



Consumer Law

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This is the eighty-third issue in the series *Hot Topics: legal issues in plain language*, published by the Legal Information Access Centre (LIAC). *Hot Topics* aims to give an accessible introduction to an area of law that is subject of change or public debate.

AUTHOR NOTE

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Overview

In 2010 comprehensive legislation was passed by the Parliament of the Commonwealth of Australia to unify and rationalise previously inconsistent and inefficient state laws relating to consumers. These national laws are called the Australian Consumer Law (ACL).

The *Trade Practices Act 1974* was renamed as the *Competition and Consumer Act 2010* and had its consumer protections sections repealed and replaced by Schedule 2 which, together with its regulations, makes up the ACL.

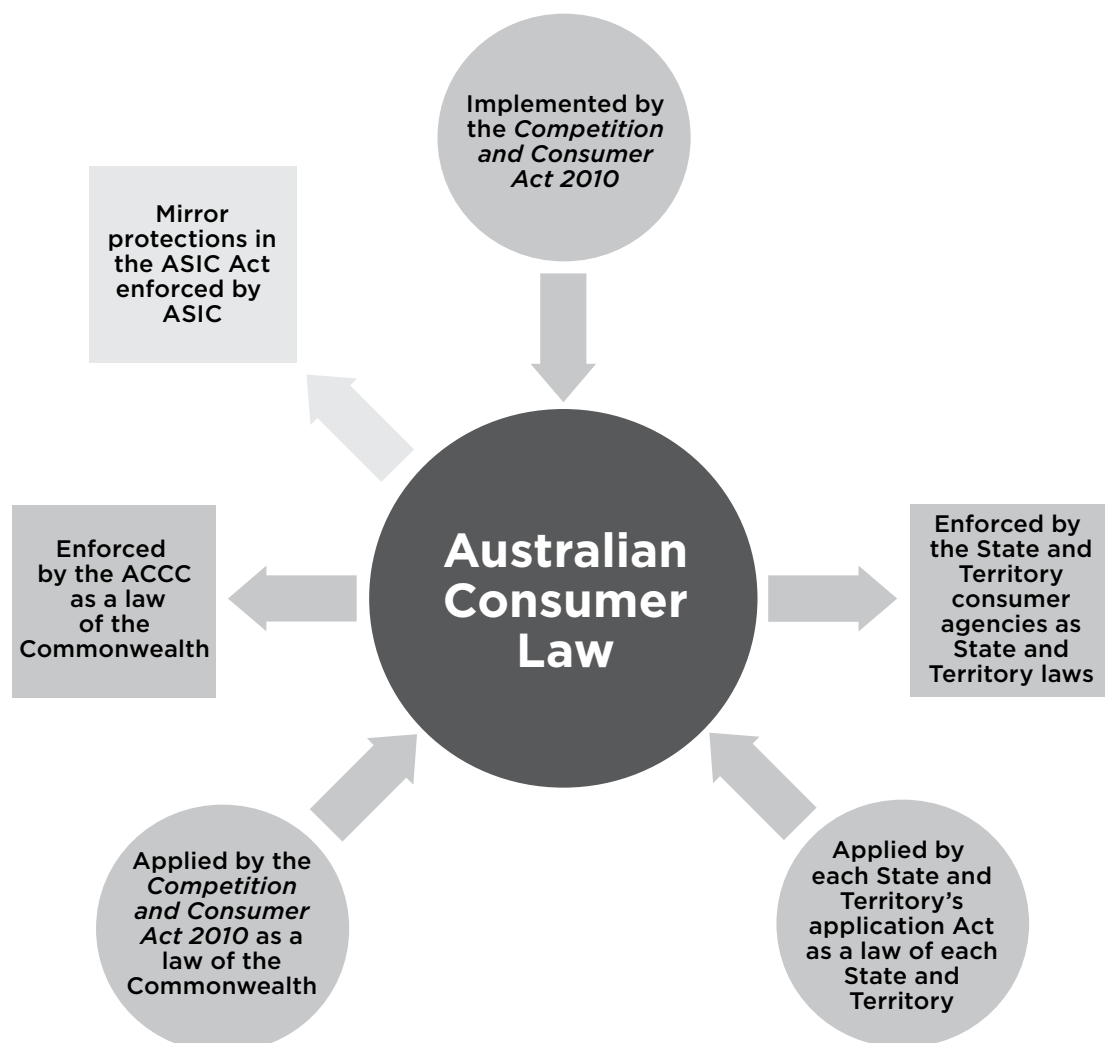
The ACL creates a single, national consumer law for Australia. It applies to all businesses regardless of their size or business structure. The ACL is enforced by the Australian Competition and Consumer Commission (ACCC), the state and territory fair trading agencies (eg NSW Fair Trading) and, where it applies to financial services, the Australian Securities and Investments Commission (ASIC).

Under the ACL, consumers have the same protections and expectations about business conduct wherever 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.

The introduction of the ACL was one of the most significant reforms in the history of Australian consumer protection and rights. The new law reduces the compliance burden for businesses and creates a national harmonised system of consumer protection and product safety.

The bulk of the amendments came into effect on 1 January 2011¹ as an ‘application law’ and consist of:

- > Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (CCA);
- > provisions of the main body of the CCA relating to Schedule 2; and
- > regulations made under these consumer laws.



1. The unfair contract terms regime applied from 1 July 2010.

Schedule 2 applies as a law of the Commonwealth (CCA, Part XI), and as the applied (ACL) law of the states or territories (CCA, Part XIAA). These laws apply as state and territory laws, by having separate legislation to 'apply' the current ACL² as a law of the eight states or territories. The ACL is defined in these statutes as Schedule 2 of the CCA and the regulations in force under section 139G.

This innovative constitutional solution was necessary because the Australian Parliament does not have power to legislate generally with respect to fair trading and consumer protection matters. It does have the power in respect of 'foreign corporations and trading or financial corporations formed within the limits of the Commonwealth' within the meaning of section 51(xx) of the Australian Constitution and in respect of 'trade and commerce ... among the States'; within the meaning of section 51(i) of the Australian Constitution.³

Hot Tip: Who does the ACL protect?

The ACL generally provides protections to any person or corporation as a consumer of goods or services. In some cases, protections only apply to a defined class of 'consumers'. Under Section 3 of the ACL a person is defined as a 'consumer' if they acquire goods or services that are priced at less than \$40,000. A person is also a 'consumer' if they acquire goods or services that are priced at more than \$40,000, but they are 'of a kind ordinarily acquired for personal, domestic or household use or consumption'. A person who acquires a vehicle for use in the transport of goods on public roads, irrespective of price, is also considered to be a consumer for the purposes of the ACL.

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ABOUT THE ACL

The ACL comprises 400 pages of federal legislation and 287 substantive sections.

The main changes implemented by the ACL are:

- > a single set of definitions and interpretive provisions, some of which differ from those in the *Trade Practices Act* (Chapter 1);
- > a new national law on unfair contract terms covering standard form contracts (Chapter 2 Part 2-3);
- > a single set of provisions about unfair practices and fair trading (Chapter 3, Part 3-1);
- > new national consumer guarantees provisions, which replaces existing laws on conditions and warranties (Chapter 3, Part 3-2, Division 1);
- > a new law for unsolicited consumer agreements, which replace existing state and territory laws on 'door-to-door' sales and other direct marketing (Chapter 3, Part 3-2, Division 3);
- > simple national rules for lay-by agreements (Chapter 3, Part 3-2, Division 3);
- > a new national product safety law (Chapter 3, Part 3-3);
- > new national provisions on information standards, which apply to services as well as goods (Chapter 3, Part 3-4); and
- > a nationally-consistent enforcement regime with tougher penalties and more enforcement tools available to the government agencies administering the law.

GENERAL PROTECTIONS UNDER THE ACL

There are three areas of consumer protection dealt with in Chapter 2 of the ACL where 'general protections' are created to provide general standards of conduct in trade or commerce.

These are:

- > **misleading or deceptive conduct** – there is a broad prohibition on misleading or deceptive conduct in trade or commerce;
- > **unconscionable conduct** – there is a broad prohibition on unconscionable conduct in trade or commerce; and
- > **unfair contract terms** – unfair contract terms in consumer contracts are void.

SPECIFIC PROTECTIONS UNDER THE ACL

The ACL creates specific protections for consumers against unfair business practices in the following areas:

- > unfair practices;
- > consumer transactions;
- > safety of consumer goods and product-related safety; and
- > information standards.

These will be covered in more detail in later sections.

Les and Dave Jacobs, Cultura.

2. Western Australia used a different mechanism from other states and territories to implement the law. For a table of the legislation used in each state and territory see: <http://www.pcc.gov.au/uniform/National%20Uniform%20Legislation%20table.pdf>

3. Explanatory Memorandum, *Trade Practices Amendment (Australian Consumer Law) Act (No 2)*, Ch 17, at para [17.6], available online at: www.austlii.edu.au/au/legis/cth/bill_em/tpaclb22010505/memo_0.html

RATIONALE OF AUSTRALIAN CONSUMER LAWS

The rationale of the national consumer laws is explained in the object of the CCA, in section 2: ‘... to enhance the welfare of Australians through the promotion of competition and fair trading and provisions for consumer protection’.

This draws together two fundamental competition law and economic principles, now accepted in all advanced economies – that **market efficiencies** provide the appropriate environment within which fair trading is developed positively – so that the negative market forces of misleading, deceptive or unconscionable conduct, unfair contract terms, unfair practices, inadequate information or safety standards are discouraged and consumer demands are met efficiently.

Consumer laws are connected to competition laws and to intellectual property laws. Fair pricing and demand-led availability of goods and services benefits consumers, from both **inter-brand** and **intra-brand** perspectives.

Hot Tip: Inter-brand or intra-brand competition

Inter-brand competition is between manufacturers or marketers of competing products eg one brand of shampoo versus another. **Intra-brand competition** is competition among retailers or distributors of the same product, eg a particular brand of shoes sold by different retailers. Intra-brand competition may be on price or non-price terms, eg customer service.

OTHER NSW CONSUMER LEGISLATION

The following table lists some other commonly encountered areas of consumer regulation in New South Wales.

| | |
|----------------------------|---|
| contracts | <i>Contracts Review Act 1980 (NSW)</i> |
| injuries or damages | <i>Civil Liability Act 2002 (NSW)</i> |
| real estate agents | <i>Property Stock and Business Agents Act 2002 (NSW)</i> Property Stock and Business Agents Regulation 2003 |
| motor vehicles | <i>Motor Dealers Act 1974 (NSW)</i> <i>Sale of Goods Act 1923 (NSW)</i> |
| lawyers | <i>Legal Profession Act 2004 (NSW)</i> <i>Civil Liability Act 2002 (NSW)</i> |
| conveyancers | <i>Conveyancers Licensing Act 2003 (NSW)</i> |
| funeral funds | <i>Funeral Funds Act 1979 (NSW)</i> |
| health services | <i>Civil Liability Act 2002 (NSW)</i> |
| energy | <i>Electricity Supply Act 1995 (NSW)</i> <i>Gas Supply Act 1996 (NSW)</i> Marketing Code of Conduct (for door-to-door and telephone marketing) Electricity Supply (General) Regulation 2001 Gas Supply (Natural Gas Retail Competition) Regulation 2001 Service and Installation Rules of NSW <i>Privacy Act 1988 (Cth)</i> (consumer privacy) <i>Residential Parks Act 1998 (NSW)</i> (tenants in residential parks) Customer Services Standards for the Supply of Electricity to Permanent Residents of Residential Parks 2006 <i>Electricity (Consumer Safety) Act 2004 (NSW)</i> Electricity Supply (Safety and Network Management) Regulation 2002 |
| water | <i>Sydney Water Act 1994 (NSW)</i> <i>Sydney Water Catchment Management Act 1998 (NSW)</i> <i>Hunter Water Act 1991 (NSW)</i> <i>Local Government Act 1993 (NSW)</i> <i>Central Coast Water Corporation Act 2006 (NSW)</i> <i>State Water Corporation Act 2004 (NSW)</i> <i>Residential Tenancies Act 2010 (NSW)</i> (tenants) |

Unfair business practices

The Australian Consumer Law (ACL), in Chapter 2, provides general protections against:

- > misleading and deceptive conduct
- > unconscionable conduct
- > unfair contract terms.

There are further prohibitions on specific unfair practices set out in Chapter 3, Part 3-1. These are:

- > false and misleading representations – Division 1
- > unsolicited supplies – Division 2
- > pyramid schemes – Division 3
- > pricing – Division 4
- > other unfair practices – Division 5

MISLEADING AND DECEPTIVE CONDUCT

The Australian Consumer Law (ACL), section 18, broadly prohibits misleading or deceptive conduct in trade or commerce. (Chapter 2, Part 2-1).

Hot Tip: Section 18

Section 18 is in the same form as section 52 of the former Trade Practices Act, and will have the same effect, so court decisions that related to that section remain applicable.

This conduct can include actions and statements, such as misleading:

- > advertisements
- > promotions
- > quotations
- > statements and representations by a person.

A business is likely to breach the ACL if they create a misleading overall impression with the consumer about price, quality or value. A breach of law can occur even if the business did not mean to mislead a consumer about a product or service.

Silence

A business can breach the ACL by failing to disclose important details, the correct details or not passing on important facts that are relevant to the consumer's decision.

Disclaimers and small print

Businesses cannot use small print or disclaimers to excuse misleading or deceptive conduct.

However, consumers cannot ignore disclaimers that are prominently displayed. Such disclaimers may be enough to protect the business, depending on the circumstances.

Predictions and opinions

Promises, opinions and predictions can be misleading if the person making the statement:

- > knew it was incorrect or untrue
- > did not care whether it was true or not
- > had no reasonable grounds for making it.

A court will decide whether a prediction or statement was misleading or deceptive.

Exceptions for information providers

Media organisations such as radio stations, television stations, and newspaper and magazine publishers, will be liable if they publish a misleading or deceptive advertisement if they knew it to be misleading. However, they will not be responsible if they:

- > are in the business of publishing or arranging for the publication of advertisements
- > received the advertisement in the ordinary course of this business
- > did not know, and had no reason to suspect, that the advertisement was misleading or deceptive.

Penalties

Misleading or deceptive conduct may lead to civil remedies including injunctions, declarations, damages, compensatory orders, orders for non-party consumers and non-punitive orders.

Consumer protection agencies may issue public warning notices against traders who have been given court orders for misleading and deceptive conduct.

UNCONSCIONABLE CONDUCT

Unconscionable conduct is a statement or action so unreasonable it defies good conscience. Section 21 of the ACL prohibits unconscionable behavior in connection with the supply of goods or services, or the acquisition of goods or services, in business transactions. Examples of unconscionable conduct, depending on the circumstances, include:

- > not properly explaining the conditions of a contract to a person they know doesn't speak English or has a learning disability

- > not allowing sufficient time to read an agreement, ask questions or get advice
- > using a friend or relative of the customer to influence the customer's decision
- > encouraging a person to sign a blank or one-sided contract.

There is a list of factors which courts may take into account (but are not limited to) contained in section 22 of the ACL.

The maximum civil penalties are \$220,000 for individuals and \$1.1 million for a body corporate.

CASE STUDY: ACCC v CRAFTMATIC

Between August 2005 and at least May 2008, Craftmatic used misleading and unfair tactics to convince elderly people to agree to a home presentation by one of Craftmatic's sales representatives. Once at the consumer's home, an elaborate and well rehearsed sales process was used to persuade the consumer to buy a Craftmatic bed, in some cases costing more than \$10 000. While some consumers were happy to buy a bed, others who indicated that they either did not want, or could not afford to buy a bed were subjected to a barrage of unfair sales techniques in an attempt to change their mind.

The ACCC took action in the Federal Court which declared, by consent, that Craftmatic's method of promotion and sale consisted of steps designed, scripted and conducted to unduly influence potential customers and to create and take advantage of an unequal bargaining position.

The Federal Court ordered injunctions for a period of seven years restraining Craftmatic from a wide range of conduct that was found to be misleading and unconscionable. It also required Craftmatic to give each consumer who bought a bed within the relevant period an opportunity to make a complaint to Craftmatic, the details and outcomes of which had to be reported back to the ACCC. It also required the company to provide all prospective customers with extra details about their rights.

See *ACCC v Craftmatic Australia* [2009] FCA 972; available at www.austlii.edu.au/au/cases/cth/FCA/2009/972.html

UNFAIR CONTRACT TERMS

The Australian Consumer Law (Part 2-3) aims to improve protection for consumers by removing unfair terms in consumer contracts. Consumer contracts are contracts for the supply of goods and services, or for the sale or grant of an interest in land, to an individual for personal, domestic or household use.

The law applies to contracts between consumers and businesses, known as 'standard form consumer contracts'. Most insurance contracts are **not** covered.⁴ The law aims to reduce cases where consumers suffer a loss or other disadvantage due to unfair contract terms.

Standard form contracts

Generally, a standard form contract is one that:

- > is prepared by the business
- > contains a set of generic terms and conditions
- > is not negotiated between parties
- > is presented on a 'take it or leave it' basis.

Consumers enter standard form contracts every day, typically for home loans, credit cards, mobile phones, gym memberships, travel and health insurance and utilities.

Unfair terms

A term is said to be unfair if:

- > the contract term is one-sided and greatly favours the business over the consumer, and
- > there is no satisfactory commercial reason why the business needs such a term, and
- > the consumer will suffer financial loss, inconvenience or other disadvantage if the term is enforced.

Types of unfair terms

The law contains a list of the types of terms that may be considered unfair. Contracts can still include these terms, as they are not banned, but when used in certain circumstances they could be unfair. Some examples are:

- > terms that allow the business to make changes to important parts of the contract, such as increasing charges or varying the type of product to be supplied, with no right for the consumer to cancel the contract without penalty
- > terms that avoid, limit, or restrict the liability of a supplier, its employees or agents for a breach of the contract
- > terms that require consumers who breach the contract or end it early to pay an excessive amount in compensation or cancellation charges.

Decisions on unfair terms

Only a court or the Consumer, Trader and Tenancy Tribunal (CTTT) can decide if a term is unfair.

The court or CTTT must consider:

- > whether the term meets the three tests of unfairness
- > how the term was expressed in the contract (for example, it may be hidden in fine print or written in hard to understand legal language)
- > the contract as a whole – a term that seems unfair may be reasonable if it is balanced by other terms offering benefits such as lower prices.

If a court or tribunal finds that a term is unfair, it is void. The term is treated as if it never existed and cannot be enforced or relied on. However, the contract will still bind the consumer and trader if it can operate without the unfair term.

4. These are currently regulated by the *Insurance Contracts Act 1984*. The Government is considering whether this exclusion should continue. For more information see www.treasury.gov.au

CONTRACTS WITH MINORS

The *Minors (Property and Contracts) Act 1970* binds minors to contracts, leases and other transactions, where it can be shown the contract is for their benefit. It does not take into account parents' or guardian's wishes as to whether or not the contract should have been formed. The minor would certainly not be bound by unfair and exploitative transactions, but they would probably be bound by ordinary transactions, freely chosen, in ordinary market conditions; eg renting a flat or buying something on credit.

If a minor believes an unfair or exploitative transaction has occurred, NSW Fair Trading can attempt resolution. If unsuccessful, the consumer can go to the Consumer, Trader and Tenancy Tribunal. People doing business with minors will often require someone (over 18) to guarantee that the minor fulfils their part of the bargain.

FALSE OR MISLEADING REPRESENTATIONS

Businesses must not make false or misleading statements about goods and services, regarding:

- > the standard, quality, value or grade of goods or services
- > whether the goods are new
- > a particular person agreeing to acquire goods or services
- > testimonials by any person relating to goods or services
- > the price of goods or services
- > the availability of repair facilities or spare parts
- > any guarantee, warranty or condition on the goods or services.

Courts have found false and misleading representations in these cases:

- > a manufacturer sold socks, which were not pure cotton, labelled as 'pure cotton'⁵
- > a business made a series of untrue representations about the therapeutic benefits of negative ion mats it sold.⁶

MORE ABOUT CONTRACTS

A contract is a legally binding agreement between two or more people. Contracts can be verbal or written. No matter how straightforward an agreement is, it is a good idea to have a written contract, as it decreases the chance of misunderstandings and leads to fewer disputes. When an agreement is verbal, it may be difficult to prove exactly what was agreed to, or prove that a contract existed.

A contract can also be made without a party being aware of it. For example, a bookstore that orders in a book and takes a deposit from a customer is entering into a contract to supply the customer with the promised book. By the book store accepting the deposit and the customer offering to pay the balance later, they have agreed to a contractual arrangement.

In some industries, written contracts are compulsory. For example, in the home building industry, a written contract is required between a builder and a customer for any job worth more than \$1000 (inclusive of GST).

A contract has three elements:

1. **an offer** – this may be made when you decide to buy something and offer to pay a price. You may also offer to give something or do something in return
2. **an acceptance** – this may be done by the seller agreeing to supply the goods or services. The acceptance may be in words or an action (eg, if you signed a written agreement accepting the terms and conditions)
3. **consideration** – this is the value (usually money) that is given in return for the goods or services offered to be supplied or acquired. It may also be the promise to pay at a later date after certain events occur or procedures are followed.

Goods and services must be supplied in the time specified in the contract, or if a time has not been specified, within a reasonable time after accepting payment.

When can a contract be ended?

Generally, once a contract has been signed, neither party can change their mind – both parties are locked in. If either party still wishes to pull out of the contract before it is finished, they may end up paying a penalty (sometimes the full amount of the contract) or the other party may take them to court to recover their losses.

Some contracts may allow a party to 'opt out' or terminate the contract early, with or without a penalty. If either party wishes to have an opting-out clause in the contract, they should seek independent legal advice to make sure they are properly covered.

Should one party end the contract or breach the terms and conditions, the other party may seek to recover any losses they incur as a result of that breach. For example, if a consumer pays a deposit on goods and then changes their mind, the trader may be entitled to an amount of money to cover their reasonable costs after taking all reasonable steps to minimise any losses incurred as a result of the breach.

There are however limited circumstances when consumers may end an agreement without penalty and these can include:

- > misrepresentation of the goods, services, terms or conditions
- > during a cooling-off period provided under the ACL.

5. *Trade Practices Commission v Pacific Dunlop Limited* (1994) FCA 1043. Available at www.austlii.edu.au/au/cases/cth/FCA/1994/1043.html
6. *ACCC v Giraffe World Australia Pty Ltd* (1999) FCA 1511. Available at www.austlii.edu.au/au/cases/cth/FCA/1999/1511.html

Hot Tip: before signing a contract

- > **Be sure you really want and know what you are signing for. (If in doubt, take time to consider the contract carefully.)**
- > **Read every word – including the fine print.**
- > **Seek legal advice if you don't understand the contract.**
- > **Don't be pressured into signing anything.**
- > **If necessary, take the contract home overnight and read it through.**
- > **Never sign a contract that contains blank spaces.**
- > **Make sure that all parties sign against any changes that are made to the contract.**
- > **Always get a copy of any contract you sign.**

Whether a representation is considered false or misleading will depend on the circumstances of each case. A representation that misleads one group of consumers may not necessarily mislead another group. A representation can be misleading even if it is true or partly true.

Testimonials

Testimonials are statements from previous consumers about their experience with a product or service. Misleading testimonials can persuade consumers to buy something based on the belief in the testimonial, even if it is not true. A business accused of making a misleading testimonial must provide evidence to show it is not misleading in court.

Offering rebates, gifts, prizes and other free items

It is unlawful to offer rebates, gifts, prizes or other free items without intending to provide them. It is also unlawful to fail to provide them as promised.

Bait advertising

Businesses must not mislead the public into believing a product is available at a certain price, only to find out the business does not have the stock to sell. Businesses must have a reasonable supply of the goods on hand when offering it to consumers. Reasonable supply will be determined by several factors including the type of goods and what was in the advertisement.

Wrongly accepting payment for goods

Businesses must not accept payment for goods and services if they:

- > do not intend to supply
- > intend to supply a different product or service
- > know they would not be able to supply the goods or services.

Exceptions for information providers

Please refer to the exceptions listed under 'Misleading and deceptive conduct' on page 4.

Penalties

Making false or misleading representations is an offence and carries maximum criminal penalties of \$220,000 for individuals and \$1.1 million for a body corporate.

CASE STUDY: APPLE iPADS

Section 33 of the Australian Consumer law states: 'A person must not in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods'. Apple admitted that it disobeyed this requirement during the period 8 March 2012 to 12 May 2012, in the marketing of one of their popular iPad devices.

The ACCC alleged four breaches of section 33, as the iPads were advertised online at Apple's website and online store, on signage with demonstrator models in Apple stores; in promotional and marketing materials provided to Apple resellers; and in promotional and marketing information provided to resellers for use on their websites.

The iPads were marketed as 'iPad with WiFi and 4G', which implied that they were able to use networks described as '4G' in Australia, which Apple knew they could not. By using of the designation 'iPad with WiFi + 4G' Apple implied that the new iPad cellular model could connect directly to the Telstra LTE mobile data network in Australia. Apple admitted that this conduct was liable to mislead consumers as to the ability of the new iPad cellular model to connect to the Telstra LTE mobile data network, the only network in Australia described as '4G'.

In a decision of the Federal Court, Justice Bromberg noted that the facts of the case suggested that 'global uniformity was given a greater priority than the need to ensure compliance with the ACL' and warned that when global campaigns are used in Australia, they 'need to be attuned to the understandings and perceptions of Australian consumers'.

Apple was fined \$2.25 million and ordered to pay \$300,000 towards the ACCC's court costs. Among the factors which the court took into consideration in determining the penalty were the size of the corporation and the deliberateness of the contravention. The court noted that it was important to impose a penalty of sufficient severity to provide specific deterrence. Apple's cooperation with the ACCC, which avoided a contested hearing, was also taken into consideration.

Further details concerning the case are available from www.accc.gov.au and the Federal Court decision, *ACCC v Apple Pty Ltd* [2012] FCA 646, is available at www.austlii.edu.au/au/cases/cth/FCA/2012/646.html

Civil remedies for the same amount apply. Other civil remedies include:

- > injunctions
- > damages
- > compensation
- > orders for non-party consumers
- > corrective advertising orders
- > adverse publicity orders
- > disqualification orders.

Consumer protection agencies may issue public warning notices against traders who have been given court orders for misleading and deceptive conduct.

REPRESENTATIONS ABOUT COUNTRY OF ORIGIN

Businesses must not make false or misleading representations about the country of origin of goods. A representation can include words, a picture or both, attached to the goods (ie label) or in promotional material. Claims can include, 'made in', 'product of', 'produce of', 'produced in', 'grown in' or the use of a particular logo. The criteria for claims only apply to countries not regions such as 'made in California'.

'Made in' claims

For a business to claim goods are 'made in' or 'manufactured in' a certain country:

- > the goods must be substantially transformed in that country, and
- > 50% or more of the total cost* of producing or manufacturing the goods must be made in that country.

To be considered as 'substantially transformed' the product has to undergo a fundamental change in that country. The change can be to the appearance, operation or purpose: for example, milling flour from wheat.

*Total cost of producing the goods includes materials, labour and overheads.

'Product of' claims

For a business to claim goods are 'produced in', 'produce of' or 'product of' a specific country, all or virtually all of the production or manufacturing must happen in that country, or all of the significant ingredients or components must come from that country.

'Grown in' claims

A business can claim goods are 'grown in' a particular country when:

- > at least 50% of total weight comprises ingredients or components grown and processed in that country
- > virtually all production or manufacturing processes happen in that country
- > each significant ingredient or significant component was grown and produced in that country.

Penalties

Making false or misleading representations about the country of origin is an offence and carries maximum criminal penalties of \$220,000 for individuals and \$1.1 million for a body corporate.

Civil remedies for the same amount apply. Other civil remedies include:

- > injunctions
- > damages
- > compensation
- > orders for non-party consumers
- > corrective advertising orders
- > adverse publicity orders
- > disqualification orders.

Consumer protection agencies can accept court-enforceable undertakings, issue infringement notices, substantiation notices and public warning notices.

INFORMATION STANDARDS

Information standards regulate the type and amount of information provided to consumers about goods and services.

An information standard can:

- > require particular information to be provided or not
- > set out the form or manner of this information
- > give a meaning to certain information.

The ACL recognises the following mandatory information standards:

- > care labelling for clothing and textile products
- > ingredient labelling of cosmetics
- > tobacco labelling – health labels.

Suppliers, manufacturers, importers, distributors, hirers and retailers must ensure goods and services comply with standards and be familiar with the information standards relating to those goods and services.

Penalties

Supplying goods or services that do not comply with an information standard is an offence. The maximum penalties are \$1.1 million for a body corporate and \$220,000 for an individual. Civil penalties for the same amount apply. Breaching information standards can also lead to injunctions, personal damages, compensatory orders, corrective advertising orders and adverse publicity orders.

Sales practices

CONSUMER GUARANTEES

The Australian Consumer Law (ACL) provides statutory guarantees on certain goods (new and second-hand) and services sold, hired or leased. Previously, national, state and territory laws had required consumers to enforce their rights as breaches of contract. The approach in the ACL to the terms of consumer transactions also eliminates the distinction between ‘conditions’ and ‘warranties’.

Consumer guarantees apply to:

- > any type of goods or services costing up to \$40,000
- > goods or services costing more than \$40,000 and purchased for personal, domestic or household use
- > vehicles and trailers.

Consumer guarantees do not cover goods:

- > bought before 1 January 2011
- > bought from one-off sales by private sellers, such as garage sales or fetes
- > bought at auction, where the auctioneer acts as agent for the owner
- > costing more than \$40,000 and normally for business use
- > bought to on-sell or resupply
- > a person uses, as part of a business, to manufacture, produce or repair something else.

image unavailable

Supply of goods

Consumer guarantees relating to the supply of goods include:

- > title – that the supplier has the right to sell the goods to the consumer (section 51)
- > the right to undisturbed possession – consumers should not be disturbed by others seeking to reclaim the goods (section 52)
- > undisclosed securities – goods must be free from any security, charge or encumbrance that was not disclosed, or was created without their consent (section 53)
- > acceptable quality – defined in section 54 (2) as being:
 - fitness for purpose for which such goods are commonly supplied
 - acceptable in appearance and finish
 - free from defects
 - safe
 - durable
- > fitness for any disclosed purpose (section 55)
- > supply of goods by description – goods must correspond with their description (section 56)
- > supply of goods by sample or demonstration – goods must correspond with the sample and consumers must be given a reasonable opportunity to compare goods with the sample (section 57)
- > repairs and spare parts – manufacturer to take reasonable steps to make repairs and spare parts available for a reasonable period after supply of goods (section 58)
- > express warranties – a manufacturer must comply with an express (manufacturer’s warranty).

Supply of services

There are guarantees as to ‘due care and skill’ in the supply of services to the consumer (section 60). There are also warranties as to ‘fitness for particular purpose’ of the provision of the service as made known to the provider, expressly or by implication (section 61), and as to supply of the service within a reasonable time (section 62), unless otherwise specifically provided in an agreement.

Guarantees are not to be excluded by contract, and there are certain limitations of liability for failures to comply with guarantees, other than title, undisturbed possession and absence of encumbrance by way of undisclosed securities. The extent of limitations is determined having regard to the relative bargaining positions, any inducements offered at time of sale or provision of the service, whether it was a special order, or the buyer knew or ought reasonably to have known of the existence or extent of any particular term due to a prior course of dealings between the parties.

There is particular legislation covering the provision of gas, electricity and telecommunications services and so these guarantees do not apply to those circumstances. Rules in relation to conflicts of laws between Australia and other jurisdictions may also apply, as does the UN Convention on Contracts for the International Sale of Goods.

REFUND, REPAIR OR REPLACEMENT?

Whether a consumer can get a refund, repair or replacement depends on whether the problem is:

- > major – cannot be fixed or is too difficult to fix; or
- > minor – can usually be put right.

The consumer may also be able to claim for compensation for their costs in time and money because something went wrong with the goods.

The supplier or manufacturer will provide the remedy depending on what the problem is.

Major problems

A consumer can choose to:

- > reject the goods and get a refund
- > reject the goods and get an identical replacement, or one of similar value if reasonably available, or
- > keep the goods and get compensation for the drop in value caused by the problem.

A major problem with goods is when:

- > a reasonable person would not have bought the goods if they had known about the problem
- > the goods are significantly different from the description, sample or demonstration model shown
- > the goods are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time
- > the goods are substantially unfit for a purpose that you told the supplier about, and cannot easily be made fit within a reasonable time
- > the goods are unsafe.

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GM Visuals/Blend.

Minor problems

If the problem can be repaired within a reasonable time, the supplier must be given a chance to fix the problem.

The supplier may choose to:

- > provide a refund
- > replace the goods
- > repair the goods.

WARRANTIES

A warranty is a voluntary promise made by a seller or manufacturer about their goods. Examples include manufacturers' warranties and express warranties.

Warranties cannot replace or restrict any consumer guarantees. A consumer can insist a seller meets a consumer guarantee, even if the goods are covered by a manufacturer's warranty. A seller cannot avoid dealing with the problem by telling the consumer it is the manufacturer's responsibility.

An extended warranty is an additional warranty that may or may not extend the manufacturer's warranty. Some extended warranties start from the date you buy the item and not when the manufacturer's warranty ends.

Before purchasing an extended warranty:

- > check what the warranty covers and whether the product needs regular maintenance or servicing for it to apply
- > read the terms and conditions fully to help you decide if it's worth the extra money.

UNSOLICITED SUPPLIES

Unsolicited supplies are goods or services supplied to someone without their permission. Unless a business or person reasonably believes that they have the right to do so, it is unlawful to:

- > request payment for unsolicited goods or services
- > request payment for unauthorised entries or advertisements.

It is also unlawful to send unsolicited credit cards or debit cards.

There is a three-month period in which the supplier can retrieve their goods, called the *recovery period*.

The recovery period reduces to one month when the recipient of the goods gives written notice to the supplier stating:

- > the recipient's name and address
- > that the goods are unsolicited and the recipient does not want them
- > where the supplier can pick the goods up from.

The recipient can keep the unsolicited goods not collected within the recovery period.

However, the recipient cannot:

- > keep the goods if they knew they were not intended for them – for instance, if the package was addressed to someone else.
- > unreasonably refuse to allow the collection of the goods during the recovery period.

TELEMARKETING – INDUSTRY SPECIFIC REGULATION

Telemarketers need to follow the same rules set out in the ACL as all other businesses. This also applies to businesses who use telemarketers or telemarketing firms, who may find themselves liable for any breaches made by the telemarketers working on their behalf.

There are industry standards that set the rules about when and how telemarketers, researchers and fax marketers can make contact: the Telemarketing and Research Calls Industry Standard 2007 and the Fax Marketing Industry Standard 2011 and it is ACMA's role to ensure compliance. Permitted hours for telemarketing are regulated under the *Do Not Call Register Act 2006*, which is managed by ACMA (see below).

Australian Communications and Media Authority

The Australian Communications and Media Authority, (ACMA), is a federal government body with responsibilities in the following areas:

- > **broadcasting** – plan the channels that radio and television services use, issue and renew licences, regulate the content of radio and television services and administer the ownership and control rules for broadcasting services.
- > **online content** – regulate online content (including internet and mobile content) and enforce Australia's anti-spam law.
- > **telecommunications** – licence Australia's telecommunications carriers and regulate fixed line and mobile telecommunications.
- > **radio-frequency spectrum** – plan and manage the radio-frequency spectrum in Australia; responsible for compliance with licensing requirements and investigating complaints of interference to services.
- > **Do Not Call Register** – (see below).

Do Not Call Register

The Do Not Call Register (DNCR) is a secure database listing the fixed line, mobile, fax and VoIP numbers of individuals and government bodies wishing to avoid unsolicited telemarketing calls. Emergency services numbers are also eligible and businesses may register fax numbers to help prevent unsolicited faxes. Unsolicited telemarketing calls to DNCR numbers are prohibited and the ACMA oversees enforcement. Telemarketers pay the DNCR an annual subscription fee to have their lists checked – or 'washed,' to ensure their lists do not include DNCR numbers.

Under the *Do Not Call Register Act 2006*, public interest organisations – including charities, researchers, political parties and educational institutions – are still able to call numbers on the DNCR, but all telemarketers must conform to the industry standards (see above). See www.donotcall.gov.au for more information or call 1300 792 958.

Penalties

The maximum civil and criminal penalties for requesting payment for unsolicited goods or unauthorised advertisements are:

- > \$1.1 million for a body corporate
- > \$220,000 for an individual.

UNSOLICITED CONSUMER AGREEMENTS

Consumers enter into unsolicited agreements when they buy goods or services over the phone from a telemarketer or from a door-to-door salesperson.

Door-to-door salesperson

A door-to-door salesperson cannot contact a consumer:

- > on a Sunday or public holiday
- > before 9am or after 6pm on a weekday
- > before 9am or after 5pm on a Saturday.

The seller must explain up-front what the purpose of the visit is and produce identification.

The seller must inform the consumer that they can ask them to leave and they must leave immediately if asked to.

Consumers must also be provided with a copy of the contract and informed of their termination rights.

Telemarketers

A telemarketer must not contact consumers:

- > on a Sunday or a public holiday
- > before 9am or after 8pm on a weekday
- > before 9am or after 5pm on a Saturday.

Consumers must be provided with a copy of the contract either in person, by post or electronically within five days and the seller must inform the consumer of their termination rights.

PYRAMID SCHEMES

Pyramid schemes make money by recruiting businesses or people rather than by selling a legitimate product or providing a service – even if they are selling a product.

New participants make a payment to join, known as a ‘participation payment’. To make any money in the scheme the participant must recruit others to join who will pay a participation payment with the recruiter gaining a recruitment payment, either financial or non-financial.

A court can consider several factors when identifying a pyramid scheme. The Australian Consumer Law (ACL) does not limit the matters a court can consider, however the following characteristics can be used to help identify a pyramid scheme:

- > unrealistic claims in regard to future profits;
- > the sales and/or promotional material push recruitment very hard;
- > recruitment payments are a substantial reason to join.

Penalties

A business or person must not participate in, or attempt to persuade others to participate in, a pyramid scheme. The maximum civil and criminal penalties are \$1.1 million for a body corporate and \$220,000 for an individual.

PRICING

Multiple pricing

Multiple pricing is when a business displays an item with more than one price. The business must sell the product for the lowest displayed price or withdraw it from sale until the price is corrected. This applies regardless of where the price is displayed, in a catalogue, online or in a television advertisement.

The ‘displayed price’ is a price:

- > attached to or on:
 - the goods
 - anything connected or used with the goods
 - anything used to display the goods
- > published in a catalogue available to the public, when:
 - the deadline to buy at that price has not passed
 - the catalogue is current (not out-of-date)
- > that reasonably appears to apply to the goods, including a partly-observed price, or
- > displayed on a register or scanner.

A price is not a ‘displayed price’ when it is:

- > entirely obscured by another price
- > a price per unit of measure and shown as an alternative means of expressing the price
- > not in Australian currency, or unlikely to be interpreted as Australian currency.

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A price published in a catalogue or advertisement ceases to be a displayed price when a retraction is published to a similar circulation or audience.

If a supplier specifies that a catalogue price applies only in a particular region, they can display a different price in a catalogue for another region.

Penalties

Failing to sell goods for the lowest display price can lead to maximum civil and criminal penalties of \$5000 for a body corporate and \$1000 for an individual.

Component pricing

A supplier must not promote or state a price that is only part of the cost, unless also prominently advertising the single (total) price.

The single price must be:

- > clear at the time of the sale
- > as prominent as the most prominent component of the price.

The single price is the total of all measurable costs and includes:

- > any charge payable, and
- > the amount of any tax, duty, fee, levy or charges (for example, GST).

A single price for services supplied under a contract that allows periodic payments does not have to be displayed as prominently as the component prices.

Penalties

The maximum civil and criminal penalties for failing to comply with single price requirements are \$1.1 million for a body corporate and \$220,000 for an individual.

LAY-BY AGREEMENTS

A lay-by can be an easy way of buying something without having to pay for it all at once. However, the goods need to be paid for in full before the consumer can take them home.

When agreeing to set up a lay-by the supplier must ensure that the agreement offered:

- > is in writing
- > specifies all terms and conditions, including dates when payments are due and termination fees
- > is in plain English and easy to understand.

Cancelling a lay-by

The consumer may cancel the agreement at any time before receiving the goods. On cancellation, the consumer must receive a refund of all money paid, less any termination fee specified in the agreement.

The termination fee must not be more than the supplier's reasonable costs. This could include storage and administration costs. If the supplier cancels the lay-by the termination fee cannot be charged.

Suppliers must not terminate a lay-by agreement, except when:

- > the consumer has breached a term of the agreement (for example, they failed to make a scheduled payment on time)
- > the supplier is no longer engaged in trade or commerce, or
- > the goods are no longer available due to circumstances outside the supplier's control (not because the supplier decided to withdraw the goods from sale).

Penalties

It is an offence for a supplier to:

- > enter into a lay-by agreement without putting it in writing
- > not give the consumer a copy of the written agreement
- > refuse all of the consumer's money (except for the termination charge)
- > charge a termination fee that is higher than the reasonable costs associated with the agreement or when the supplier has breached the lay-by agreement.

Each offence has maximum civil and criminal penalties of \$30,000 for a body corporate and \$6000 for an individual.

REFERRAL SELLING

Referral selling is when:

- > a consumer is persuaded to buy goods or services by promises of a rebate, commission or other benefit for supplying information that helps the trader sell to other consumers, and
- > the consumer does not get the promised benefit unless some other event happens after the agreement is made – for example, other consumers also have to buy the goods or services from the same supplier.

It is not 'referral selling' if a supplier promises a benefit for simply providing the names of consumers or helping the trader supply goods.

Penalties

The maximum civil and criminal penalties for referral selling are \$1.1 million for a body corporate and \$220,000 for an individual.

HARASSMENT AND COERCION

It is unlawful to use physical force, coercion or undue harassment in connection with the:

- > supply or possible supply of goods or services
- > payment for goods or services
- > sale or grant, or the possible sale or grant, of an interest in land, or
- > payment for an interest in land.

Undue harassment means unnecessary or excessive contact or communication with a person, to the point where that person feels intimidated, tired or demoralised.

Coercion involves force (actual or threatened) that restricts another person's choice or freedom to act. Unlike harassment, there is no requirement for behaviour to be repetitive in order to amount to coercion.

Product safety

There are around 15,000 types of products available in Australia, and even more if you factor in different brands. Considering how many products we use just on a daily basis, it is vital that these are as safe as possible.

Under the Australian Consumer Law (ACL), which took effect on 1 January 2011, Australia now has a national product safety system. The national product safety system covers consumer products that are for personal, family or household use. It also covers services that are related to products, including the installation, maintenance, repair, cleaning, assembly or delivery of consumer products.

WHAT ARE THE LAWS ON PRODUCT SAFETY?

Under the ACL, the Australian Government can:

- > ban products permanently
- > impose mandatory safety standards
- > impose information standards, requiring that certain information about a product be provided to consumers before or at the time of purchase.

The Australian Government, as well as state and territory governments, are also able to:

- > issue safety warning notices
- > ban products temporarily
- > issue compulsory recall notices, requiring businesses to recall a product.

They also regulate what a supplier has to do, including:

- > responsibilities if a Minister bans a product or imposes a safety or information standard on a product or product related service
- > when to recall a product and how to do this
- > what to do if a Minister issues a compulsory recall notice
- > when to report a product-related incident to the Minister
- > when a manufacturer may be liable for loss or damage caused by a product with a safety defect.

Bans

A ban is made to protect consumers when there is a risk that a product may cause serious injury, illness or death. It is illegal to trade in banned products in Australia.

PRODUCT SAFETY ENFORCEMENT FRAMEWORK UNDER THE ACL

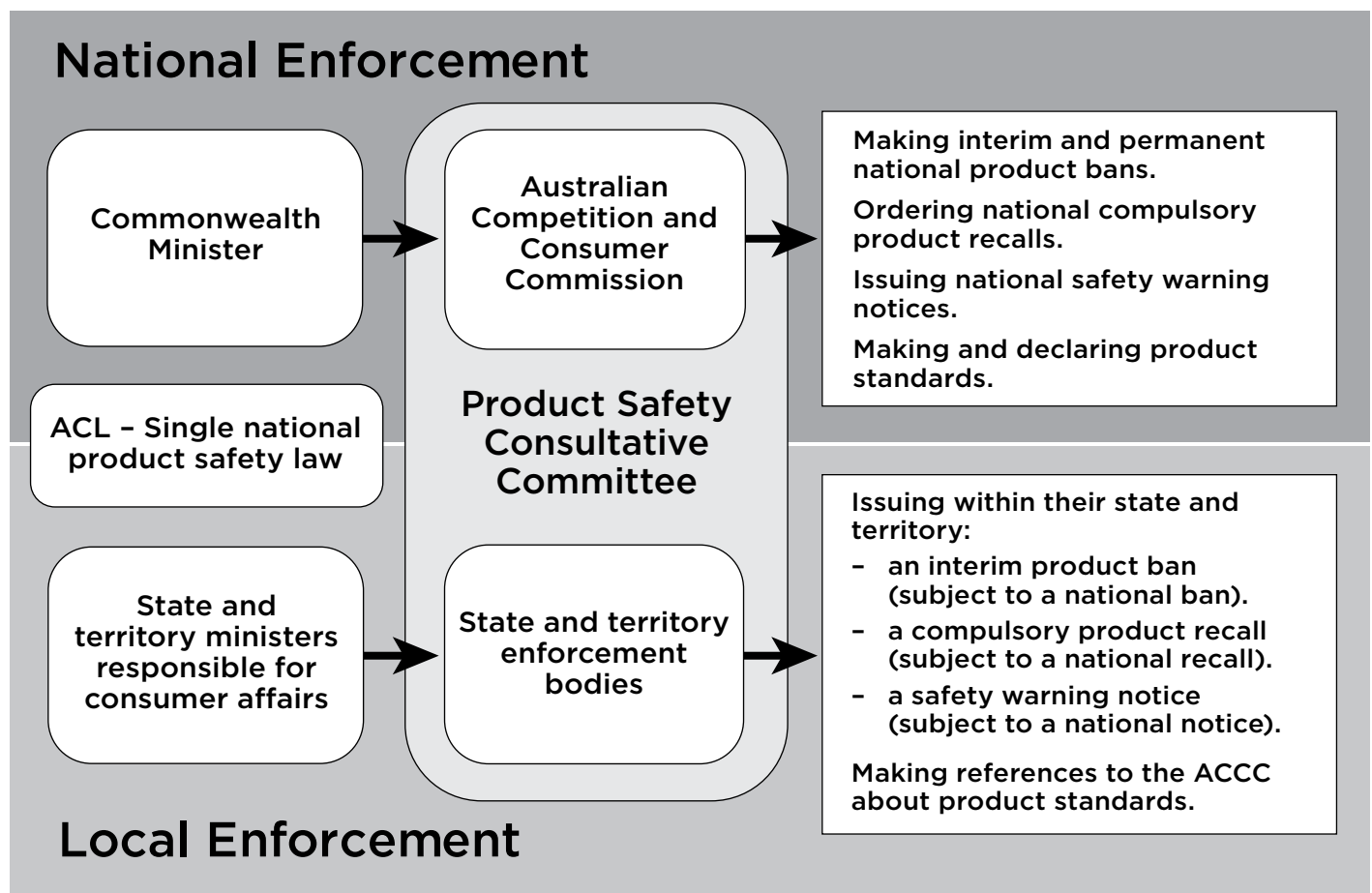


Diagram adapted from The Australian Consumer Law: an introduction, page 9, Commonwealth Treasury.

Bans can be permanent, or they can be temporary – known as interim bans. There are currently 21 permanently banned products in Australia.

Mandatory standards

Mandatory standards are sets of rules for making and selling products that could otherwise cause injury, illness or death. In other words, mandatory standards help make certain products safer for consumers. If a product or product-related service is covered by a mandatory standard and doesn't comply with all its requirements, it is illegal to sell it in Australia.

Some consumer goods or product-related services are subject to a mandatory information standard which requires that certain information is provided with the product. For example, information standards apply to ingredient labelling for cosmetics and care labelling for clothing and textile products.

Recalls

A recall is when a consumer product is removed from sale or supply after it has been found to be unsafe. Suppliers or government regulators can determine that a product needs to be recalled.

Most recalls are voluntary, meaning that the supplier recalls the product and immediately notifies the Government. Recalls can also be compulsory, meaning that the Australian Government or a state or territory government directly orders the product recall.

Penalties (fines)

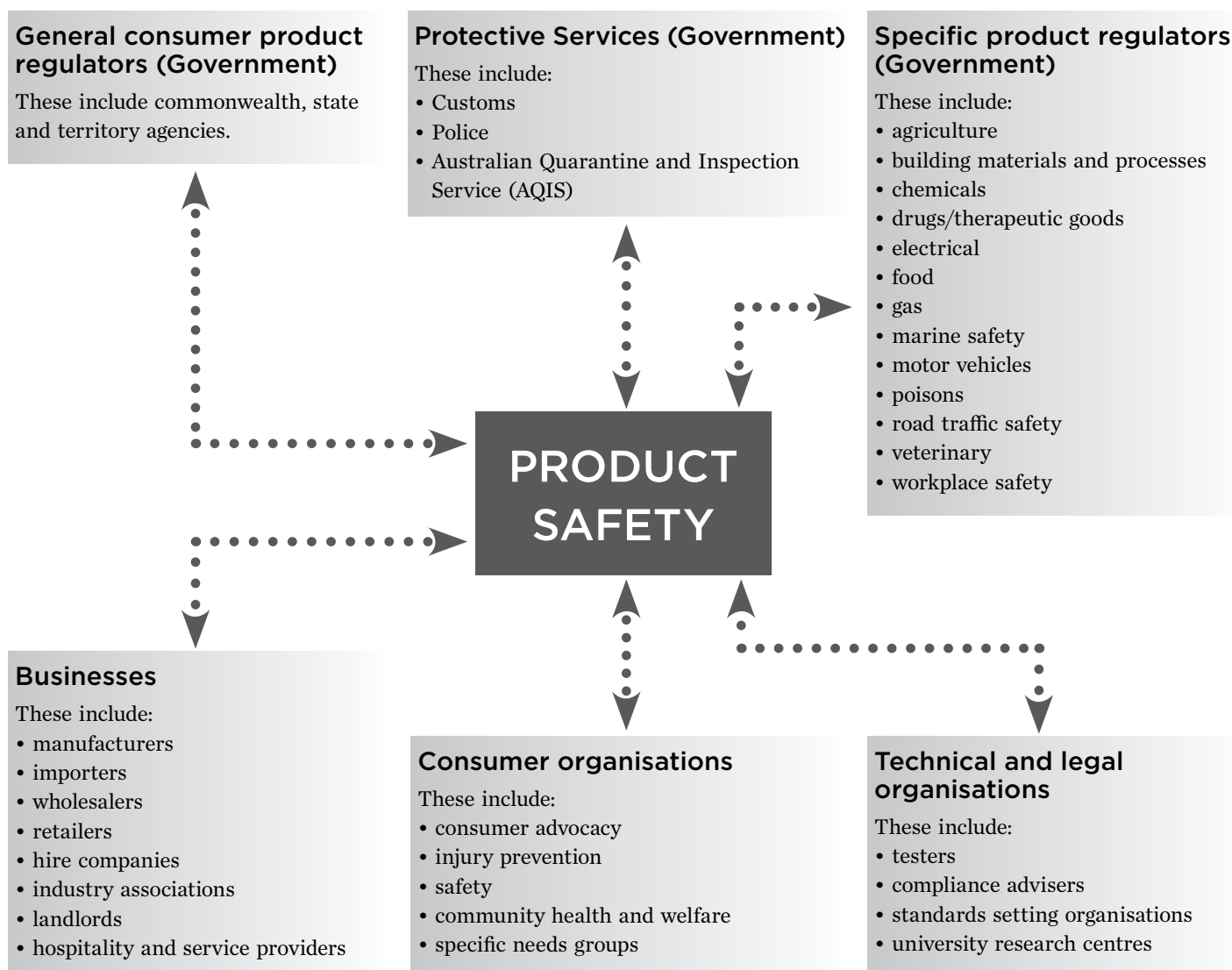
Under the ACL, suppliers can face big penalties for trading in products that are banned or do not comply with mandatory standards. Fines can be:

- > up to \$1.1 million for companies
- > up to \$220,000 for individuals.

PRODUCT SAFETY – WHO DOES WHAT?

The product safety system relies on consumers, suppliers (businesses who sell products, such as retailers, wholesalers, manufacturers and importers), government agencies and other organisations to work together to ensure that new and existing products are safe. It is important to note, however, that under the law, suppliers are responsible for ensuring the safety of their products.

The national (or Commonwealth) regulator is the Australian Competition and Consumer Commission (ACCC).



MANDATORY REPORTING

Under the ACL, suppliers of consumer products and related services are required to report deaths, serious injuries or illnesses associated with consumer products. This requirement is known as ‘mandatory reporting’.

All participants in the supply chain of a consumer product are responsible for mandatory reporting. This includes a retailer, dealer, hirer, distributor, installer, repairer, importer, manufacturer and/or exporter of the products in question. Similarly, anyone in product-related services linked to the products are required to report incidents. This could include installers and service technicians. Suppliers have to submit a mandatory report within two days of learning about an incident.

CASE STUDY: BIG W CHILDREN'S SLEEPWEAR

In September 2009, Big W carried out an urgent voluntary recall of 27 styles of children's pyjamas, nighties and other sleepwear. During a routine product check, the ACCC had found that these styles were incorrectly labelled as ‘low fire danger’, when in fact they were highly flammable (meaning they will catch fire and burn easily). In October 2009, Big W recalled eight more styles of children's sleepwear for the same reason.

Under the mandatory standard for children's nightwear, these products need a specific warning label that says whether the clothing is high or low fire danger. To figure out which label it needs, the clothing needs to be tested. Testing had revealed that the BigW sleepwear should have been labelled ‘warning high fire danger keep away from fire’.

The mandatory standard is in place to help parents keep their kids safe from severe burns and death when they're around fire and heat sources, such as heaters, fireplaces and in kitchens. All clothing is flammable, but some children's sleepwear can ignite and burn a lot more quickly than other types of clothing, and so the labels help parents to know the level of danger.

After this recall, Woolworths Limited (the company that owns Big W) took further corrective action with:

- > issuing a public apology notice in December 2009
- > ordering a large review into the labelling error and the procedures that were in place
- > developing and implementing an Action Plan (which was developed after the results of the review), to help ensure the error won't happen again
- > undertaking to the ACCC that it will no longer supply children's nightwear products that do not comply with the mandatory standard.
- > conducting a review of its recall procedures
- > developing and implementing a training program for its buying and quality assurance staff to help ensure they comply with the mandatory standard
- > giving funding of \$200,000 for a research project into the mandatory standard, and
- > making a \$200,000 donation to the Sydney's Children's Hospital.

TIPS ON SELLING, BUYING AND USING PRODUCTS SAFELY

- > If you plan to sell a consumer product, first check www.productsafety.gov.au to make sure the product isn't banned and to see if it needs to comply with a mandatory standard.
- > If a customer complains to you about a product you have sold, made, imported, and/or distributed having caused harm or death – even if you are not sure it's true or if it's your product – you must submit a mandatory report within two days via www.productsafety.gov.au
- > If you are a retailer selling a product that needs to comply with a mandatory standard, check with your supplier that it complies. If needed, ask for certificates that prove the product has been tested.
- > If you are buying something and need to know whether it's safe and complies with safety regulations, including whether it's been tested, ask the retailer. They should be able to give you this information.
- > If you buy a product, borrow one or receive one as a gift, always read and follow any safety instructions or warnings very carefully.
- > If you think a product you've bought is unsafe, report it to the ACCC or to NSW Fair Trading (or equivalent in your state or territory). You should also report it to the supplier.

Check out www.productsafety.gov.au for a comprehensive list of products and tips.

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Australia first introduced a mandatory standard for children's nightwear in 1978 to address a high incidence of severe burns. A marked drop in the incidence of burns admissions followed. The current mandatory standard of 1 March 2008 addresses both design and material, covering labelling and safety requirements. It applies to anyone in the business of supplying children's nightwear.

Val Thoermer/Imagebroker.

Financial products and services

The Australian Securities and Investments Commission (ASIC), is Australian's corporate, markets and financial services regulator. It is responsible for a range of financial products and services including credit, insurance, superannuation, managed funds and more complex products.

ASIC's role includes both licensing and ongoing supervision of providers of financial services and credit. If a business or person wants to provide financial services or engage in credit activities, they must be licensed with ASIC or be a representative of someone who is licensed (that is, they must either have their own licence or come under the umbrella of another licensee as an authorised representative or employee).

ASIC's particular ACL jurisdiction relates to financial products and financial services, as the ACL unfair contract term provisions apply to standard form consumer contracts for financial products and financial services such as contracts for banking services, home loans or credit cards. An important part of ASIC's role is to promote confident and informed investors and consumers in the financial system.

More information on ASIC is also available on page 25.

CONSUMER RIGHTS IN FINANCIAL SERVICES

Consumers can check basic facts about people, companies, schemes or personal property on ASIC or other government databases. This is an important step before getting financial advice, a loan or credit, buying financial products, or handing over money for a purchase or an investment.

The ASIC lists will confirm whether or not people or companies are licensed to provide credit or financial advice.⁷ A licence from ASIC *does not* mean that ASIC endorses the financial product or advice, or that consumers cannot incur a loss from dealing with them. ASIC grants a licence if a business shows it can meet basic standards such as training, compliance, insurance and dispute resolution, but the business is responsible for maintaining these standards. Checking ASIC's databases should be only one of the many checks people undertake before investing their money.

MONEYSMART WEBSITE

www.moneysmart.gov.au

ASIC's MoneySmart website has a wide range of helpful information on:

- > using credit wisely, taking control of debt and what to do if experiencing financial difficulty.
- > the basic principles of investing for both experienced investors and beginners.
- > superannuation – there is an employer contributions calculator and also a co-contributions calculator – these allow people to check how much super they should be getting, and also how much government co-contribution they can get if they put in extra super.
- > insurance – including tips on what consumers should look for when comparing insurance policies; and specifically, mobile phone, tablet and laptop insurance.

MoneySmart's budget planner helps people work out their current spending and how much they can afford in repayments, allowing for interest rate rises, unexpected expenses and financial emergencies. The website also has a credit card calculator and multi-loan calculator so people can compare the costs of different interest rates.

CREDIT AND LOANS

The law provides some important protections for consumers in relation to credit and borrowing.

Credit providers must be licensed and only lend money if they think the credit is suitable for the particular consumer. The responsible lending laws also require the credit provider to make reasonable inquiries about a person's financial situation, requirements and objectives, take reasonable steps to verify that person's financial situation and decide whether the credit contract is 'not unsuitable' for that person.

Consumers must also be given a credit guide with information such as the lender's licence number, fees and details of the consumer's right to complain. From 1 July 2012 there are some additional protections for consumers, including for example that:

- > lenders provide a key fact sheet with credit card applications, containing information about minimum repayment calculations, interest and fees; and
- > lenders may not offer increases in credit limits without the consumer's consent.

7. To check these lists go to the MoneySmart website: www.moneysmart.gov.au or to the ASIC Connect Professional Registers at www.asic.gov.au

Hot Tip: compare rates, fees and charges

Although the law provides some important protections for consumers in relation to credit and borrowing, taking time to research lots of different products and compare interest rates, features, fees and charges before signing up is a good idea. Even a small difference in the interest rate can make a big difference to repayments over time.

Fees and charges can also add a lot to the cost of borrowing. Common fees and charges include:

- > establishment fees
- > annual charges for credit cards
- > account-keeping fees
- > fees for late or missed repayments
- > fees for going over a credit limit
- > fees for repaying a loan early, or refinancing or consolidating loans.

Before locking themselves into a product, consumers should check the credit contract for all the fees and charges.

CASE STUDY: RICHIE REGRETS NOT SHOPPING AROUND

Richie saw a red sports car at a dealership and after a test drive decided he had to have it. The car salesman offered to arrange finance for him. Richie drove away from the dealership with a loan of more than \$45,000 and an interest rate of 22% per year. When he spoke to his Dad after he got home, he realised that not only had he paid too much for the car, the loan was also uncompetitive and would cost him much more compared to other deals.

SUPERANNUATION

Superannuation ('super') is a way for people to save for retirement. The money comes from contributions made into each employee's super fund by employers and, ideally, topped up by the employees' own money. Sometimes the government will also add to it through co-contributions.

Employers must pay 9% of the value of employees' 'ordinary time earnings' into a super fund if the employee is:

- > over 18 and earns more than \$450 before tax in a calendar month; or
- > under 18 and works more than 30 hours a week (and still earns more than \$450 in the calendar month).

Generally consumers are free to choose the super fund their contributions are paid into. It's important for employees to give their super fund their tax file number so they don't pay unnecessary tax or miss out on other benefits.

To grow their super even more, people can consider taking advantage of the government's co-contribution initiative by making a personal contribution to their super fund. Depending on their income, the government will deposit a percentage of the amount contributed into the employee's super fund.

The Australian Tax Office (ATO) website has more information about the current co-contribution entitlements and income thresholds.

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CASE STUDY: LINDSAY'S SUMMER JOB BOOSTS HIS SUPER

Lindsay, 17, finished his TAFE studies for the year in November and decided to get a job working in a large department store until the end of December. During the busy period leading up to Christmas he was working every day. As he was earning more than \$450 a month and working more than 30 hours per week, Lindsay checked with the payroll manager that he was being paid the super he was entitled to. Lindsay ended up getting \$250 put into his super fund. Over time that money will grow as it is invested.

People who have had a few different employers may have super in different super funds, and will be paying administration charges for each fund, which will eat away at their super balance. Consolidating super funds (that is, bringing all your super together into one fund) saves costs by avoiding duplicated fees, reduces paperwork and makes it easier to keep track of your super.

People who have changed jobs often, or worked on a casual or part-time basis, may have lost track of some of their super entirely. They can find lost super by using the ATO's free online search tool, SuperSeeker. Logging into SuperSeeker with a tax file number allows people to do an initial search.

Hot Tip

It is worthwhile making the effort to look for your lost super, as it could mean more money for you in retirement.

INVESTING

Anyone with super or shares can consider themselves an investor. Apart from superannuation, the most common types of investments used by Australians include shares, managed funds and property.

The objective of investing is to make your money grow without taking any unnecessary risks. There are various protections under the law for investors. For example, entities that offer investment products are required to disclose certain information about the features and risks of the product.

Smart investors take time to understand the basic principles of investing and then develop and stick to a sound investment plan. They think about their goals and risk tolerance, understand the principles of risk and return, and choose investments that meet their needs and fit their overall plan.

INSURANCE

With so many companies providing different types of insurance, it is important for people to read the fine print, ask lots of questions and find the right policy for their needs.

Consumer insurance needs will depend on an individual's stage of life, personal possessions and financial responsibilities. Common types of insurance include car insurance, home and contents insurance, life insurance, travel insurance and health insurance. Also, insuring portable electronic devices, such as mobile phones, tablets and laptops – which are highly valuable but also easy to damage, misplace or steal – can be a good way to offset the cost of repair or replacement.

COMPLAINTS

What steps can you take if you have a complaint about financial advice, superannuation, managed funds, insurance, credit, loans or bank accounts?

- > First contact the business with the complaint. They may be able to solve the problem on the spot. If they can't or you're unhappy with their response, take the complaint further.
- > Ask the business for their complaints handling procedure. Write a letter or email, clearly setting out the problem and include copies of relevant documents such as receipts or invoices.
- > Contact an external dispute resolution scheme. Nearly all financial services businesses must belong to an external dispute resolution (EDR) scheme. EDR schemes hear complaints for free and can be a simpler alternative to resolving disputes in court. The business must tell consumers which scheme it belongs to.

External dispute resolution schemes

There are three EDR schemes:

- 1. Financial Ombudsman Service (FOS)** – for complaints about banking, credit, loans and debt collection, life insurance, superannuation, financial planning, insurance broking, stockbroking, investments, managed funds, timeshares, general insurance, finance and mortgage broking;
- 2. Credit Ombudsman Service Limited (COSL)** – for complaints about credit unions, building societies, non-bank lenders, mortgage and finance brokers, financial planners, lenders and debt collectors, credit licensees and credit representatives; and
- 3. Superannuation Complaints Tribunal (SCT)** – for complaints about providers of superannuation, retirement savings accounts and annuities. Consumers must contact the trustee of their superannuation fund before going to the SCT.

People can also lodge an online complaint with ASIC. Contact details for the EDR schemes and ASIC are on page 28.

Scams

Some of the most common types of scams are outlined in this section. The ACCC runs the SCAMwatch website **www.scamwatch.gov.au** which helps you to keep up-to-date on the latest information on scams; you can also subscribe to information on email and Twitter. NSW Fair Trading has produced ‘Scam buster’, a free phone app that allows fast sharing of information about scams.

ADVANCE FEE FRAUD

Advance fee fraud is the most common type of scam, accounting for more than half of the scams reported to the ACCC. It includes any scam where a scammer requests fees upfront or personal information in return for goods, services, money or rewards that they never supply. Scammers invent convincing and seemingly legitimate reasons for requesting payment such as to cover fees or taxes. They often ask for payment via international wire transfer. These scams are commonly mass-marketed, with scammers sending them out simultaneously to thousands of people all over the world – usually by mail or email.

The upfront payment scam is the most common version of advance fee fraud and involves a scammer promising you a share in money or goods in return for upfront payments or personal information. The promise is never delivered upon.

‘NIGERIAN’ SCAM

The Nigerian 419 scam is the best known advance fee fraud example: a scammer offers you a reward in exchange for helping transfer money overseas – all you have to do is give your bank account details and pay fees or taxes. The fake inheritance scam, where a scammer claims that you have been left a huge inheritance from a long-lost relative, is also common.

LOTTERY, SWEEPSTAKES AND COMPETITION SCAMS

These scams try to trick you into giving money upfront or providing your personal details in order to receive a prize from a lottery, sweepstake or competition that you have never entered. Scammers typically claim that you need to pay fees or taxes before your ‘winnings’ or prize can be released. You may be asked to call or SMS a premium rate phone number to claim your prize. As well as losing any money you send, you may also be up for a hefty phone bill if you call a premium number to ‘collect your prize’. If you provide personal details, your identity could be misused too.

Scammers can use official-looking documents and brochures that appear to have government approval or to have come from a reputable company.

DATING AND ROMANCE SCAMS

Dating and romance scams can cause significant financial and non-financial harm to victims, including emotional distress. The most common dating and romance scams involve scammers creating fake profiles on legitimate dating websites. They use these profiles to try and enter into a relationship with you so they can get a hold of your money and personal details. Scammers seek to exploit your emotions, typically by developing a strong rapport with you before asking for money to help cover costs associated with illness, injury, travel costs or a family crisis. These scams may be operated by experienced criminal networks and can run for months or even years. Victims are often approached on legitimate dating websites but the scammer is quick to move the communication away from the security of the website.

COMPUTER HACKING

Computers, including tablets and smartphones, are an indispensable part of our lives and often have personal details stored on them, which are valuable to scammers. ‘Phishing’ emails are commonly used by scammers to trick you into giving them access to your computer. They ‘fish’ for your personal details by encouraging you to click on a link or attachment. If you do, malicious software (‘malware’) can be installed and the hacker will have access to files and information stored on your computer. A phishing email often appears to have come from an organisation that you know and trust, like a bank or financial institution.

Social networking scams can be initiated via a phishing email that asks you to enter your account password on a fake copy of the networking site’s login page. If you provide your account details, the scammer can hack in to your account and take control of your profile. They may then pose as you in an attempt to gain money or personal details from your friends, family or followers.

Be wary offline too – scammers are also known for calling homes and claiming that a computer is infected with a non-existent virus, or is experiencing technical issues. They will try to convince you to buy fake antivirus software and to give them remote access to your computer. If you buy the software or grant access, the scammer can install malware and spyware to collect your personal details.

ONLINE SHOPPING, CLASSIFIEDS AND AUCTION SCAMS

There are scams which target the increasing volume of online buying and selling. Not getting what you paid for is common – a scammer will sell a product, sending a faulty or inferior quality item or nothing at all. They may also pretend to sell a product just to gather credit card or bank account details.

An online auction scam involves a scammer claiming that you have a second chance to buy an item that you placed a bid on because the winner has pulled out. The scammer will ask you to pay outside of the auction site's secure payment facility; if you do and your money is lost, the auction site will not be able to help you.

The online classifieds scam is a common scam targeting both buyers and sellers. Buyers should beware of scammers who post fake ads on legitimate classifieds websites. The ads can be for anything from rental properties to pets, used cars or cameras, and will often be cheaply priced. If you show interest in the item, the scammer may claim that they are travelling or have moved overseas and that an agent will deliver the goods following receipt of payment. Following payment you will not receive the goods or be able to contact the seller.

For sellers, a classified scammer will respond to your advertisement with a generous offer. If you accept it, the scammer will pay by cheque or money order. However, the amount that you receive is for more than the agreed price. The 'buyer' may tell you that the overpayment was a mistake and will ask you to refund the excess amount by money transfer. The scammer hopes that you will transfer the money before you discover that their cheque has bounced, or that the money order was fake. You lose your money, as well as the item you sold if you have already sent it.

BANKING, CREDIT CARD AND ONLINE ACCOUNT SCAMS

Your financial details are invaluable to scammers and can be used to commit fraud anywhere in the world. Phishing scams are a popular method used to gain your financial details. Scammers send emails or SMS messages that appear to be from your bank, a financial institution or an online payment service. They usually claim that there is a problem with your account and request that you verify your details on a fake but convincing copy of the bank's website.

Card skimming is the copying of information from the magnetic strip of a credit card or ATM card. Scammers skim your card by putting a discreet attachment on an ATM or EFTPOS machine. They may even install a camera to capture your PIN. Once your card is skimmed, scammers can create copies and make charges to your account.

Card-not-present fraud is where scammers use your credit card number and details to pay for a product or service without physically having your card. Scammers can run up a hefty credit bill buying products online or via the phone. If a scammer is successful in obtaining your financial details, they can use it to access your money, or commit identity theft or fraud.

SMALL BUSINESS SCAMS

A false billing scam is the most common trick scammers use against small businesses. Scammers issue fake bills for unwanted or unauthorised listings, advertisements, products or services. The business directory scam is a well-known example, where you receive a bill for a listing in a supposedly well-known directory. Scammers trick you into signing up by disguising the offer as an outstanding invoice or a free entry, but with a hidden subscription agreement in the fine print.

The domain name scam is another ploy used by scammers, where you are deceived into signing up for an unsolicited internet domain registration very similar to your own. You may also receive a fake renewal notice for your actual domain name and pay without realising.

An office supply scam involves you receiving and being charged for products that you did not order. These scams often involve products or services that you regularly order such as stationery and cleaning supplies. Scammers typically call your business pretending that a service or product has already been ordered.

A fax back scam is where a scammer faxes you an offer that you have to fax back to a premium rate number (starting with '19') to accept. The scammer then makes sure that it takes several minutes to process the fax, resulting in a hefty phone bill.

JOB AND EMPLOYMENT SCAMS

Job and employment scams involve offers to work from home, or set up and invest in a 'business opportunity'. These scams are often promoted through spam email or advertisements in well-known classifieds (including websites). Scammers promise a job, high salary or large investment return following initial upfront payments. These payments may be for a 'business plan', training course, software, uniforms, security clearance, taxes or fees.

image unavailable

Tek Image/Science Photo Library.

Sometimes you will receive the item but it won't work or isn't what you expected. Some offers may be a cover for illegal money laundering activities, where you are asked to receive payments into your bank account for a commission and then pass the money on to a foreign company. If you receive an offer to participate in a scheme that requires you to recruit people, be wary – it could be a pyramid scheme (see page 12 for details).

GOLDEN OPPORTUNITY AND GAMBLING SCAMS

Investment opportunity scams often begin with a phone call or email offering a 'not-to-be-missed', 'high return' or 'guaranteed' investment in shares, real estate, options or foreign currency trading. While it may seem convincing, in reality the scammer will take your money and you will never receive the promised returns.

A computer prediction software scam promises to accurately predict the results of horse races, sports events, stock market movements or lotteries. Scammers promise you huge returns based on past results and trends. In order to participate, you may be asked to pay for membership fees, special calculators, newsletter subscriptions or computer software programs.

Pyramid schemes trick you into paying large upfront joining or membership fees to participate in money-making ventures where you have to convince other people to join. People are often persuaded to join by family members or friends. These schemes work by recruiting people rather than selling a legitimate product or service. There is no guarantee that you will recoup your initial investment and, in the end, all pyramid schemes collapse. These scams are often highly sophisticated and can be hard to tell apart from genuine offers. Pyramid schemes are illegal in Australia, see page 12.

CHARITY AND MEDICAL SCAMS

Charity scams involve scammers collecting money by pretending to work for a legitimate cause or charity, or a fictitious one they have created. Often scammers will exploit a recent natural disaster or crisis that has been in the news. They may also play on your emotions by claiming to collect for a cause that will secure your sympathy, for example to help sick children. These scams divert much-needed donations away from legitimate charities and causes. Charities must be registered with the government – donate confidently by checking their registration first.

Miracle cure scams offer a range of products and services that can appear to be legitimate alternative medicines, usually promising quick and effective remedies for serious medical conditions. The treatments are often promoted using false testimonies from people who have been 'cured'.

Weight loss scams promise dramatic weight loss with little or no effort. This type of scam may involve an unusual or restrictive diet, revolutionary exercise, a 'fat-busting' device, breakthrough pills, patches or creams. You may be required to make a large advance payment or enter into a long-term contract to receive ongoing supplies.

Fake online pharmacies offer counterfeit drugs and medicine at very cheap prices, and sometimes provide them without a doctor's prescription. These drugs may have limited or no active ingredients, which can have lethal consequences for users.

TOP 10 TIPS TO PROTECT YOURSELF

1. **Watch out for scams** – scammers can target you anytime, anywhere, anyhow.
2. **Don't respond** – ignore suspicious emails, letters, house visits, phone calls or SMS messages – press 'delete', throw them out, shut the door or just hang up.
3. **Don't agree to an offer straight away** – do your research and seek independent advice if it involves significant money, time or commitment, and get the offer in writing.
4. **Ask yourself who you're really dealing with** – scammers pose as people or organisations that you know and trust.
5. **Don't let scammers push your buttons** – scammers will play on your emotions to get what they want, including adopting a personal touch.
6. **Keep your computer secure** – always update your firewall, anti-virus and anti-spyware software, and only buy from a verified source.
7. **Only pay online using a secure payment service** – look for a URL starting with 'https' and a closed padlock symbol.
8. **Never send money to someone you don't know and trust** – it's rare to recover money from a scammer.
9. **Protect your identity** – your personal details are private and invaluable; keep them that way and away from scammers.
10. **If you've spotted a scam, spread the word!** – tell your family and friends, and report it to SCAMwatch – www.scamwatch.gov.au.

Regulation, compliance and enforcement

The Australian Consumer Law is applied at the Commonwealth level and in each state and territory. Compliance and enforcement with the law is on a ‘one-law, multiple regulators’ model, with existing consumer regulators enforcing the uniform law.

The following agencies enforce provisions relating to consumer goods and services:

- > Australian Competition and Consumer Commission (ACCC) – for details see page 24.
- > NSW Fair Trading – for details see page 25.
- > other state and territory consumer protection agencies
- > ASIC has particular jurisdiction in relation to financial products and services, such as contracts for banking services, home loans or credit cards – for details see page 25.

COMPLIANCE

ACL regulators aim to promote a high level of compliance with the law. For this, both consumers and traders need to be aware of their rights and responsibilities, and how to obtain redress. Providing information and advice to consumers and traders for this purpose is a key function of ACL regulators. To be effective, compliance measures must be supported by a wide range of escalating enforcement options that can be used if a trader fails to comply or when there is a serious contravention of the ACL.

ENFORCEMENT

The Australian Consumer Law (ACL) includes enforcement powers, penalties and remedies that can apply for breaches or suspected breaches of the ACL: Chapter 5. As mentioned above, the ACL operates under an arrangement described as ‘multiple regulator model’, which means that the ACL is a single national law enforced in all jurisdictions by the various jurisdictions’ consumer regulators.

ACL regulators use a range of activities and powers to encourage and enforce compliance with the law. A core issue for regulators is to minimise consumer detriment. ACL regulators may act to address actual detriment or the risk or potential of detriment.

Hot tip: Consumer detriment

Consumer detriment is:

- > the direct financial or material loss or disadvantage from a trader not complying with the law (for example, goods damaged or not delivered)
- > costs incurred in seeking a remedy to the loss (for example, time lost in repeated trips to a trader to seek a refund).

Criminal prosecution for breaches of the law is only one of a range of approaches ACL regulators may take to ensure compliance with the law. Other tools and strategies include:

- > education, advice and influencing good practice
- > voluntary industry self-regulation codes
- > ‘without prejudice’ discussions
- > dispute resolution
- > formal written warnings
- > infringement notices
- > enforceable undertakings
- > public warnings
- > court orders
- > injunctions
- > compensation orders
- > civil penalties, including pecuniary penalties and disqualification orders.

Setting priorities

ACL regulators will give enforcement priority to matters that demonstrate one or more of the following:

- > conduct of public interest or concern
- > conduct resulting in significant consumer detriment
- > conduct affecting disadvantaged or vulnerable consumer groups
- > conduct that suggests a pattern of non-compliance by the trader or is indicative of a risk of future misconduct
- > conduct that is industry-wide, or likely to become so
- > whether action is likely to have a worthwhile educative or deterrent effect
- > conduct that demonstrates a blatant disregard for the law.

ACL regulators are less likely to pursue matters that:

- > are one-off, isolated events, unless the conduct involves a blatant and deliberate breach of the law
- > are more appropriately resolved directly between the parties under an industry code (for example, by way of mediation)
- > involve issues more effectively dealt with at the local level by state and territory agencies (for example by way of individual dispute resolution of a complaint)
- > are primarily contractual or private right disputes (the *Competition and Consumer Act* provides complainants with a private right of action in these circumstances).

Hot tip: ACL – new enforcement powers

A range of new enforcement powers are available to regulators under the ACL.

Undertakings – a regulator may accept a court-enforceable undertaking, eg if a person becomes aware that they may have breached the ACL, they may offer an undertaking that certain conduct will not occur again. A regulator is not obliged to accept the undertaking (section 218).

Substantiation notices – this is a tool to seek information about claims or representations in the marketplace; regulators can issue a notice to a business to provide information or documents to support a claim.

Public warning notices – regulators can issue a notice warning the public about conduct which may be detrimental (section 223).

Infringement notices – the ACCC or ASIC can issue infringement notices for suspected breaches of the ACL.

DISPUTE RESOLUTION

State and territory ACL regulators play an important role in resolving disputes between consumers and traders about good and services covered by the ACL. Each regulator provides information on its website about dispute. For more information on dispute resolution processes provided by Fair Trading and the CTTT see pages 25 and 26.

PRIVATE RIGHTS

Aside from compliance and enforcement by ACL regulators, the ACL creates private rights that persons can enforce through Commonwealth, state and territory courts and tribunals.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

The Australian Competition and Consumer Commission (ACCC) is a national independent statutory authority. It was formed in 1995 to administer the *Trade Practices Act 1974* (renamed the *Competition and Consumer Act 2010* on 1 January 2011) and other Acts. The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure industries. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws.

In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies (NSW Fair Trading in New South Wales), which administer the mirror legislation of their jurisdictions, and the Competition and Consumer Policy Division of the Commonwealth Treasury. As well as education and information the ACCC recommends dispute resolution when possible as an alternative to litigation, can authorise some anti-competitive conduct and will take legal action where necessary. It provides a range of plain language publications, most available on its website. ACCC initiatives include promoting consumer education in rural areas and with Indigenous communities.

Enforcement role

The *Competition and Consumer Act* provides the ACCC with a range of enforcement remedies, including court-based outcomes and court enforceable undertakings. The ACCC also resolves many matters administratively.

In enforcing the provisions of the *Competition and Consumer Act*, the ACCC's primary aims are to:

- > stop the unlawful conduct
- > deter future offending conduct
- > undo the harm caused by the contravening conduct (for example by corrective advertising or restitution for consumers and businesses adversely affected)
- > encourage the effective use of compliance systems
- > where warranted, punish the wrongdoer by the imposition of penalties or fines.

The ACCC relies on complaints to identify issues and inform its compliance and enforcement activities, however, the ACCC cannot pursue all the complaints it receives. The ACCC is unlikely to become involved in resolving individual disputes, or disputes that are more appropriately resolved directly between the parties under an industry code (for example through mediation).

While all complaints are carefully considered, the ACCC's role is to focus on widespread consumer detriment and the ACCC exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for consumers. The ACCC's Compliance and Enforcement Policy is available from their website.

NEW SOUTH WALES FAIR TRADING

NSW Fair Trading is the regulator under a large number of laws governing a wide range of businesses and other activities affecting consumers, tenants and not-for-profit organisations. It was established under the *Fair Trading Act 1987* (NSW). NSW Fair Trading administers fair trading laws, including but not limited to the ACL.

NSW Fair Trading looks after the rights of consumers, providing information and advice to consumers on their rights and how to obtain redress, as well as mediation services. At the same time it advises businesses and traders on fair and ethical practices with the aim of achieving fairness for all in the marketplace. Informing consumers and traders about their rights and responsibilities is an essential ingredient of its work.

NSW Fair Trading investigates suspected breaches of the ACL and uses dispute resolution as an important part of dealing with complaints from consumers and traders.

NSW FAIR TRADING DISPUTE RESOLUTION

NSW Fair Trading acts as an impartial body in disputes between consumers and traders on fair trading issues. Should an issue arise, in the first instance, consumers are encouraged to approach the trader to discuss the issue and attempt to resolve the matter. If a resolution cannot be achieved, consumers are then able to approach NSW Fair Trading to intervene and mediate the dispute.

Upon receipt of a written complaint, staff from NSW Fair Trading will attempt to resolve the matter through a dispute resolution process, which involves assessing the matter and negotiating between both parties. While Fair Trading's intervention into a complaint often results in resolution, in some cases it is not possible to reach an agreement that is satisfactory to both the consumer and the trader. In such cases, Fair Trading advises the consumer of other options available to them including, where appropriate, lodgement of a claim with the Consumer Trader and Tenancy Tribunal.

If matters such as misconduct or breaches of legislation are detected during the dispute resolution process, further assessments may be conducted to determine the most suitable course of action to rectify such issues, including possible investigation into the trader.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The Australian Securities and Investments Commission (ASIC) is Australia's corporate, markets and financial services regulator, ensuring that Australia's financial markets are fair and transparent, and supported by confident and informed investors and consumers. ASIC is an independent Commonwealth Government body, set up under and in order to administer the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It also administers, among other legislation, significant parts of the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*. Aspects of the Australian Consumer Law are mirrored in the ASIC Act, to protect consumers of financial products and services.

As mentioned above, ASIC's particular ACL jurisdiction relates to financial products and financial services, as the ACL unfair contract term provisions apply to standard form consumer contracts for financial products and financial services such as contracts for banking services, home loans or credit cards. ASIC, the ACCC and state and territory consumer protection agencies work together to ensure consistency in the approach to the unfair contract terms provisions, and the consumer law more generally.

ASIC is generally responsible for dealing with contraventions of the unconscionable conduct or consumer protection provisions of the ASIC Act and the *National Credit Act*, and can for example issue infringement notices which will result in financial penalties.

Enforcement role

ASIC can pursue a variety of enforcement remedies, depending on the seriousness and consequences of the misconduct. Some remedies involve relatively minor consequences while others will be serious, such as imprisonment and high monetary penalties. ASIC can take enforcement action designed to punish wrongdoers, protect investors, preserve assets, correct disclosures or compensate people. It can also try to resolve matters through negotiation or issuing infringement notices. ASIC's decision on whether to take enforcement action is based on assessing the evidence, the cost versus regulatory benefit, and the level of harm or loss.⁸

ASIC might, in some cases, take protective action that is primarily designed to protect investors and financial consumers, rather than punish those involved in breaches of the law. Examples of these remedies are a ban on providing financial services or engaging in credit activities; revocation, suspension or variation of conditions of a licence; and public warning notices.

In cases where a consumer has a problem with their financial services provider, they should first make a complaint directly to the provider. If the complaint cannot be resolved that way, the consumer can take the complaint to an external dispute resolution scheme. They can also make a complaint directly to ASIC.

8. For more information on ASIC enforcement powers generally see ASIC Information Sheet 151: ASIC's approach to enforcement (INFO 151) available at www.asic.gov.au.

Most financial services businesses licensed by ASIC must belong to an independent complaints scheme. There are three independent complaints schemes that cover different areas of the financial services industry:

- > Financial Ombudsman Service (FOS)
- > Credit Ombudsman Service Ltd (COSL)
- > Superannuation Complaints Tribunal.

The role of independent complaints schemes is to resolve complaints that cannot be settled directly between the consumer and the business. A business must accept the final decision of the complaints scheme if the consumer does. If the consumer does not agree with the decision, they can take the matter to court.

CTTT'S DISPUTE RESOLUTION PROCESS

Stage 1: Application

When the parties to a dispute cannot resolve it on their own, they can apply to have their matter listed at the CTTT. An application form for the appropriate Division needs to be lodged along with payment for the application fee. The CTTT sends the parties a letter advising them of the place, date and time to attend the hearing.

Stage 2: Conciliation

When the parties arrive at the CTTT on the hearing day they must first try to reach agreement through conciliation. Although conciliation by definition is a voluntary process, the *Consumer Trader and Tenancy Tribunal Act 2001* requires the CTTT to try to bring parties to a settlement before the CTTT is permitted to hear their arguments.

During the conciliation process, the parties have an opportunity to look at each other's evidence, discuss the strengths and weaknesses of their cases and try to search for mutually acceptable solutions. Where possible, the CTTT provides conciliators who actively assist the parties in their negotiations. In many cases, the dispute can be settled at this stage and there is no need to take the matter any further.

If an agreement is reached during the conciliation session, a formal order will be made in accordance with the agreement. If an agreement is not reached, a Tribunal member will listen to both parties' arguments and will impose an enforceable decision.

The main benefit of conciliation is that disputes can be dealt with quickly. Conciliation also gives parties greater control over the outcome because settlement at this stage alleviates the need to have a decision imposed on them by the CTTT.

Stage 3: Hearing

Both parties are required to attend the hearing. In circumstances where parties have a good reason for non-attendance such as a medically certified reason, flexible arrangements such as telephone conferences can be made.

If a party fails to attend (without contacted the CTTT to make alternative arrangements), the CTTT has the power to make orders in their absence. These are commonly known as 'ex parte' orders.

During a hearing, the Tribunal member's role is to control the proceedings and to direct the discussion. The parties are allowed to tell their side of the story, present their evidence and then ask questions of each other. The CTTT is not bound by the technical rules of evidence that operate in courts. For example, the member can ask questions and can inquire into any matter that he or she feels fit, provided that that the inquiry does not unfairly disadvantage either of the parties.

In normal circumstances, parties are required to run their own cases in the CTTT without legal representation. This reflects the ideal of keeping proceedings affordable, informal and uncomplicated by legal jargon.

After both parties have presented their case, the Tribunal Member will make a decision and give reasons. Sometimes the decision is 'reserved' meaning that it will be handed down at a later date.

Stage 4: Rehearings and appeals

If a party is not satisfied with the decision of the CTTT, they can lodge an application to have the matter reheard. A rehearing is not automatically granted. In order to be successful, the party seeking the rehearing must show that they have suffered a substantial injustice because:

- > the decision of the CTTT was not fair and equitable; or
- > the decision was against the weight of evidence; or
- > significant new evidence has arisen.

Ultimately, the Chairperson has the discretion to grant or dismiss applications for rehearings.

Parties who are not happy with the outcome of the hearing also have the option of lodging an appeal with the District Court. Appeals to the District Court must only be about errors made by the CTTT in applying the law. The *Consumer Trader and Tenancy Tribunal Act 2001* does not permit parties to lodge appeals about the merits of their case.

CONSUMER TRADER AND TENANCY TRIBUNAL

The NSW Consumer, Trader and Tenancy Tribunal (CTTT)⁹ is a low-cost and accessible service for the resolution of a wide range of everyday disputes between consumers and traders, and disputes about residential property.

The CTTT uses alternative dispute resolution methods such as conciliation to help parties settle their disputes, by negotiating and reaching an agreement often without the need for a hearing. CTTT hearings are designed so that parties can generally run their case without legal representation. Orders made are final and binding, and are legally enforceable.

Disputes are resolved in one of the following Divisions:

- > **Commercial** – disputes about agricultural tenancies, commission fees, Travel Compensation Fund appeals and some credit matters.
- > **General** – consumer claims about the supply of goods and services. Also includes disputes about conveyancing costs, pawnbroker stolen goods and holiday park long-term occupancy.

- > **Home building** – disputes between home owners, tradespeople and insurers about residential building work.
- > **Motor vehicles** – consumer claims about vehicles purchased from a motor dealer or repairs.
- > **Residential parks** – disputes between residential park residents and owners.
- > **Retirement villages** – disputes between retirement village residents and operators.
- > **Social housing** – social housing tenancy disputes between social housing or community housing providers, tenants and occupants.
- > **Strata and community schemes** – disputes about strata scheme and community scheme living.
- > **Tenancy** – disputes between landlords, tenants and occupants such as rental bond claims, repairs, non-payment of rent and termination of a tenancy.

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Photo provided courtesy of the CTTT.

9. The CTTT looks set to become part of a new 'super-tribunal' which will integrate 23 of the state's tribunals into a new NSW Civil and Administrative Tribunal; see the Attorney-General's media release of 26 October 2012 at <http://www.nswbar.asn.au/circulars/2012/oct/tribunals.pdf>

Further information

The **Legal information Access Centre (LIAC)** in the State Library offers a free service to help you find information about the law, including cases and legislation. See the back cover for details. Resources on this area of law include *The Australian Consumer Law*, S G Corones, 2nd ed., Lawbook, 2013; Competition and Consumer Law looseleaf services (CCH and LawBook); Consumer rights, Vol 2, *Lawyers Practice Manual NSW*, Thomson Reuters.



Visit LIAC's **Find Legal Answers** website:
www.legalanswers.sl.nsw.gov.au

You will find the **Legal Studies Research** guide under the 'HSC Legal Studies' tab.

Use our **HSC Legal Studies News Watch** blog to find the latest information:

http://blog.sl.nsw.gov.au/hsc_legal_studies/

Product Safety Australia

www.productsafety.gov.au

Information on the product safety system, standards, bans and recalls.

LawAccess NSW

www.lawaccess.nsw.gov.au

LawAccess NSW is a free government telephone service that provides legal information, referrals and sometimes advice for people who have a legal problem in NSW.

Tel: 1300 888 529

Legal Aid NSW

www.legalaid.nsw.gov.au

Tel: 1300 888 529

Telephone typewriter access: 1300 889 529

Translator and Interpreter Service: 131 450

Community legal centres

www.clcsw.org.au/clc_directory.php

The Community Legal Centres NSW directory lists the contact details of New South Wales legal centres.

Consumer Credit Legal Centre

cclc.nsw.org.au

A community legal centre specialising in financial problems, such as credit and debt.

Credit & debt Hot line: 1800 007 007

Australian Consumers Association

www.choice.com.au

T: 1800 069 552

Financial Ombudsman Service (FOS)

www.fos.org.au

1300 780 808

Credit Ombudsman Service Ltd (COSL)

www.cosl.com.au

1300 780 808 or 1800 138 422

Superannuation Complaints Tribunal (SCT)

www.sct.gov.au

1300 884 114 or 03 8635 5580

Telecommunications Industry Ombudsman

www.tio.com.au

T: 1800 062 058

National Financial Counselling Hotline

www.financialcounsellingaustralia.org.au

T: 1800 007 007

Australian Competition and Consumer Commission

www.accc.gov.au

GPO Box 3131
Canberra ACT 2601
T: 1300 302 502

MoneySmart

www.moneysmart.gov.au

This website is run by ASIC and provides lots of information, tools and calculators to help consumers with better ways to manage their money.

NSW Fair Trading

www.fairtrading.nsw.gov.au

P.O. Box 972
Parramatta NSW 2124
T: 13 32 20 or (02) 9895-0111

twitter.com/#!/NSW_FairTrading

Australian Securities and Investments Commission

www.asic.gov.au

PO Box 9827
Sydney NSW 2001
ASIC Infoline 1300 300 630

SCAMwatch

www.scamwatch.gov.au

The SCAMwatch Infocentre: 1300 795 995

Follow SCAMwatch on Twitter at @scamwatch_gov or twitter.com/SCAMwatch_gov.

(an electronic version of the *Little Black Book of Scams* can be downloaded from this website)

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83 Consumer law

This issue looks at the new national consumer legislation, the Australian Consumer law (ACL), which provides new laws relating to product safety, unfair contract terms, national consumer guarantees, door-to-door sales, lay-by agreements and information standards for services as well as products. The issue looks at the complexity of creating this national legislation and what the changes mean.

82 Families

This issue looks at the different concepts attached to the idea of 'family'. Some families are vulnerable and require more support, while some undergo changes such as separation, divorce and repartnering. It looks at money and property after separation, child support, adoption and courts dealing with family issues.

81 Child care and protection

Responsibility for decisions about a child's health, schooling and cultural upbringing in Australia generally lies with parents; but when families cannot provide adequate care and protection for their children, the State may intervene in various ways. This issue discusses Australia's obligations to implement and report under the UN Convention on the Rights of the Child, as well as parental responsibility, children in out-of-home care and initiatives to improve protection for children.

80 International humanitarian law

IHL is the branch of international law that deals with armed conflict. It seeks to place limitation on the damaging effects of armed conflict especially on the vulnerable and to impose restrictions on the means and methods of warfare that are permissible.

79 Australian legal system

An overview of the elements of our system and how it developed, covering how law is made, what the law deals with and the roles of the legislature, judiciary and executive. Information on the Australian legal system is rarely to be found in a single publication and in a reader-friendly accessible format.

78 You and your lawyer

Having a legal problem can be intimidating. This issue will help you to understand the role of lawyers, and the help provided by other organisations in the legal services sector. It includes practical information about how to work with a lawyer, lawyers, duties, ethics, costs and complaints.

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All other issues have now been withdrawn.

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