

# Business snapshot

## Australian Consumer Law: what you need to know



Australian  
Competition &  
Consumer  
Commission



### What is the Australian Consumer Law?

The Australian Consumer Law (ACL) is a Commonwealth law governing consumer protection and fair trading in Australia. The ACL is contained in a schedule to the *Competition and Consumer Act 2010* (the Act). From 1 January 2011, it will apply both nationally and as a law of each state and territory.

### What does the ACL mean for my business?

The ACL replaces existing consumer protection legislation contained in the *Trade Practices Act 1974* (TPA) and in various state and territory Acts, most notably Fair Trading Acts.

Under the ACL, consumers will have the same protections and expectations about business conduct no matter where they are in Australia. Similarly, businesses will have the same obligations and responsibilities wherever they operate in Australia. The principles underpinning the ACL are consistent with those in current consumer protection legislation—fair and honest trading.

These protections and obligations will also be reflected in similar provisions in the *Australian Securities and Investments Commission Act 2001*, so that financial products and services are treated in the same way as any other consumer goods and services.

## What do I need to know?

### Change of name

As of 1 January 2011 the Trade Practices Act will have a new name: the **Competition and Consumer Act 2010**.

### New powers and penalties

The ACCC has new powers, including:

- the power to issue **substantiation notices** requiring businesses to substantiate claims they make about their products or services
- the power to issue **public warning notices** where it has reasonable grounds for believing that a contravention of certain consumer protection provisions of the Act has occurred and that consumers have suffered, or are likely to suffer, detriment as a result
- the power to issue **infringement notices** where it has reasonable grounds for believing that a contravention of certain provisions of the Act has occurred, imposing a financial penalty of \$66 000 for listed corporations, \$6600 for other corporations and \$1320 for individuals
- a new **investigation power** which will allow it to audit corporations that are required to keep, generate or publish information or documents under an applicable industry code (including the Franchising Code, the Oilcode and the Horticulture Code).

The ACL introduces **civil pecuniary—financial—penalties** of up to \$1.1 million for corporations and \$220 000 for individuals who breach the unconscionable conduct and certain consumer protection provisions of the Act.

The courts can now also, on application by the ACCC, make an order disqualifying a person from managing corporations for a given period if the court is satisfied that the person has contravened or attempted to contravene the law and that the disqualification is justified.

### Unfair contract terms

The ACL creates a national unfair contract terms (UCT) regime which applies to standard form consumer contracts and enables a court to find that a term of such a contract is unfair, and so void. This law applies to contracts in all forms, whether written or oral, and made by all means, including online, over the phone or face to face. Importantly, the contract itself remains binding on the parties to the extent that it can operate without the unfair term.

The UCT provisions provide a three-pronged test of unfairness. A term is unfair if:

1. it would cause a significant imbalance in the rights of the parties to the contract; and
2. it is not reasonably necessary to protect the legitimate interests of the party it advantages; and
3. it would cause detriment if applied or relied upon.

When deciding whether a term is unfair, the court must also consider the transparency of the term within the contract, and the contract as a whole.

The law applies to contracts that are entered into on or after 1 July 2010 and to the terms of existing contracts that are renewed or changed on or after 1 July 2010.

### Consumer guarantees

The ACL includes a set of twelve consumer guarantees which apply to all goods and services purchased by consumers from 1 January 2011. The consumer guarantees are based on the same principles as the implied warranties and conditions that previously existed in state and territory fair trading laws and the TPA. They set out the rights and obligations of both consumers and businesses in a clearer way.

Any business that supplies or manufactures goods or services which cost less than \$40 000, or cost more than \$40 000 but are of a kind normally acquired for domestic or personal use, must comply with the consumer guarantees.

The consumer guarantees provide that all goods must be of acceptable quality, be fit for any disclosed purpose and match any description, sample or demonstration model shown. Repair facilities and spare parts must be reasonably available for a reasonable time, and any express warranty made by a supplier or manufacturer must be complied with.

Goods must come with clear title and without any undisclosed securities or charges attached to them. Consumers also have a right to undisturbed possession of the goods.

Services must be delivered with due care and skill, be fit for any disclosed purpose and, if the contract for services doesn't set a time frame, be completed within a reasonable time.

The ACL also sets out the remedies that apply if a business fails to comply with the consumer guarantees. The appropriate remedy varies depending on whether the failure is major or minor. It can include a replacement, refund, repair, resupply of services or compensation for any drop in value below the price paid.

### Sales practices

The ACL prohibits specific unfair practices in trade or commerce. It addresses areas including:

- unsolicited supply of goods and services, including unsolicited credit cards and debit cards
- unsolicited consumer agreements—rules applying to door-to-door selling, telephone sales and other forms of direct selling which do not take place in a retail environment, including specific supplier obligations about the way in which consumers are approached, disclosure obligations and consumer rights in relation to termination
- pyramid schemes—rules prohibiting a person from participating or persuading others to participate in a pyramid scheme. Such schemes usually entail two payments: a participation payment to join; and a promised recruitment payment for when a member recruits others, which may be a financial or non-financial benefit
- referral selling—rules prohibiting businesses from persuading a consumer to buy goods or services by promising a benefit for supplying information that helps the business sell to other consumers, where the promised benefit is conditional on some other event (such as a sale to another consumer)
- component pricing—rules relating to pricing practices to ensure that the total price is always presented where possible
- lay-by agreements—rules that businesses must adhere to in lay-by sales, specifically relating to the form and termination of agreements
- proof of transaction—a rule that suppliers must provide proof of transaction (such as a GST tax invoice or a cash register receipt) to consumers for goods or services valued at \$75 or more
- itemised bills—a rule that customers can request, and are entitled to receive, an itemised bill for services setting out how the price was calculated, the number of labour hours and the hourly rate, and a list of the materials used, including the amounts charged for them.

### Product safety

As part of the ACL, a single national product safety regime will be implemented, based on the existing provisions of the TPA and other state-based legislation.

The Commonwealth will have the sole power to make safety standards and permanent safety bans, and these will both apply nationally.

Regulators will jointly enforce safety bans, standards and mandatory recalls.

The responsible Minister will be able to issue warning notices about consumer goods or product-related services. These are designed to alert the public that the goods are under investigation and/or that there may be risks involved in using them.

There will also be a new mandatory reporting requirement which will require suppliers to advise the Minister, through the ACCC, within 48 hours of becoming aware of any incidents associated with consumer products that result in death, serious injury or illness.

### Other relevant parts of the Competition and Consumer Act

While the ACL introduces some new provisions, it is important to remember that the majority of the existing provisions in the TPA are included in the ACL and the Competition and Consumer Act. For example, the ACL includes the broad prohibitions on misleading and deceptive conduct and unconscionable conduct, and the specific prohibitions against false or misleading representations. The Competition and Consumer Act also includes the TPA's prohibitions against anti-competitive conduct.

## Where can I find out more about the ACL?

The ACL will be enforced by the ACCC, state and territory consumer protection agencies and, where it applies to financial products and services, ASIC. Contact details for those agencies are provided below.

The website [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au) contains more information on the specific areas outlined above and links to publications which explain each aspect of the new law in more detail.

You can also call the **ACCC's Small Business Helpline** on 1300 302 021.

## Regulations

The ACL is supported by the *Competition and Consumer Regulations 2010* (the Regulations). The Regulations contain some specific requirements for businesses to comply with the ACL, in particular the provisions relating to unsolicited supplies and unsolicited consumer agreements.

Some of the Regulations commence on a date later than 1 January 2011. These transitional arrangements allow businesses time to comply with the new law. All businesses must ensure they comply with the ACL and the Regulations by the required date.

Further information on the Regulations can also be obtained from [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

### Consumer protection agencies

#### Australian Securities and Investments Commission

1300 300 630  
[www.asic.gov.au](http://www.asic.gov.au)

#### Australian Capital Territory

Office of Regulatory Services  
(02) 6207 3000  
[www.ors.act.gov.au](http://www.ors.act.gov.au)

#### Queensland

Office of Fair Trading  
13 74 68  
[www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au)

#### South Australia

Office of Consumer & Business Affairs  
(08) 8204 9777  
[www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

#### Tasmania

Office of Consumer Affairs & Fair Trading  
1300 654 499  
[www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)

#### New South Wales

NSW Fair Trading  
13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

#### Victoria

Consumer Affairs Victoria  
1300 55 81 81  
[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

#### Northern Territory

Office of Consumer Affairs  
1800 019 319  
[www.consumeraffairs.nt.gov.au](http://www.consumeraffairs.nt.gov.au)

#### Western Australia

Department of Commerce  
1300 30 40 54  
[www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)

### Other ACCC contacts

Infocentre 1300 302 502

Website [www.accc.gov.au](http://www.accc.gov.au)

For information in languages other than English, call 131 450 and ask for 1300 302 502

TTY service for people with hearing or speech difficulties:  
1300 303 609 [www.accc.gov.au](http://www.accc.gov.au)

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#### Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011. For more information on the Australian Consumer Law changes see [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

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ISBN 978 1 921887 11 6

ACCC 11/10\_44164\_189