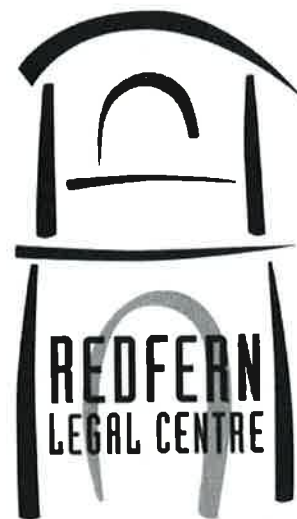


Redfern Legal Centre



27 May 2016

Australian Consumer Law Review Secretariat

By email: aclreview@treasury.gov.au

Dear ACL Review Secretariat,

Australian Consumer Law Review

Thank you for the opportunity to contribute to the five-year review of the Australian Consumer Law. Redfern Legal Centre's submission will focus on common issues arising from our casework experience of consumer law issues.

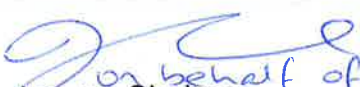
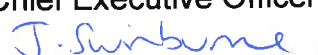
Redfern Legal Centre regularly assists vulnerable and disadvantaged consumers who fall victim to unscrupulous commercial practices. Our submission will focus on the ways in which the ACL can be reformed to ensure better protections for all consumers, but particularly this demographic.

Our submission will consider the structure and clarity of the ACL, the general and specific protections under the ACL, proposals for a general prohibition on unfair commercial practice and access to remedies and scope for private action.

We would welcome the opportunity to appear before the ACL Review Secretariat panel or to meet with you to discuss our submission further.

Yours faithfully,

REDFERN LEGAL CENTRE


Joanna Shulman
Chief Executive Officer



Will Dwyer
Credit & Debt Solicitor

73 Pitt Street Redfern NSW 2016 ACN: 31 001 442 039 ph: [02] 9698 7277 fax: [02] 9310 3586 web: www.rlc.org.au

General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm

Interviews by appointment: Monday to Thursday 6.30pm – 8pm

Redfern Legal Centre



Australian Consumer Law Review Secretariat

Australian Consumer Law Review

AUTHORS:

Will Dwyer, Credit & Debt Solicitor

Elizabeth Morley, Principal Solicitor

Redfern Legal Centre



Table of contents

- 1. Introduction: Redfern Legal Centre**
- 2. RLC's experience with Australian Consumer Law**
- 3. RLC's Recommendations in Summary**
- 4. RLC's Response to the Discussion Questions**
 - a. The structure and clarity of the ACL (ref 2.1)
 - b. General and specific protections under the ACL (ref 2.2 and 2.3),
 - c. Addressing 'unfair' commercial practices (ref 2.4.1),
 - d. The interaction of the ACL and the ASIC Act (2.4.2),
 - e. Access to remedies and scope for private action (3.3); and
 - f. Selling away from business premises (ref 4.1).

Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal centre with a particular focus on human rights and social justice. Our specialist areas of legal practice include domestic violence, tenancy, credit and consumer, employment and discrimination and complaints about police and other governmental agencies.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

RLC's experience with Australian Consumer Law

RLC recognises that the protection of financial and consumer rights is essential to securing other rights and freedoms such as secure housing, effective education and social and economic participation.

Since 1977, RLC has run a specialist practice to assist vulnerable and disadvantaged consumers address credit and consumer law problems. We regularly encounter vulnerable consumers who, for a range of reasons, are disproportionately affected by unscrupulous business practices.

RLC offers free legal advice on credit and consumer law matters arising under the Australian Consumer Law and the National Consumer Credit Protection Act. We assist clients from all walks of life on a broad range of common legal problems involving consumer rights, remedies and dispute resolution process.

RLC's Recommendations in Summary

- **Recommendation 1:** The ACL review Secretariat should review the effectiveness of 'unconscionable conduct' as a definition and provision of the ACL. Broad consideration should be given to reframing unconscionability as 'unfairness' or another more accessible term.
- **Recommendation 2:** The introduction of a general 'unfair trading' provision, to improve the capacity to address systemic misconduct
- **Recommendation 3:** removing the 'carve out' of insurance contracts from the ACL unfair contract terms provisions.
- **Recommendation 4:** ensure that insurance contracts and conventional financial services (consumer leases in particular) are subject to general protection under the ACL.
- **Recommendation 5:** Improve the efficiency and enforceability of dispute resolution outcomes through: the implementation of an external dispute resolution process, administered by a Retail Ombudsman scheme, or an enforceable conciliation scheme, administered by consumer protection agencies.
- **Recommendation 6:** A general prohibition on unsolicited sales, particularly through door to door sales and cold call telemarketing.

Response to Discussion Questions

In this submission, RLC has focused our responses towards common legal and procedural issues that we regularly encounter in our casework. We have a particular focus on those issues, which tend to disproportionately affect vulnerable or disadvantaged consumers.

Accordingly, we have structured our submission in response to following elements of the ACL Review Issues Paper:

- The structure and clarity of the ACL (ref 2.1)
- General and specific protections under the ACL (ref 2.2 and 2.3),
- Addressing 'unfair' commercial practices (ref 2.4.1),
- The interaction of the ACL and the ASIC Act (2.4.2),
- Access to remedies and scope for private action (3.3); and
- Selling away from business premises (ref 4.1).

In general, the ACL has worked well since its implementation and continues to provide an appropriate balance between consumer redress and business compliance costs. However, dispute resolution remains adversarial and in some cases remedies are difficult to enforce. The ACL dispute resolution process needs to be improved.

RLC considers that alternative dispute resolution process could be better utilized to assist consumers and businesses to resolve disputes more efficiently. An external dispute resolution process administered by a Retail Ombudsman scheme, or an enforceable conciliation scheme administered by consumer protection agencies, are two options to improve the efficiency and enforceability of dispute resolution outcomes.

The unconscionable conduct provisions of the ACL remain uncertain and difficult to enforce. This reduces the deterrent effect against businesses and the utility of these protections for vulnerable consumers. Reframing unconscionability as 'unfairness', and the introduction of a general 'unfair trading' provision, is crucial to improving the capacity to address systemic misconduct.

RLC strongly advocates for a general prohibition on unsolicited sales, particularly through door to door sales and cold call telemarketing. These methods of sale invariably involve elements of undue influence, misrepresentation and coercion.

Unfair contract terms provisions should apply to insurance contracts. The carve out of ACL protections for insurance and financial services has lead to wide scale unfair practices which disproportionately affect vulnerable consumers. Insurance contracts and conventional financial services (consumer leases in particular) are ordinary consumer services, which should also have general protection under the ACL.

Funeral insurance and consumer lease products targeted at vulnerable consumers continue to exploit the complexity and uncertainty around consumer protections for financial services. These products disproportionately affect vulnerable consumers.

Structure and clarity of the ACL (2.1)

Is the language of the ACL clear and simple to understand? Are there aspects that could be improved?

Plain English, practical and consumer-friendly guidance on the ACL is an important method for improving community legal education around common disputes and legal problems. There is a wide range of guidance on particular aspects of the ACL that has been produced by the ACCC, ASIC, Consumer Protection Agencies, Legal Aid Commissions and Community Legal Centres. This material is broadly available online, and well produced, but has not been consolidated into a simple, authoritative and accessible online guide, such as in the format of the Law Handbooks.¹

RLC recommends that the ACL Secretariat consider a wholesale review of all available consumer law self-help material and consolidate this into a consumer law practice guide, available on the www.consumerlaw.gov.au website and published in hard copy. This guide should be drafted in plain English and include simple guidance as to process and procedure for the resolution and redress of consumer law disputes. It should include a triage process which, depending on the specific nature of the problem, directs consumers to sample letters, complaint forms and the appropriate consumer protection agencies, ombudsman schemes or tribunals.

It is important that this type of uniform and accessible guidance material is available online, particularly in mobile accessible format, as well as in hard copy for distribution to community legal centres and other community organisations to ensure access by consumers who do not own a computer or who are not computer literate.

Is the ACL's treatment of 'consumer' appropriate? Is \$40,000 still an appropriate threshold for consumer purchases?

Given the threshold of \$40,000 has not changed since its introduction in 1986, consideration should be given to increasing the threshold to reflect cost increases and inflation since that time. Common consumer purchases over the \$40,000 threshold include home building works and motor vehicles. There remains uncertainty as to the application of ACL protections towards these types of purchases.

There is also uncertainty about the extent of ACL protections for small business owners who purchase goods and services for their businesses around the \$40,000 threshold. As we understand, in the absence of 'contracting in' specific guarantees or warranties, small business owners will not generally receive the same kind of ACL protection for goods or services they acquire for their business. We note that changes in the workplace have led to many ordinary people, who would previously have been employees, are now in the position of being contractors and small business owners. The Secretariat may wish to consider extending ACL protections beyond 'personal, domestic or household' items to consider purchases made by small business within a particular threshold. This would more

¹ Fitzroy Legal Service, Law Handbook <http://www.lawhandbook.org.au/> and Redfern Legal Centre, Law Handbook http://www.legalanswers.nsw.gov.au/guides/law_handbook/

closely align with the recent extension of the ACL unfair contract terms protections for small businesses.

General protections of the Australian Consumer Law (2.2)

Are the ACL's general protections working effectively? Do they address the risks of consumer and business harm without imposing disproportionate or unnecessary costs on businesses?

In our view, the ACL's general protections are working effectively and generally strike the appropriate balance between addressing the risk of consumer and business harm without imposing disproportionate costs on business. In RLC's casework experience, there is a broader recognition of consumer rights amongst those consumers and businesses we encounter. To better improve the effectiveness of ACL general protections, the dispute resolution and remedy needs to be improved. We will expand upon our suggestions to better improve the ACL dispute resolution process in our response to section 3.3 below.

Are there any changes that could be made to improve their effectiveness, or address any of the issues raised in section 2.2? Are there any gaps that need to be addressed?

Unconscionable conduct (2.2.2)

The unconscionable conduct provisions of the ACL remain difficult to understand and interpret, for both consumers and business alike. The absence of a clear definition of unconscionable conduct, through statute or precedent, remains a significant gap and limits the effectiveness of this provision.

Incidents of unconscionable conduct are the most egregious breaches of ACL rights, yet the most difficult to prosecute or enforce. The uncertainty around 'unconscionable conduct' could be addressed through a general 'unfair trading' prohibition which empowers regulators to step in and address systemic misconduct at an early stage. We believe that the concept of unconscionability in the ACL should be reframed and redefined as one of 'unfairness' or 'unfair commercial practice'.

By definition, those affected by unconscionable conduct are already at a 'special disadvantage', and rarely in a position to assert their rights. Given the serious misconduct inherent in 'unconscionability', it is important there is a clearer expression and definition of what constitutes unconscionable conduct. In seeking to enforce the prohibition against unconscionable conduct, regulators remain largely reliant upon the evidence of individual witnesses, on a case-by-case basis. Where those affected by unconscionable conduct are inherently vulnerable or under a special disadvantage, it is very difficult for them to be effective witnesses. They are often less likely to have retained documentary evidence of the conduct, less likely to be confident in their recollection, more easily confused or intimidated and less inclined to assert their rights to complain. This presents significant

issues for regulators attempting to prosecute a case, or establish a pattern of malfeasance.²

The concept of unconscionable conduct remains confusing and not widely understood by consumers or business. The courts have had considerable difficulty interpreting the common law concept of ‘unconscionable conduct’ since the key cases of *Blomley v Ryan*³ and *Commercial Bank of Australia v Amadio*.⁴ The ACL includes a prohibition on not only the common law concept but also on unconscionable conduct that is not limited by the common law interpretation. Courts have differed in their interpretation of the two concepts and it is unclear whether ‘moral obloquy’ is required, and if it is, to what degree.

To add to the confusion at the legal interpretation level, the level of comprehension of the term ‘unconscionable conduct’ among both business and consumers is, in our experience, very low. The impact of this is profound. It means that both:

- Businesses are not aware of how, and the extent to which, the law governs the way in which they do business and otherwise interact with customers and potential customers; and
- Consumers (particularly vulnerable consumers) are not aware of their rights under the ACL, meaning they are less likely to protest against unconscionable dealings as well as less likely to understand whether they may be entitled to a remedy.⁵

Practically, it seems unlikely that section 21 could be applied to general practices or a pattern of behaviour without an affected complainant. In our view, the regulator should be empowered to address systemic misconduct or business models which are inherently or structurally unfair or which intentionally target vulnerable or credulous consumers.

While there is little harm in retaining the unconscionable conduct prohibition in section 21 ACL, we consider that an additional prohibition that is analogous to the European Union’s Unfair Commercial Practices Directive 2005⁶ would be a useful concept to incorporate into the ACL. We expand further upon this issue in our recommendations for a general prohibition on unfair trading at section 2.3.

Recommendation 1: The ACL review Secretariat should review the effectiveness of ‘unconscionable conduct’ as a definition and provision of the ACL. Broad consideration should be given to reframing unconscionability as ‘unfairness’ or another more accessible term.

² see Consumer Action Law Centre, Discussion Paper: Unfair trading and Australia’s consumer protection Laws (2015) <http://consumeraction.org.au/wp-content/uploads/2015/07/Unfair-Trading-Consumer-Action-2015-Online.pdf> (CALC: Unfair Trading Discussion Paper)

³ (1956) 99 CLR 362

⁴ (1981) 151 CLR 447

⁵ see CALC: Unfair Trading Discussion Paper

⁶ http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm

Case Study – ‘generally unfair’ commercial practices

Jane is a single mother of three young children, who is reliant upon Centrelink income. She is from a non-English speaking background and has a low level of literacy. She came to RLC with a complaint against a consumer lease company. Jane had previously entered into a consumer lease for a washing machine and fridge. She was attracted to the consumer lease company because their advertising stated that they lease to people on Centrelink and the \$30 per week payment seemed affordable. After about three years of making payments under the consumer lease, Jane thought that she had ‘paid off’ the fridge and washing machine. The consumer lease company told Jane that she could finalise her lease and purchase the goods for \$1.

When Jane paid off the fridge and washing machine, the consumer lease company told her that she now qualified for a new TV and a smartphone. Jane agreed to a new lease for these goods. Jane didn’t read the lease agreement, as it was too long, she didn’t understand it and the salesman encouraged her to sign it on the spot. The lease agreement was 26 pages and written in complex legalese. Jane thought she was just paying goods off over time in the same way she had her fridge and washing machine. The payments being deducted through Centrepay went up significantly and Jane struggled to manage her family’s basic living expenses.

Unfortunately Jane lost the smartphone and went back to the lease company to tell them about it. The lease company told Jane not to worry and that she could get a replacement phone if she signed some more paperwork. The payments being debited through Centrepay then increased again. Jane became very worried, as she could not afford to buy groceries and pay the rent.

Jane came to RLC for advice. RLC discovered that Jane when she was given a replacement smartphone, Jane had been signed up to a new lease. Jane was unaware that she was already paying for an additional ‘damage liability reduction’ fee for lost or damaged goods under the terms of the lease. Jane was shocked when RLC later calculated that the amount she had paid for the fridge and washing machine over three years was more than 3 times the retail price.

RLC filed a complaint with the consumer lease company, alleging misleading, deceptive and unconscionable conduct and breaches of the credit law. The lease company denied these allegations, or that this was part of their ordinary business practice, but agreed to gift the smartphone and TV to Jane on condition that she did not complain to the Financial Ombudsman Service. Jane accepted this offer. RLC was unable to test whether the consumer lease company had breached the unconscionable conduct threshold in Jane’s circumstances, or whether the terms of her consumer lease were unfair contract terms.

Unfair contract terms (2.2.3)

Currently the regime only benefits consumers who are aware of their right to challenge a contract term they consider to be unfair. This is because there is no financial penalty for a person who includes an unfair term in their contract – the term may simply be declared void. This is not a sufficient deterrent for business conduct.

We recommend the ACL Secretariat give consideration to implementing a broader scheme of financial penalties and pecuniary redress for consumers affected by unfair contract terms. Where the termination fees imposed by contracts amount to unfair penalties, the law should impose a broader deterrent, and empower courts and tribunals, beyond simply declaring that such a term is void.

Many vulnerable consumers such as our clients do not read, nor even have a copy of, their contract and do not understand why, for example, they are unable to terminate a contract without paying a substantial financial penalty. Many such consumers will simply incur significant debts without the capacity to challenge the basis on which they are being charged.

<h3>The Australian Consumer Law's specific protections (2.3)</h3>
--

Should the ACL prohibit certain commercial practices or business models that are considered unfair?

RLC strongly supports the introduction of a general prohibition on unfair trading and commercial practices or business models. The introduction of this type of provision would better empower regulators to quickly and efficiently address systemic misconduct and unscrupulous business practices. These practices, and a regulators capacity to address to them, are inevitably restricted by the difficulty of establishing a general class of misconduct from individual 'case by case' complaints.

Is introducing a general prohibition against unfair commercial practices warranted, and what types of practices or business models should be captured? What are the potential advantages, and disadvantages, of introducing such a prohibition?

In our view it would be of significant consumer benefit to introduce an overarching prohibition on 'unfair trading' or 'unfair commercial practices' in the business-to-consumer context. The existing prohibition on unconscionable conduct is not fit for purpose. Section 21 of the ACL provides that it was Parliament's intention that the section is 'capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour'. However, to our knowledge no successful prosecution has been brought under section 21 without a particular individual having been disadvantaged by the conduct. It remains

difficult to establish a broad practice of unconscionable conduct without establishing a class of complainants.⁷

In our view, a prohibition that is analogous to the European Union's Unfair Commercial Practices Directive 2005) (Directive) would be a useful concept to incorporate into the ACL. Like the Directive, the relevant prohibition need only relate to business-to-consumer interactions.

The Directive prohibits 'unfair commercial practices'. A commercial practice is unfair if:

(a) it is contrary to the requirements of 'professional diligence' (meaning 'the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity'); and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

The Directive further provides for commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group.

To 'materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision (e.g. decision to purchase) that they would not have taken otherwise.

The Directive also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commercial practices, for example, their mental or physical infirmity, age or credulity, in a way the trader could reasonably be expected to foresee. When assessing whether or not the standards have been breached, the conduct shall be assessed from the perspective of the average member of that group. The 'foreseeability' element means traders are not required to do more than is reasonable, both in considering whether the practice would have an unfair impact on any clearly identifiable group of consumers and in taking steps to mitigate such impact.

Please also refer to our comments set out in response to section 4.1 below. In our view, consideration of the best approach to target general unfair commercial practices should also include consideration of a specific prohibition on unsolicited sales and marketing.

Recommendation 2: The introduction of a general 'unfair trading' provision, to improve the capacity to address systemic misconduct

⁷ see CALC: Unfair Trading Discussion Paper

Does the current approach to defining a ‘financial service’ in the ASIC Act create unnecessary complexity in determining if certain conduct falls within the scope of the ACL or the ASIC Act? How could this be addressed?

Under the current approach, conventional consumer insurance and financial products and services are governed by ASIC Act. This is confusing and in our view leads to a lower level of reporting and enforcement in these sectors. It also limits consumer access to appropriate redress for what are often ordinary, albeit ‘financial’, services used for personal, domestic or household purposes.

The question of what is and is not a ‘financial product’ and ‘financial service’ is a difficult question even for lawyers, and in some instances it can be difficult to arrive at a firm view one way or the other. This leads to confusion both for consumers and businesses. While some provisions are substantially the same under the ASIC Act and ACL, there are currently no equivalent provisions in the ASIC Act to the unfair contract provisions.

In our view, there are no legitimate grounds for continuing to exclude insurance agreements from the unconscionable conduct and unfair contract terms protections, which apply to other financial products and services. Insurance is a conventional financial service which many consumers access in a commonplace and ordinary manner.

We do not feel that there is any rational justification for continuing to exclude insurance or financial products from general and specific protections set out in the ACL. Consumers need clear and transparent guidance as to whether their insurance contracts, small amount credit contracts and consumer lease agreements are subject to the consumer protections in the ACL.

Consumers should be able to expect that their protections as consumers will be governed by a simple and accessible set of rules. Ordinary financial services have a real and tangible impact on many consumers’ lives. Uncertainty around insurance and other financial services is a cause of significant uncertainty, anxiety and stress. It is vital that the protections available to other forms of ordinary consumer transactions and agreements apply with equal force to those in the financial sphere.

Recommendation 3: removing the ‘carve out’ of insurance contracts from the ACL unfair contract terms provisions.

Recommendation 4: ensure that insurance contracts and conventional financial services (consumer leases in particular) are subject to general protection under the ACL.

Access to remedies and scope for private action (3.3)

Are there any barriers to consumers and businesses enforcing their rights and seeking access to remedies under the ACL? Are there barriers to private action that need to be addressed?

What low-cost actions could consumers and businesses more readily use to enforce their rights?

The lack of an enforceable alternative dispute resolution process remains a significant barrier to accessible remedies and redress through the ACL framework.

Presently, in New South Wales where a consumer is unable to resolve a consumer dispute by agreement and negotiation with a trader, their only alternatives are to request assistance from NSW Fair Trading, which is under-resourced and unable to impose a binding resolution on parties, or take a matter to the NSW Civil and Administrative Appeals Tribunal, an adversarial process which we see cause significant anxiety to vulnerable consumers due to the cost, time and overall complexity of the processes. Enforcing NCAT judgments against recalcitrant traders is often very time consuming and difficult for consumers. In the absence of enforceable remedy, individual complaints to the ACCC and ASIC are often of limited utility for most consumers which RLC encounters.

We strongly support proposals for the introduction of a general consumer or ‘retail’ Ombudsman. This alternative dispute resolution process would be of significant benefit in lowering the current barriers to consumers enforcing their rights seeking access to remedies under the ACL. A consumer Ombudsman scheme is the best proposal for more efficiently and effectively resolving consumer disputes about contraventions of the ACL. A consumer Ombudsman scheme must be free for consumers, and should be able to conduct investigations and conciliations make enforceable decisions, which are binding against businesses.

The Retail Ombudsman UK⁸ is the best example of an overseas consumer dispute resolution initiative, which could be adopted in Australia. The UK Competition Commission established the Retail Ombudsman in 2014. It provides an independent dispute resolution process to resolve complaints between consumers and retailers/traders. It can make enforceable decisions, which bind the retailer and direct a retailer to pay financial compensation of up to £25,000 to aggrieved consumers. It is an alternative dispute resolution scheme that is free for consumers to access, provided they have attempted to resolve their dispute with a trader and the dispute has not been resolved within eight weeks.

Recommendation 5: Improve the efficiency and enforceability of dispute resolution outcomes through: the implementation of an external dispute resolution process, administered by a Retail Ombudsman scheme, or an enforceable conciliation scheme, administered by consumer protection agencies.

Selling away from business premises (4.1)

Does the ACL adequately address consumer harm from unsolicited sales? Are there areas of the law that need to be amended?

⁸ <https://www.theretailombudsman.org.uk/>

Unsolicited sales, including door-to-door sales practices, cold calling and unsolicited public approaches together constitute a key area of supplier behaviour that frequently causes serious financial and other harm to consumers. The easiest targets for unsolicited sales are vulnerable or disadvantaged consumers including low-income earners and the unemployed, elderly people, people who have experienced educational disadvantage, people suffering from mental illness or disability and people for whom English is not their first language.

The 2012 report commissioned by the ACCC on door-to-door sales in Australia⁹ noted anecdotal evidence from 20% of sales agents interviewed of targeting perceived “easier” or vulnerable clients including (in one case) ‘older people, single parents and the young ones who were just in their first house.’ This behaviour was sharply demonstrated recently in the vocational education training scandal in which training providers and their sales agents actively targeted housing estates and Centrelink offices.

In our view, the only way of effectively minimising this area of harm is to impose a blanket ban on all unsolicited sales and direct marketing.

Case Study – Direct Marketing

Charlie* is young man who lives in social housing in Waterloo, with his elderly mother. Charlie has psychiatric illness in the form of schizo affective disorder. His mother has advanced dementia and Charlie is her carer. His sole source of income is the Centrelink Disability Support Pension. Charlie came to Redfern Legal Centre to seek advice about outstanding moneys owed to Direct Telco in relation to a contract for home phone services and letter of demand seeking payment of \$1200.

A month or so prior, Charlie received an unsolicited telemarketing call from a sales representative at Direct Telco offering telephone services. Charlie was already receiving telephone services from Telstra at this point and didn’t require any further services. He attempted to terminate the call but the sales representative was very persistent. The sales representative told them that Direct Telco was part of Telstra and that they could reduce the cost of his phone services. Direct Telco then read out a script very quickly and asked Charlie a number of yes/ no questions in rapid succession. Charlie felt stressed and under pressure and said yes to the questions in the hope of ending the call. Direct Telco did not clearly or effectively communicate the reason for their call, Charlies 10 day cooling off rights or Charlies right to terminate the call and for Direct Telco not to call him back within 30 days.

Charlie then received some paperwork from Direct Telco in the mail, which he had trouble understanding. When he received a bill from Direct Telco some weeks later, it was much higher than his previous bills with Telstra. He called Direct Telco and told them he wanted to switch back to Telstra.

A few weeks after this initial call, Direct Connect called Charlie and informed him of outstanding moneys owed to them. Charlie was unaware he had entered into any

⁹ Frost & Sullivan, Research into the Door-to-Door Sales Industry in Australia (2012)

agreement with Direct Connect, and immediately terminated the alleged contract when he received this call.

Charlie then received an invoice from Direct Connect totalling \$1284.00. The amount was substantially comprised of a contract termination fee for entering into a contract for a minimum term of 24 months.

RLC raised a complaint with Direct Telco alleging a breach of the ACL and Telecommunications Consumer Protection Code. Direct Telco denied any wrongdoing and did not respond effectively to the particulars of our complaint. RLC raised a complaint with the Telecommunications Industry Ombudsman. In responding to the TIO, Direct Telco then agreed to waive any claim of Charlie's outstanding liability. RLC spend around 15 hours of professional time resolving this complaint against Direct Telco. In our view, Direct Telco should never have been effectively deterred from marketing their service to vulnerable consumers in this way.

This case highlights the prevalence of coercive, dishonest and misleading conduct through direct marketing. Those affected by misleading direct marketing are invariably vulnerable consumers who are often unaware of or unable to exercise their rights under the ACL. Direct marketing benefits traders only and provides no benefit to consumers or to society in general. The most effective and efficient way to prevent this misconduct is through a blanket prohibition on direct marketing.

Recommendation 6: A general prohibition on unsolicited sales, particularly through door to door sales and cold call telemarketing.