Submission

By

To the

Commerce Committee

On the

Consumer Law Reform Bill

29 March 2012

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CONSUMER LAW REFORM BILL
SUBMISSION BY BUSINESSNZ[1]
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1. INTRODUCTION

1.1 BusinessNZ welcomes the opportunity to comment on the *Consumer Law Reform Bill* (referred to as 'the Bill'). The Bill covers a large number of proposals to reform and rationalise New Zealand's consumer legislation, and we do not intend to comment on every proposal. However, despite the decision by the then Minister of Consumer Affairs to not proceed with certain recommendations of the discussion papers, we are still concerned about some clauses in the Bill.

2. SUMMARY OF RECOMMENDATIONS

2.1 BusinessNZ **recommends** that:

a) The Select Committee seek to use the joint Productivity Commission review for further analysis of controversial changes to consumer legislation that has trans-Tasman alignment as one of its core justifications. (p.4);

b) The Bill does not introduce prohibition on unconscionable conduct (p.7);

c) The prohibition on unfair contract terms should not be introduced into the Bill (p.9);

d) No general prohibition on unsubstantiated claims is imposed under the Fair Trading Act (p.9);

e) Notwithstanding our main recommendation, specific substantiation notice powers or enforcement of unsubstantiated claims are not extended to include self-enforcement rights for consumers and other traders (p.10);

f) The proposal for consumers to have rights under the Consumer Guarantees Act in relation to carrier services does not proceed. (p.11);

g) Increasing the liability cap of $1,500 in the Carriage of Goods Act 1979 to $2,000 proceeds (p.12);

h) The Fair Trading Act should not be amended to ban recidivist offenders from supplying goods or services, but that other existing mechanisms, such as increased fines should be used instead (p.12); and

i) A provision be added to the uninvited direct sales section of the Bill whereby customers are able waive the right to damage compensation

[1] Background information on BusinessNZ is attached in the appendix.

to gain installation earlier than the five working days after the date on which the consumer receives a copy of the agreement (p.13).

3. BACKGROUND

3.1 This is the third time BusinessNZ has submitted on efforts to update New Zealand's consumer laws, with submissions on the Ministry of Consumer Affairs' (referred to as 'the Ministry') 2006 and 2010 discussion papers, as well as a follow-up submission on the Ministry's additional paper concerning unconscionability. It goes without saying that it has been a lengthy process to get to the point where significant changes to New Zealand's consumer law are soon likely to be put in place.

3.2 Given the wide ranging areas of consumer-related legislation that the discussion papers have previously covered, we have particularly concentrated on the prohibition options, along with specific elements of consumer law where we believe improvements could be made. While the Bill in its current form is generally moving in the right direction in terms of improving consumer law at minimal cost to business, there are still areas where we would wish to ensure New Zealand's competitiveness is not unnecessarily hampered. First however, there is a particular factor of which the Select Committee needs to be conscious of when examining the Bill.

4. ALIGNMENT WITH AUSTRALIA

4.1 As BusinessNZ has mentioned previously, the intention to align with Australia has been strongly evident throughout the previous papers issued by the Ministry. This has also been explicitly stated in the Bill's explanatory note, where the fifth bullet point of the policy objectives indicates that one objective is to revise and update consumer law so that it '*achieves alignment with the Australian Consumer Law, as appropriate, in accordance with the government's agenda of a single economic market with Australia'*.

4.2 BusinessNZ appreciates that New Zealand does not live in isolation from other countries. International movements and trends need to be taken into account when domestic regulations/laws are examined, much like the private sector needs to observe and respond accordingly to consumer trends or product changes offshore.

4.3 However, this is not the first time we have noted our general concern about the way in which many of New Zealand's laws relevant to this issue are to be aligned to similar arrangements in Australia. While we support moves that lead to closer economic relations between the two countries, we have always taken the view that harmonisation should only occur if there is a <u>clear net economic benefit</u> to New Zealand. In fact, we are increasingly of the view that the debate around trans-Tasman harmonisation has become far too simplistic over time, and as a consequence is tending to overlook some fundamental differences in terms of what should or should not be considered for harmonisation. While the explanatory statement in 4.1 above refers to the caveat of harmonisation <u>as appropriate</u>, the push by government towards harmonisation is often viewed as an overwhelming reason in itself for change. Therefore, subtle differences in the scale of importance for regulatory change are often overlooked.

4.4 For instance, there may be some harmonisation options where perfect alignment makes sense as it reduces transaction costs between the two countries. There may be other regulations that New Zealand should pick and choose from, given Australia has had them for some years, providing New Zealand with the benefit of hindsight. Last, there are some regulations in Australia which for competitive purposes are clearly unpalatable for New Zealand, either because they would simply not fit with New Zealand's associated laws, or would place greater regulatory requirements on New Zealand businesses. When going through the Bill, the regulations of greatest concern to BusinessNZ are those which reduce our competitive ability and result in stunted growth.

New Zealand & Australia Productivity Commission Trans-Tasman Joint Inquiry

4.5 In terms of examining proposed changes with a strong trans-Tasman influence, we note that the Government has announced a joint inquiry between the New Zealand Productivity Commission and the Australian Productivity Commission on strengthening economic relations between the two countries, recognising that it will be the 30th anniversary of Closer Economic Relations (CER) in 2013. Among the issues examined, there will be a focus on:

- Identifying specific areas for potential reform;
- Identifying the ways reform might best be achieved; and
- Identifying any significant transition and adjustment costs.

4.6 In light of this upcoming investigation to be completed by December 2012, BusinessNZ believes the Select Committee should be conscious of this avenue for independent and considered review where necessary. Namely, if there are particular controversial changes to consumer legislation with trans-Tasman alignment as one of its core justifications are raised during the submission process, the Select Committee may seek to have these undergo further review as part of the joint Productivity Commission review.

Recommendation: That the Select Committee seek to use the joint Productivity Commission review for further analysis of controversial changes to consumer legislation that has trans-Tasman alignment as one of its core justifications.

5. UNCONSCIONABLE CONDUCT & UNFAIR CONTRACT TERMS

5.1 BusinessNZ is pleased to see that the prohibition options involving unconscionable conduct and unfair contract terms have not been included in the Bill. We believe this is a very sensible outcome for three main reasons:

a) At no stage over the last six years has the Ministry put forward a clear evidence based argument that either enforcement provision should be introduced in New Zealand;

b) The majority of submitters in both 2006 and 2010 strongly outlined their opposition to the introduction of these enforcement provisions being introduced for various valid reasons; and

c) Beyond the Ministry for Consumer Affairs, other key Government departments such as Treasury did not believe there was sufficient evidence to introduce these provisions, as stated in paragraph 114 of the paper to the Cabinet Economic Growth and Infrastructure Committee:

'Introducing unfair and unconscionable contract provisions will involve compliance costs for business and the few anecdotal cases identified in submissions suggest that the benefits of these provisions are unlikely to exceed the costs. These provisions also have the potential for significant unintended consequences in relation to the conduct of economic activity and contract enforceability. In light of these risks, Treasury recommends delaying decisions on introducing unfair and unconscionable contract provisions for two to three years to allow evidence from their introduction at the Commonwealth level in Australia to be considered.'

5.2 Also, following on from the point (a) in 5.1 above, we do not believe the Ministry's analysis has reflected either the Government's overall statements on better regulation or the Treasury's Regulatory Impact Analysis (RIS) handbook. As an example, the Government's statement on regulation entitled *Better Regulation, Less Regulation*[2] outlined two commitments. The second one stated that:

We will introduce new regulation only when we are satisfied that it is required, reasonable and robust.

We do not believe any of these requirements for new regulation have been met by the Ministry since they began to investigate enforcement provisions in 2006.

5.3 Obviously, BusinessNZ would not want to see unfair and unconscionable contract provisions reintroduced during the Select Committee process. Therefore, the following provides a summary of BusinessNZ's views on these two enforcement issues, mostly taken from our submission to the Ministry in 2010.

Unconscionable Conduct

5.4 First, we wish to state that one of BusinessNZ's founding policies is the promotion of the integrity of business practices. Therefore, we oppose any conduct that is clearly deemed to be 'unconscionable' or 'unreasonable', which we would view to mean actions deemed to be clearly illegal or dangerous. However, in light of what the Ministry have outlined in various papers over recent years, we believe there is no justification for referring unconscionable conduct in the Fair Trading Act (FTA).

5.5 Because the term 'unconscionable' can be very emotive and open to wide interpretation, we view such behaviour as being any action deemed to be clearly illegal, that is, an action that breaks current legislation such as described under the FTA. We believe analysing the facts of a case to

[2] Released by Hon Bill English and Hon Rodney Hide on 17 August 2009.

ascertain whether the behaviour of one party should be deemed to be unfair or unreasonable is an extremely subjective process.

5.6 The Ministry's paper in 2010 outlined two statements in relation to unconscionability that we believe send strong warnings that its introduction should not proceed. First, page 54 stated that 'in practice the legal test for unconscionability is difficult to meet. Essentially, a stronger party needs to be found to have taken advantage of weaker party, to an extent which is "against good conscience"'. The second notable statement was on pages 55 and 56, namely that 'the previous Principal Referee of the Disputes Tribunal noted that in 5,000 cases, only two consumers were successful in establishing unconscionable conduct in the Disputes Tribunal'. In other words, this represented a success rate of only 0.04%, hardly indicative of a significant problem.

5.7 Also, while we acknowledged that the 2010 paper included a real life example (on page 58) of where the issue of unconscionable conduct might arise, we have to say that the example was an extreme one (a woman who felt she was in some way forced to sign a finance contract to purchase a car because she did not have enough cash to purchase a bus ticket), again suggesting we would be legislating for a very small minority. In addition, the paper pointed out that even in this case, there would still be significant uncertainty as to whether it would fall under unconscionable conduct.

5.8 The small percentage of successful cases and the extreme example provided in the paper fail to indicate any significant problem that currently exists in New Zealand regarding 'unconscionable conduct'. Although it may be somewhat difficult to openly provide an example of 'unconscionable conduct', looking to rectify a problem without providing evidence of the severity of the problem makes supporting what is proposed difficult. This perhaps indicates that the issue in New Zealand is not as severe when compared with other countries.

5.9 If we were to look at the issue from the opposite perspective, there is a justifiable argument that there needs to be a certain level of responsibility on the part of a business or consumer considered to be the victim of 'unconscionable conduct'. Because a deal is deemed to be unfair by consumers or smaller organisations, does not automatically mean that 'unconscionable conduct' has taken place. Factors often raised by those in favour of introducing unconscionable conduct may also reflect poor process on 'the victim's' part. For example, one factor could be whether the consumer or business was able to understand the relevant documents. If documents are signed that are not fully understood, a small business or consumer should have taken responsibility for getting outside help so that they could understand what they were signing.

5.10 Overall, the term 'unconscionable conduct' is an extremely emotive one. Because of the lack of evidence of clear cases of unconscionable conduct, along with the general uncertainty of the term's meaning, we find no significant merit in allowing for the inclusion of unconscionable conduct in the FTA via the current Bill.

Recommendation: That the Bill does not introduce a prohibition on unconscionable conduct.

Unfair Contract Terms

5.11 The Ministry's paper in 2010 stated that an unfair contract term is a term that 'causes a party to a contract (usually the consumer) to be at a disadvantage while the term is not reasonably necessary for the protection of the interests of the other party (usually the business)'. Typically, an unfair term is a pre-written term in a standard form contract.

5.12 The paper sought views on supporting the inclusion of unfair contract term provisions in the FTA, which the Ministry viewed as its preferred approach.

5.13 First, it goes without saying that it should be the responsibility of any party who enters into a contract to find out the implications of what they are signing before doing so. If consumers or businesses are unsure or are not confident about signing something, there are numerous places to turn to for clarification.

5.14 Like the issue of unconscionable conduct, there has been a clear and consistent failure by the Ministry to indicate the scale of the problem in New Zealand such as to justify prohibiting unfair terms in the FTA. Critical questions have not been raised, for example, are there regular cases of New Zealand consumers not entering into contracts because of perceived unfair conditions? Also, what processes do these consumers go through to reach this point? Overall, the work of the Ministry has lacked any description of the scale of the problem.

5.15 The key word at the heart of this issue is 'fair'. We believe this word can lead to misleading outcomes because the term can be used very loosely, and what is deemed to be fair or unfair can be very subjective. Fairness can often be used as a convenient label or as a more palatable alternative to self-interested explanations for choices made. What is fair to one person may be perceived as totally unfair by another. There is always the prospect of other players competing in any field if a perceived gap or an opportunity arises that existing players have not identified or understood, as for instance, if a business provides what a consumer deems to be unfair conditions in a contract. There is often the opportunity for another business to provide a more competitive offer. This underlines the importance of ensuring no undue restrictions on new entrants to a market.

5.16 BusinessNZ would be extremely concerned if the introduction of the legislation prohibiting so called unfair terms in consumer contracts meant opportunities for transactions were stifled because of fears they could be deemed to have components that are unfair. Such outcomes would benefit no one in the long run.

5.17 BusinessNZ again struggles to understand why this was even included as a possible option during the discussion rounds, when it seems there is another inadequate problem definition. In fact, the 2010 paper stated that 'the extent

of concerns with unfair contract terms in practice in New Zealand is not known'.

5.18 Page 31 of the 2010 paper outlined work carried out by the Australian Productivity Commission (APC), which came to the conclusion there were sound economic and ethical reasons for legislation dealing with unfair contract terms that cause consumer detriment. However, there are two further statements that should encourage significant caution when looking to introduce in New Zealand legislation specifically prohibiting unfair contract terms.

5.19 First, the 2010 paper stated that 'the similarity between the Australian and New Zealand markets enables New Zealand policy makers to take advantage of the Australian Productivity Commission analysis without having to repeat an identical analysis'. We disagree. If a trans-Tasman study had been undertaken, then we may have been more sympathetic towards that statement. But as we have mentioned, Australia's evidence of findings and its legislation should not automatically mean take-up in New Zealand without proper analysis here.

5.20 The other interesting point in the paper was that notionally unfair contract terms in Australia are often dormant and not used by suppliers. To that point, the APC pointed out that there is an argument that consumers generally have nothing to fear from what some consider being 'unfair' contract terms because suppliers will generally treat their customers fairly in competitive markets, irrespective of the standard terms to which consumers notionally agree. There is always the fact that consumers themselves may not be acting in good faith, hence the need for businesses to try and counterbalance with their own contract terms.

5.21 Also, it is obvious that businesses that continually enact what some claim to be 'unfair' contract terms will most likely lose their competitive advantage as consumers will no longer be able to trust them. As is often the case, public notice of such conditions via the media often has far more powerful effect than simply legislating across the board for the vast majority of contracts where no problems surface.

5.22 The last point we wish to comment on is that the APC weighed the uncertain evidence of consumer benefit against the likely costs of regulating unfair contract terms, and relying on the fact that businesses in Victoria, the U.K and Europe had identified no major problems or costs associated with the introduction of unfair contract term laws, and believed such laws should proceed. However, the evidence (or lack of) in Australia and New Zealand seems to indicate no significant problem with the absence of legislation prohibiting unfair contract terms. Regarding costs, we again would want the matter analysed in a New Zealand context. It may be the case that costs are indeed low, but we should not take this for granted given regulatory structures offshore often differ markedly from their local counterparts.

5.23 Again, we do not oppose the possibility of including provisions prohibiting unfair contract terms if there are significant reasons for doing so. However,

like unconscionable conduct, this does not appear to be the case. Overall, BusinessNZ would want to see evidence of a clear problem with unfair contract terms in New Zealand before any consideration is given to the idea of introducing such a prohibition in this country. Therefore, we favour the current position of the Bill that does not including unfair contract terms.

Recommendation: That a prohibition on unfair contract terms should not be introduced into the Bill.

6. MAKING UNSUBSTANTIATED CLAIMS

6.1 The Bill seeks to introduce a general prohibition on unsubstantiated claims in the FTA by way of including clause *12A Unsubstantiated Representations*. While we are pleased to see that both specific substantiation notice powers and the enforcement of unsubstantiated claims beyond that of the Commerce Commission have not been included in the Bill after consideration in previous discussion papers, we remain fundamentally against the need to include the proposed clause in the FTA. As we have mentioned in previous submissions on this issue:

1. Like the 2006 and 2010 reviews there is no overwhelming evidence of substantial numbers of false product claims made by businesses. Apart from the GlaxoSmithKilne and Probitas examples discussed in the papers there has been no attempt by the Ministry to provide figures on the proportion of successful Commerce Commission prosecutions.

2. Consumers today are probably better placed than ever in the past to make a value judgment about the validity of a good or service. Any claim made about a product or service can now be readily verified if consumers are willing to undertake some background investigation themselves.

3. Proposals to require suppliers to substantiate claims about their products or services are controversial, with suppliers having to prove they are innocent, which would impose a reverse onus. We have also noted the costs associated with proving claims (especially who pays if a business is found to be innocent) and how such claims could involve frivolous issues as opposed to significant health and safety concerns.

6.2 Overall, BusinessNZ believes that despite the 2006 and 2010 papers and additional paper in late 2010 outlining the Ministry's views on substantiation, our concerns are still as valid, and more importantly the solution fails to stand up against any measure of the problem.

Recommendation: That no general prohibition on unsubstantiated claims is imposed under the Fair Trading Act.

6.3 Notwithstanding our main recommendation above, if clause 12A is to proceed, BusinessNZ would not want to see specific substantiation notice powers or enforcement of claims being extended to include self-enforcement rights for consumers and other traders.

Recommendation: Notwithstanding our main recommendation, specific substantiation notice powers or enforcement of claims should not be extended to include self-enforcement rights for consumers and other traders.

7. CARRIAGE OF GOODS ACT 1979

7.1 The Bill outlines two primary changes to the Carriage of Goods Act 1979 (CGA) and Consumer Guarantees Act (1993), namely that:

1. Consumers will now have the guarantees provided by the CGA when using carrier services; and
2. Carrier's liability under the Carriage of Goods Act will increase from $1,500 to $2,000.

While the increase in the liability cap represents a pragmatic step forward (given the amount was last updated in 1989), we do not support the extension of the guarantee to consumers.

7.2 General consensus amongst those affected by the Carriage of Goods Act is that the Act as it stands has historically worked well since it was introduced in 1979. In particular, it provides freedom for parties to determine their own risk and insurance arrangements when dealing with commercial carriage.

7.3 When BusinessNZ submitted on this issue in the discussion paper by the Ministry in 2010, we pointed out that there did not seem to be any attempt to provide information on the scale of the problem in view of what the Ministry believes, and which we agreed, was a significant change to the Act. We note that an additional paper was released in February 2011 regarding carriage of goods in an attempt to provide in further detail the reasoning behind the Ministry's recommendations. Apart from stating in the additional paper that there were no policy reasons why there should not be consumer protections at least as good as the service guarantees under the CGA when carrier services are supplied to consumers (paragraph 23), we believe the policy and practical outcomes of what is currently proposed have not been weighed up correctly by officials.

7.4 Paragraph 7 of the Ministry's additional paper on carriage of goods outlined submitters main concerns about the substantive changes to the Act. While the additional paper attempted to answer elements of these concerns, there are still two key areas which we believe are at the heart of this issue.

7.5 First, as stated above, there has been no indication of the scale of the problem, which the industry believes is small. Paragraph 27 of the additional paper pointed out that feedback from the carrier industry stated that carriage to, or on behalf of, consumers made up less than 1% of their business. However, the Ministry asserted that since at least two companies had recently diversified into providing specialist services for Trademe transaction carriage, this was indicative of more importance being placed on consumer business. Drawing a conclusion that consumer carriage has become a significant element of the industry on the basis of two companies recently providing such

services is a very long bow to draw in terms of identifying a key sub subset of the market, let alone whether there are significant problems for that subset.

7.6 Second, previous submitters have pointed out that no rationale has been given to treat consumers any differently from businesses. In reply, the Ministry pointed out in paragraph 28 of the additional paper that there are numerous examples where the law treats consumers differently from businesses. Also, given consumers use carrier services far less frequently than businesses, relationships are less established, which may make getting redress from a carrier more difficult for a consumer.

7.7 BusinessNZ agrees that there are various instances where consumers and businesses are treated differently, and in the course of standard policy development, we would assume this has come about as a consequence of identifying the full range of tradeoffs (both positive and negative) from doing so. We also agree that, on average, the relationship between consumer-to-business compared with business-to-business is not as strong simply because the overwhelming proportion of transactions takes place between businesses. However, we struggle to understand how the wider implications of what has been outlined in the Act have not been given due consideration when examining the effect on consumers, compared with the rest of those who will be affected by the revised Act. In other words, despite one perceived benefit arising from the change when looking at one side of the equation, the overwhelming costs and concerns on the other have been poorly weighted in the debate, in all likelihood leading to an overall net cost for the economy.

7.8 The closest this imbalance has come to being outlined by the Ministry was when they stated in their 2010 paper that *'covering carriers providing services to consumers under the Consumer Guarantees Act would be a significant change to longstanding practices in the carrier industry, because it would potentially rebalance the risk of goods being lost or damaged in transit in favour of consumers'*. Yet, despite this honest assessment, the recommendations of the Ministry have continued through to the Bill.

7.9 In short, this is a significant change with no attempt at providing solid evidence of the extent of the problem, nor an appropriate examination of the potential change to the carriage of goods landscape if the clauses in the Bill were to remain. Therefore, the proposal for consumers to have rights under the Consumer Guarantees Act in relation to carrier services should not proceed.

Recommendation: That the proposal for consumers to have rights under the Consumer Guarantees Act in relation to carrier services does not proceed.

7.10 Regarding the liability cap increasing from $1,500 to $2,000, we have previously stated that we have no strong views as to what the current liability cap should be, but would not object to at least inflation-adjusting the cap, as well as looking to adjust it in line with inflation by means of regulation. While the increase of $500 is short of the total inflation-adjusted value, which is in the order of $2,500, we accept concerns outlined by other submitters

regarding the sizeable increases in the cost of insurance for carriers. Therefore, the revised figure of $2,000 provides a pragmatic solution.

Recommendation: That increasing the liability cap of $1,500 in the Carriage of Goods Act 1979 to $2,000 proceeds.

8. MANAGEMENT BANNING ORDERS

8.1 The Bill outlines the issuing of management banning orders. Specifically, clauses 46C and 46D see the District Court having the power to make a management banning order against someone if there is a risk that person will commit further offences under the Act. Such an order can only be made against a person if they have committed, or have been involved with a company that has committed certain offences within a 10-year period. In addition, the banning order must prohibit someone from being a director of, or in any way concerned in or taking part in the management of a body that carries on business in New Zealand. The person can apply to the District Court for leave to do any of the things otherwise prohibited by the order.

8.2 When banning orders were discussed during the discussion paper phase, the Ministry mentioned that there were serious personal consequences to banning orders as they can seriously affect a person’s future earning potential. BusinessNZ agreed at the time, and we still take the view that providing for the issuing of banning orders is at the extreme end of trying to solve the problem identified, and BusinessNZ does not support this course of action.

8.3 One problem with not having banning orders noted by the Ministry is that fines for breaches often represent a fraction of the profit earned from scams and that a fine has acted as no deterrent to subsequent trading activities. However, if that is the case, we note clause 46E states that anyone who breaches a management banning order is liable on summary conviction to a fine not exceeding $60,000.

8.4 Therefore, as we outlined in our most recent submission to the Ministry, BusinessNZ believes that rather than introducing banning orders, a more useful approach would be to change to the fine system for repeat offenders. A system whereby the fine continues to double or triple for the same offence/same offender could act as a more effective deterrent. For example, if a business is found to be guilty of an offence for the second time, the fine could double from the initial maximum fine of $60,000 to $120,000. For further offences the maximum figure would again double to $240,000 and so on.

Recommendation: That the Fair Trading Act should not be amended to ban recidivist offenders from supplying goods or services, but other existing mechanisms, such as exponentially increased fines should be used instead.

9. UNINVITED DIRECT SALES

9.1 BusinessNZ agrees with the views of the Direct Selling Association that capture of the current legislation for uninvited direct sales (clauses 36K to 36R) appears to be wider than what it is primarily intended for. While the new

legislation is generally in the right direction in terms of improving sales of this nature, the Select Committee needs to consider changes to ensure that certain businesses are not inadvertently caught by the new legislation.

9.2 Clause 36K(2)(b) of the Bill leads us to believe that all tradesman who quote for work would be subject to this provision. If a tradesman decided to undertake the quoted work within the five working days right of cancellation for the customer, they could be required to refund the cost of the work, as well as be required to re-instate the consumers property to the condition it was before the work commenced (clause 36R(3)(b)). The costs for some businesses to return a consumer's property to the condition it was in (or close as is reasonably practical) immediately before the services were provided might be considerable, particularly if it means having to source household parts/materials that are longer in production or specifically designed for that property. Given the potentially large liability on the tradesmen in this regard, many would automatically defer such work until the five working day period had elapsed. Therefore, the opportunity to commence the work almost immediately when the consumer has agreed will disappear, as well as fitting in customer jobs in an efficient manner.

9.3 The capture of current legislation extends to not only tradesmen such as builders, plumbers and electricians, but also various home installation companies installing equipment for services such as satellite television, ventilation and home alarms. In addition, the likely width of the capture will also likely strike businesses displaying at events such as home shows, trade shows or field days because it is away from the enterprise's primary place of business.

9.4 To rectify this problem, we agree with the recommendation from other associations that some form of consumer waiver should be introduced where they forgo to the right to damage compensation to gain earlier installation if they wish. The consumer would need to have this in writing, and we would support appropriate checks and balances to ensure that there was no coercion by the supplier.

Recommendation: That a provision be added to the uninvited direct sales section of the Bill whereby customers are able waive the right to damage compensation to gain installation earlier than the five working days after the date on which the consumer receives a copy of the agreement.

APPENDIX

10. About BusinessNZ

10.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), its 80 member Major Companies Group comprising New Zealand's largest businesses, and its 76-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is New Zealand's largest business advocacy body. BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

10.2 In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

10.3 BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.