

Maintaining consistency with the Australian Consumer Law

A guide to maintaining a harmonised and consistent approach when developing and reviewing legislation.

Australia's principal consumer law — the Australian Consumer Law (ACL) is a single, harmonised law, which applies in each State and Territory. The ACL aims to protect consumers and ensure fair trading in Australia.

Objective

Maintaining the integrity of the ACL is an ongoing responsibility of all Australian governments. The 2009 *Intergovernmental Agreement for the Australian Consumer Law* (IGA) provides that the Commonwealth, States and Territories should endeavour to repeal, amend or modify any legislation that is inconsistent with or alters the effect of the ACL.

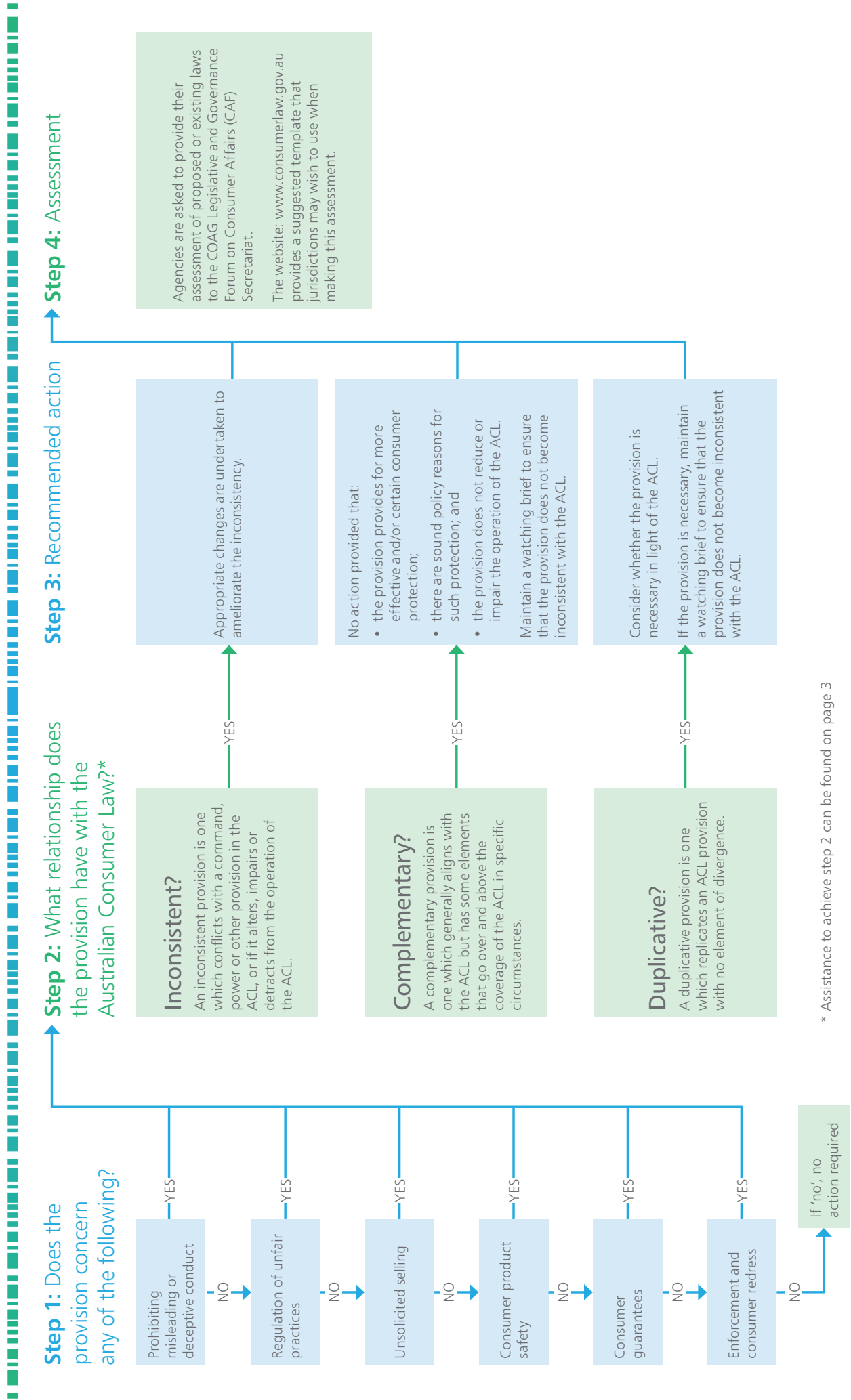
Approach

This Guide, through a principles-based approach, provides guiding principles to assist State, Territory and Commonwealth agencies to identify whether proposed or existing legislation under review is inconsistent with or alters the effect of the ACL. A principles-based approach will allow for jurisdictions to maintain flexibility in how they deliver the objective of this Guide.

Policy officers in all areas of government are encouraged to use this Guide to assist them when undertaking an assessment as to whether prospective or current legislation under review conflicts with the ACL. Links to the scope of the ACL's protections are provided.

Preserving a national, effective consumer law has significant benefits for both consumers and business.

Identifying provisions which are 'inconsistent with or alter the effect of the Australian Consumer Law'



* Assistance to achieve step 2 can be found on page 3

Scope of the Australian Consumer Law

The ACL commenced on 1 January 2011 in all Australian States and Territories. The ACL harmonised the former core consumer protection provisions of the *Trade Practices Act 1974* (Cth) and State and Territory fair trading laws.

The full text of the ACL is set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

The publication, *The Australian Consumer Law: A framework overview*, available on the website: www.consumerlaw.gov.au provides a 'summary' of the protections and obligations within the ACL. Specific guides on the following ACL provisions are also available:

- Unfair business practices
- Consumer guarantees
- Product safety
- Sales practices
- Unfair contract terms
- Compliance and enforcement.

Definitions

Inconsistent provisions

Acts, subordinate legislation, quasi-regulation and co-regulation may all be considered to be 'legislation' which may be inconsistent with or alter the effect of the ACL.

A provision is **inconsistent with or alters the effect of** the ACL if it conflicts with a command, power or other provision in the ACL, or if it alters, impairs or detracts from the operation of the ACL. Specifically, an inconsistency may be identified where:

- the proposed or existing law cannot be followed at the same time as the ACL;
- the ACL permits a certain activity, prohibited by the proposed or existing law; or
- the ACL confers a right or protection which the proposed or existing law seeks to remove.

It is critical that the substantial benefits to consumers and businesses from the ACL reforms are not undermined by the ongoing application or enactment of inconsistent industry-specific laws.

Where possible, an inconsistent provision with the ACL should be repealed or amended so that there is no conflict between the laws.

Duplicative provisions

Duplicative provisions are those which replicate the ACL with no divergence. While such laws may be framed in another way or only concern itself with the industry at hand, they provide the same obligations and/or protections as the ACL.

While duplicative provisions are strictly not inconsistent with, or alter the effect of the ACL, if left unattended they could become inconsistent over time if amendments to the ACL or the law in question are passed.

Duplicative laws can lead to confusion among suppliers and customers as to their rights and obligations.

If on policy grounds the provision is necessary, agencies are encouraged to maintain a watching brief to ensure that the duplicative provision does not become inconsistent with the ACL.

Complementary provisions

Complementary provisions are those which generally align with the ACL but have some elements that go over and above what the ACL provides for, in specified circumstances. Complementary provisions are not strictly inconsistent with, or alter the effect of the ACL.

Clear policy rationale

As the ACL represents the benchmark for consumer protection and fair trading in Australia, industry-specific consumer laws should only have the effect of supplementing or extending the generic consumer laws, where there is a clear policy rationale. A complementary provision may be warranted:

- where the quality or features of the good or service is hard to ascertain prior to purchase;
 - Credence goods are those goods whose attributes or qualities cannot be determined by the purchaser even after purchase and use.
 - Experience goods are those goods whose attributes or qualities can only be observed after use. This rationale is used for many licensing regimes and for establishing separate standards for technically complex products or highly complex issues (such as food safety regulation);
- to ensure a good is safe, pre-market product testing or certification is required. This is typical for electrical products, industrial chemicals and medicines; or
- to ensure consumers are adequately informed about certain characteristics of a good or service prior to purchase.

In many instances, complementary provisions are part of a broader sector specific framework which also establishes and provides enforcement powers to sector specific regulators.

Design principles

A complementary provision should not reduce or impair the operation of the ACL.

If a need for, or retention of, industry-specific consumer protection regulation has been established, it is recommended that:

- the activities which are covered are clearly identified;
- its requirements should aim to complement, rather than duplicate the ACL generic provisions; and
- the industry-specific regulation is sufficiently flexible to accommodate changes in the market concerned.

If on policy grounds the provision is necessary, agencies are encouraged to maintain a watching brief to ensure that the complementary provision does not become inconsistent with the ACL.

Assessment

Agencies are asked to provide their assessment via the suggested form available at the website www.consumerlaw.gov.au or other report or comments via email to the COAG Legislative and Governance Forum on Consumer Affairs (CAF) Secretariat.



Australian Government
The Treasury



Australian
Competition &
Consumer
Commission



ASIC

Australian Securities & Investments Commission



Fair
Trading



Queensland
Government



Government of **Western Australia**
Department of **Commerce**
Consumer Protection



Government of South Australia
Office of Consumer and
Business Affairs



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Northern
Territory
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