamber is unable to provide any feedback on the options presented in the consultation paper. Again, it is recommended that further consultation by the Government identify the specific issue trying to be resolved.

The consultation paper advances an array of principles, however, without more information on the problem and the specific market or regulatory failure it is difficult to provide detailed responses or consider alternative approaches.

Consumer information standards

The Chamber is concerned a ministerial power to create information standards by regulation will remove oversight provided by the Parliament.

Information standards can be useful in a limited number of circumstances but generally result in increased regulatory burden with few benefits for consumers. Arguments in support of information standards to mandate disclosures for extended warranties or to improve price transparency in the funeral industry do not establish the need for a general power to make information standards. If robust regulatory impact analysis establishes the merits of these proposals, they should be implemented through a legislative change in the Parliament.

The Chamber does not support a general power to create information standards given the absence of a robust regulatory impact analysis framework in NSW. While the Commonwealth Minister can create information standards by regulation, a Regulatory Impact Statement (RIS) must be prepared before doing so. Support RIS documentation must be independently assessed by the Office of Best Practice Regulation which ensures the quality of analysis in support of the preferred option.

The Better Regulation Principles as currently applied do not come close to the robust standards required of the Commonwealth Minister. Until the recommendations of the Greiner Review are fully implemented, the Chamber strongly opposes such a power in NSW.

As to the benefits of information standards applying to the funeral industry and extended warranties, the Chamber encourages further work to better understand the problem (including evidence) and to determine the costs and benefits of alternative approaches.

Recommendation 3

Further consideration on the merits of information standards should be considered on a case by case basis and passed through Parliament accompanied by robust regulatory impact analysis and consultation providing confidence that benefits outweigh any costs.

The Chamber is strongly opposed to an information standard making power until the recommendations of the Greiner Review are fully implemented.

Publish data on traders and licensees

The Chamber is not opposed to the preferred option of establishing an online portal for centralised access to information as described in the consultation paper (with reference to the list of information to be included). The Chamber would not support a portal that provides unverified complaints made against a business noting businesses do not have the opportunity to defend themselves against vexatious or false allegations.

Recommendation 4

The Chamber would not support a portal that provides unverified complaints made against a business noting businesses do not have the opportunity to defend themselves against vexatious or false allegations.