



The Fair Trading Act

A guide for the trader

Western Australia's *Fair Trading Act 1987* encourages fair and honest business practices, protecting both consumers and ethical traders alike.

Purpose of the Act

The *Fair Trading Act 1987* (the Act) regulates the conduct of traders in Western Australia and imposes laws that prohibit unfair trading practices that harm consumers and other traders. It also establishes systems for regulating product safety and information standards and enables codes of practice to be developed to assist both traders and consumers in their dealings.

The Act is similar to the consumer protection provisions contained in various parts (e.g. Part V) of the Commonwealth *Trade Practices Act 1974* (TPA). The Act applies to conduct in this State to which the TPA does not apply.

Unfair trading practices

Misleading or deceptive conduct

Misleading or deceptive conduct engaged in by traders in the course of business is prohibited because of the potential for consumers to suffer harm as a result of being misled by the traders' misconduct.

Traders may be in breach even if they do not intend to mislead or deceive consumers and even if consumers fail to make appropriate enquiries.

False representation

There are also provisions in the Act which prevent traders making false representations. For example, traders must not represent that goods or services:

- are of a standard or quality that they are not;
- have uses or benefits they don't have; or
- have the endorsement of a person or organisation when they do not.

They also must not:

- offer prizes or gifts unless they intend to supply them as promoted;
- accept payment for goods or services if they intend to supply something different; or
- make false or misleading statements about the place of origin of goods or services.

Unconscionable conduct

Unconscionable conduct occurs when traders deliberately use unfair tactics to exploit the "disadvantage" of consumers.

For example a consumer is in a situation of "disadvantage" when he or she:

- cannot read, speak or understand English;
- is suffering from impaired judgement as a result of a disability or an illness; or
- is unable to protect his or her commercial interests because of youth or inexperience.

The kinds of unfair tactics that are prohibited include coercing, harassing or pressuring consumers in a manner that deprives them from being able to make choices that advance or protect their commercial interests.

Pyramid selling

It is illegal to be involved in trading scheme in which a person ('scheme member') offers to sell to another person ('participant') the rights to:

- sell a product or service; and
- introduce others into the scheme in the same way.

The prohibition only applies to schemes that involve the provision of goods and services and money.

These schemes operate mainly to recruit new participants. Their common characteristic is that the recipient of a benefit is entirely dependant on the introduction of other people to the scheme. Typically the goods or services to be provided under a pyramid scheme are of little value or use.

Sooner or later the market becomes "saturated" to the point where scheme members are unable to recruit new participants. It is those scheme members that will suffer financial loss.

Unsolicited credit cards, goods and services

The practice of sending consumers goods or credit cards, or rendering services which were not ordered by the consumer and then demanding payment, is prohibited under the Act.

The Act also prohibits unsolicited advertising. This involves the unauthorised placing of an advertisement in a publication and demanding payment for it.

Anyone who receives accounts or other requests for payment for advertisements for their business placed without their knowledge or authorisation should advise the Department of Commerce.

Implied conditions and warranties in consumer contracts

The Act implies a number of conditions and warranties into all contracts with consumers.

In relation to the supply of goods there are implied conditions that:

- the supplier has the right to sell the goods and they are free of any encumbrance other than those they have disclosed;
- the goods are the same as the description or sample provided; and
- the goods are of saleable quality and reasonably fit for the purpose for which they are sold.

In relation to the supply of services conditions are implied that:

- the service will be rendered with due care and skill; and
- any materials supplied in connection with the service will be reasonably fit for the purpose.

These conditions and warranties are always part of the consumer contract. It is an offence for a person in trade or commerce to make a false or misleading claim about the existence or effect of any warranty, condition right or remedy relating to the supply of goods or services.

Product safety and information standards

There are four types of compulsory product standards which can be established under the Act:

- safety standards which require goods to comply with particular design rules or to display certain warning labels;
- information standards which require prescribed information to be given with the goods;
- quality standards which consist of requirements for the construction, testing and labelling of materials; and
- packaging standards which aim to prevent deceptive packaging or ensure that packaging is convenient to the consumer.

Standards may be established to help inform the people who sell and use the goods or services. They assure customers who buy a product that it complies with a minimum level of quality, construction and design.

Standards are usually developed by the Australian Standards Association and made mandatory.

The Commissioner for Consumer Protection also has power under the Act to issue public warning notices about dangerous goods and to order suppliers to recall consumer goods with safety related defects.

Codes of practice

Standards which are acceptable to industry and consumers can also be developed through codes of practice. Examples of these codes include the Retirement Villages Industry Code and the Fitness Industry Code of Practice.

Codes of practice eliminate the need for excessive legislative intervention and allow industry to develop fair trading standards in conjunction with government. Although industry self-regulation is preferred, mandatory codes of practice made under the Act are ultimately enforceable by the Commissioner for Consumer Protection and the Commercial Tribunal.

Further information

This note is not legal advice. It has been prepared by officers of the Department of Commerce in good faith to provide general information about the Act. As such, no reliance is to be placed on this note and you should seek advice from a lawyer in private practice in this State if you wish to know what your legal position is.

Accordingly, this State (including any State public officer, department and the like) is not liable for any loss or damage in connection with the use of this note.

For further information about your rights and responsibilities under the Act, phone the Consumer Protection Advice Line on 1300 30 40 54 for the cost of a local call from anywhere in the state.

Copies of the Act and Regulations are available from the State Law Publisher, 10 William Street, Perth. Phone: (08) 9321 7688 Fax: (08) 9321 7536

National Relay Service: 13 36 77
Quality of service feedback line: 1800 30 40 59

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