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# MULTICULTURALISM: CONSUMER CONTRACTS

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**The ALRC has published a discussion paper called *Multiculturalism: consumer contracts* (ALRC DP 49). It makes a number of suggestions for changing consumer credit and insurance law. It also makes suggestions about how consumers could enforce their rights more easily when disputes arise. This is a summary of the discussion paper.**

## **The Inquiry**

The ALRC has been asked to look at Australian family law, criminal law and contract law to see whether they properly respect and protect the cultural values of Australia's multicultural society. Articles on multiculturalism and family law and criminal law appeared in the last two issues of *Reform*.

## **The ALRC's approach to consumer contracts**

A consumer contract is an agreement to buy and sell goods and services between a business and a person who is not in business. The person who buys the goods and services from a business is a 'consumer'. The Commission's approach to consumer contracts in a multicultural society is that people who make legally binding agreements should have as much information as possible about what they have agreed to do, and about what will happen if they fail to do what they have agreed to do. This protects consumers and prevents disputes arising. When disputes do arise people should have easy access to methods by which they can exercise their rights.

## **Consumer contract laws protect the weaker party**

The law of contract assumes that contracts are entered into freely and voluntarily. But in many situations one of the parties to a contract has much less power than the other. This is so, for example, where a person borrows money to buy a car or takes out insurance for household property. The supplier will ask the consumer to sign a contract that has been prepared in advance. The contract is in many cases long, complicated, hard to understand and written in small print. People entering into these kinds of contracts often do not know what they have agreed to do because they have had no chance to negotiate the terms and have not read or understood the contract. Consumer protection law is designed to even up this difference in power between the consumer and business by setting standards of behaviour for business to follow. These include rules about what is fair behaviour, what information should be provided by the supplier and what print size should be used in contracts.

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## **Difference in power is greater among some people**

The difference in power between a business supplying goods and services and a person wanting to buy them is even greater when the consumer does not fully understand English, has an oral rather than a written tradition for communicating important information, or is not familiar with the way goods or services are bought and sold in Australia.

## **Consumer credit**

Newly arrived migrants often need to borrow money to buy the things they need to establish themselves in Australia. Lenders may encourage people to borrow more money than they can afford to repay. They may not give the borrower enough information about the conditions of the loan. They may also ask a person (often a family member) to agree to pay the debt if the borrower cannot repay it. A person who agrees to do this is called a guarantor. A person can become a guarantor or co-borrower even when he or she does not know that it is very likely that they will have to pay the debt. They may have to sell their house as a result. The Commission has been told that many consumers are at a special disadvantage in situations where they can borrow money at the same place that goods such as cars or fridges are sold. There are pressures on both the buyer and the seller to finalise a contract. The buyer often does not have a chance to think about the purchase or to change his or her mind.

## **Contracts should be easy to read and understand**

The law should require that credit contracts are written in plain English, that is, 'in language that is clear and easy to understand'. Regulations should specify print size and colour and paper colour.

## **Plain English summary and warning in community languages**

Credit providers should give borrowers a short, plain English summary of the main terms of the contract before the contract is signed. The summary will also have a warning in a range of community languages about the importance of understanding the information provided. Borrowers should be given the chance to read the summary or have it read to them. The Commission asks for suggestions about what should be in the summary.

## **Creditor (lender) should consider the borrower's ability to repay**

Tribunals which resolve disputes about credit contracts should be able to cancel or change a credit contract where a lender enters into a credit contract on terms which the borrower cannot meet and which the lender knew or should have known the borrower could not meet.

## **Borrowing money at the same place goods are bought**

The law should provide for a cooling off period of three days during which the borrower would be able to withdraw from the contract for credit and from the contract for the sale of goods.

The law should make the company who actually provides the credit responsible for the behaviour of the person who sells the credit at the point of sale.

## **Guarantors and co-borrowers**

The lender should be obliged to give a guarantor a copy of the guarantee and summary and a copy of the credit contract. The creditor should also give the guarantor or co-borrower the financial information about the borrower which the creditor used to assess any risk of the borrower not being able to repay the loan.

## **Insurance contracts**

The Commission has been told that insurance causes problems for many people. Most people insure motor vehicles, their house, and the property in their house. Many people do not know what insurance is, how it works or whether or not they need it. When a dispute arises they do not know how to make a claim or what their rights are. Problems also arise because people do not know what information they have to give an insurer when they enter into a contract. When people fill out an insurance form they have to answer truthfully the questions the insurer asks. These are questions which affect the insurer's decision whether or not to insure a person and how much the insurance will cost. But the duty (or responsibility) to inform the insurer does not end when all the questions are answered. The law about what other information a person wanting insurance must give the insurer is very complicated and the words used in application forms to explain it are hard to understand. Even though the duty is hard to understand, an insurer or a court can decide

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later that the person did not tell the insurer something he or she should have. If this happens an insurer may be able to refuse to pay some or all of a claim or cancel the insurance altogether. Insurers often refuse to pay a claim without giving a specific reason.

### **Duty to give information**

The Commission suggests two possible proposals.

- *A person taking out insurance should only have to answer truthfully the specific questions in an application for insurance.* This will change the law so that a person taking out insurance only has a duty to answer truthfully the questions that are specifically asked in the application form. An insurer or a court will not be able to refuse to pay a claim because a person did not tell the insurer something the person should have known, but did not actually know, was important. The Commission asks you to tell us whether you support this proposal.
- *Duty to give information should be explained in clear and simple language.* The words used to tell people what information they must give the insurer when they fill out an insurance form should be in clear, simple language.

The Commission supports the first proposal in principle. The second is an alternative proposal that it thinks should be adopted if there is not enough support for the first.

### **Forms should be easy to read and understand**

The law should require that insurance application forms and contracts be written in language that is clear and easy to understand. The law should specify print size and colour and paper colour.

### **Insurers should give reasons**

Insurers should be obliged to give the insured the reasons for refusing a claim or cancelling a policy and should tell the insured the facts on which the decision was made.

### **More consumer protection**

Laws which protect consumers from harsh, unjust or unfair contracts should also apply to insurance contracts.

### **Dispute resolution**

There are a number of reasons why many consumers do not enforce their rights when a dispute arises over a consumer contract. These include lack of knowledge about the law, fear of courts and other institutions, language difficulties and the cost of going to court. To overcome these barriers the Commission proposes

- *Consumer education.* Governments, industry and community organisations should develop an effective plan to educate all consumers about the law and their rights.
- *Small claims tribunals.* The monetary limit on the kinds of claims that can be taken to small claims tribunals should be increased. People should be able to use these tribunals for claims larger than are currently allowed if the parties to the dispute consent; otherwise there should be a right of appeal to a court.
- *Specialised legal centres.* Consideration should be given to establishing community legal centres specialising in consumer law and insurance law. The Commission asks for suggestions on how they could be funded.
- *Complaints review bodies.* Industries such as the finance and insurance industries should be encouraged to have their own independent complaints review bodies.
- *Evaluation of dispute resolution mechanisms.* The different methods people can use to resolve disputes about consumer contracts should be carefully looked at to see how well they work for consumers. □