

Implementation of the Australian Consumer Law

Report on progress III (2012-13)

November 2013

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ISBN 978-0-642-74943-7

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LETTER TO THE CHAIR OF CAF, THE HON JARROD BLEIJIE MP

The Hon Jarrod Bleijie MP
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November 2013

Dear Minister

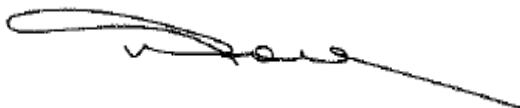
The Australian Consumer Law (ACL) was introduced on 1 January 2011 and this third report on progress provides an update on its ongoing implementation. It highlights the work that Australia's consumer agencies have undertaken to more closely integrate compliance, enforcement and education operations.

In 2012-13, a key focus for consumer agencies has been to continue efforts to strengthen and consolidate the collaborative leadership model for the ACL. By working together, Australia's consumer agencies seek to ensure that consumers across Australia have access to uniform protection from unfair trade practices through the multi-regulator model of the ACL.

Commonwealth, state and territory officials have worked collaboratively on a range of initiatives through Consumer Affairs Australia and New Zealand (CAANZ) and its advisory committees. This work includes:

- a continuation of efforts to implement and transition to the ACL including the progression of key policy and research initiatives such as amendments to the component pricing provision and travel services reform;
- communication and education activities to disseminate information to Australian consumers and businesses about their rights and obligations under the ACL, including to culturally and linguistically diverse communities;
- closer integration of compliance and enforcement operations through national efforts towards an Australia-wide complaint reporting and resolution program; and
- the coordination of national strategies to reduce the risk of product related injury and death.

This report includes a number of illustrative case studies that highlight the coordinated policy development, education and enforcement initiatives of Australia's consumer agencies from 1 July 2012 to 30 June 2013. I am pleased to provide this report on behalf of CAANZ.



David Ford
Chair, Consumer Affairs Australia and New Zealand

Consumer Affairs Australia and New Zealand (CAANZ)

CAANZ is made up of the senior officers responsible for consumer policy and enforcement in the Australian Treasury, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, NSW Fair Trading, Consumer Affairs Victoria, the QLD Office of Fair Trading, WA Department of Commerce, SA Consumer and Business Services, TAS Office of Consumer Affairs and Fair Trading, the ACT Office of Regulatory Services, NT Consumer Affairs and the New Zealand Ministry of Business, Innovation and Employment.

GLOSSARY OF TERMS

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CAANZ	Consumer Affairs Australia and New Zealand
CAF	COAG Governance and Legislative Forum on Consumer Affairs
CAV	Consumer Affairs Victoria
CBS	Consumer and Business Services, South Australia
CCA	<i>Competition and Consumer Act 2010</i>
CDRAC	Compliance and Dispute Resolution Advisory Committee
COAG	Council of Australian Governments
CPWA	Consumer Protection Western Australia
EIAC	Education and Information Advisory Committee
FTOG	Fair Trading Operations Group (part of CDRAC)
IGA	<i>Intergovernmental Agreement for the Australian Consumer Law, signed by members of the Council of Australian Governments on 2 July 2009</i>
OFT	Office of Fair Trading
PC	Productivity Commission
PRAC	Policy and Research Advisory Committee
PSCC	Product Safety Consultative Committee
TPA	<i>Trade Practices Act 1974 (now the CCA)</i>

EXECUTIVE SUMMARY

THE MULTI-REGULATOR MODEL OF THE ACL

Since the commencement of the Australian Consumer Law (ACL) on 1 January 2011, consumer agencies across Australia have worked together to support greater cooperation in enforcement, education, policy and research. Consumer agencies have built on harmonisation and coordination efforts by moving towards a more closely integrated operational model to support the ACL. The cooperative decision-making approach for the ACL has supported a nationally consistent approach to consumer protection challenges, while closer integration of compliance and enforcement operations has ensured that Australian consumers are afforded consistent protection against unfair trade practices. In turn, Australian businesses have benefited from greater consistency in the application of consumer law, and the coordinated approach to compliance and enforcement has streamlined businesses' engagement with Australia's consumer regulators.

A STRENGTHENED CONSUMER PROTECTION FRAMEWORK

Consumer agencies have continued work to build on the consumer policy evidence base, strengthen and improve Australia's consumer protection framework and deliver on strategic goals. Key work has included the formation of a working party to progress travel services reform, consideration of petrol price board signage, commencement of preparation for the scheduled 2016 implementation review of the ACL and consideration of component pricing amendments.

FOCUSSED EDUCATION AND INFORMATION

Education and information activities have improved consumer awareness of the ACL by focussing on consumers' understanding of their rights, and have complemented the compliance activities of consumer agencies by assisting businesses to meet their obligations. Key communications strategies were delivered, including the publications: *Small business self-assessment checklist* and *My consumer rights*, and the development of industry guides.

TARGETED COMPLIANCE AND DISPUTE RESOLUTION

Consumer agencies have progressed work on a range of national projects and have considered a number of consumer protection challenges including in relation to extended warranties, food labelling, energy switching, Indigenous consumer issues, travelling conmen, group buying, and dispute resolution.

A NATIONAL PRODUCT SAFETY APPROACH

Consumer agencies have continued to promote, maintain and achieve compliance with Australia's product safety system. Key work has included projects relating to sunglasses, sporting goods, ember protection for evaporative air conditioners and research into the safety of quad bikes. In the emerging hazards area, the Product Safety Consultative Committee (PSCC) developed an urgent response framework, introduced a report on deaths and severe injuries associated with consumer goods and coordinated a national response to hazards posed by small powerful magnets and synthetic drugs.

INTRODUCTION

The Australian Consumer Law (ACL) commenced on 1 January 2011. The ACL harmonised the consumer protection provisions of the *Trade Practices Act 1974* (TPA) and previous state and territory fair trading laws. Since the commencement of the ACL, consumer agencies across Australia have worked together to support greater cooperation in enforcement, education, policy and research activities.

In 2012-13, consumer agencies have built on harmonisation and coordination efforts by moving towards a more closely integrated operational model to support the ACL. The cooperative decision-making approach for the ACL has supported a nationally consistent approach to consumer protection challenges, while closer integration of compliance and enforcement operations has ensured that Australian consumers are afforded consistent protection against unfair trade practices. In turn, Australian businesses have benefited from greater consistency in the application of consumer law, and the coordinated approach to compliance and enforcement has streamlined businesses' engagement with Australia's consumer regulators.

THE AUSTRALIAN CONSUMER LAW

The full text of the ACL is set out in Schedule 2 of the *Competition and Consumer Act 2010*, which is the principal consumer protection law in Australia. The ACL includes:

- core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms;
- specific prohibitions or regulation of unfair practices based on best practice in state and territory consumer protection laws, including pyramid selling, unsolicited supplies of goods and services, component pricing and the provision of bills and receipts;
- an integrated and harmonised legal framework for unsolicited selling, including door-to-door trading and telephone sales;
- a national law for consumer product safety;
- a system of statutory consumer guarantees; and
- strengthened enforcement and consumer redress provisions.

The ACL is a single, integrated and harmonised consumer law, which replaces approximately 900 substantive provisions of at least 20 national, state and territory Acts. It means that all consumers in Australia have the same rights and all businesses have the same obligations, irrespective of the state or territory in which they engage in transactions. Further information about the ACL is available at www.consumerlaw.gov.au.

PURPOSE AND STRUCTURE OF THIS REPORT

This report provides an update on the work of the Commonwealth and the states and territories in implementing, strengthening and improving the ACL. This report highlights the enhanced coordination between consumer agencies and consistent approaches to consumer issues, in accordance with the National Consumer Policy Objective:

[t]o improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.¹

Further information on the National Consumer Policy Objective, the Intergovernmental Agreement for the Australian Consumer Law (IGA) and Australia's consumer agencies can be found at Appendix item 1. This report draws on the work engaged in by each jurisdiction through the governance arrangements for the ACL as outlined in Figure 1.

This report will begin by outlining the cooperative decision-making approach before providing an update of progress on consumer policy and research, education and information, compliance and dispute resolution, and product safety. Selected case studies have been provided to illustrate the achievements and key work in 2012-13.²

A COOPERATIVE DECISION-MAKING APPROACH

The COAG Legislative and Governance Forum on Consumer Affairs (CAF) has been established to administer Commonwealth, state and territory Consumer Affairs Ministers' collective responsibilities under the IGA. Consumer Affairs Australia and New Zealand (CAANZ) is the principal national forum for day-to-day policy and enforcement cooperation and coordination between consumer agencies. CAANZ is supported by four advisory and consultative committees.

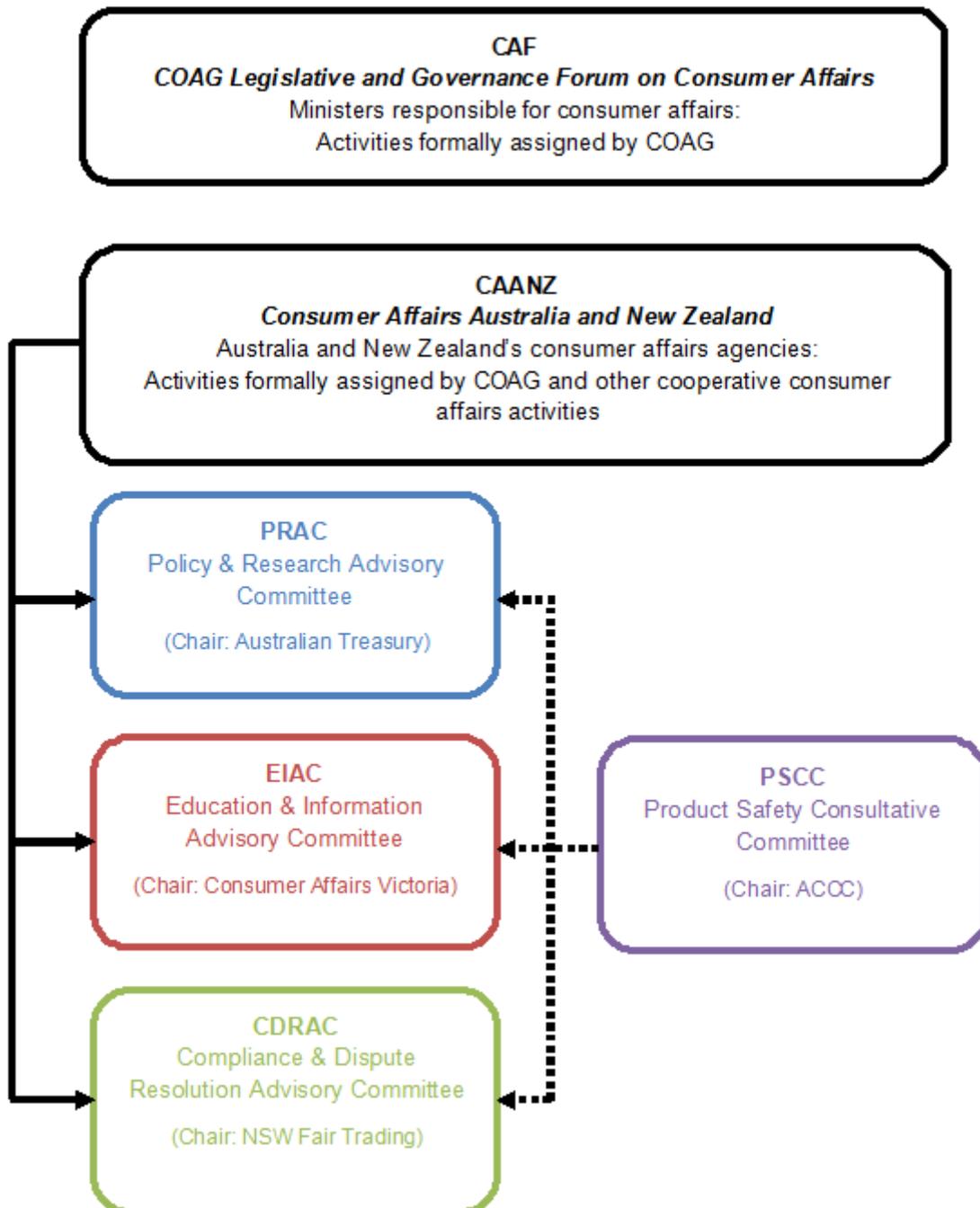
- The **Policy and Research Advisory Committee (PRAC)** focuses on the development of common policy approaches to national consumer issues, particularly as they relate to the ACL, and on coordinating the development of any amendments to the ACL. PRAC also conducts national consumer policy research.
- The **Education and Information Advisory Committee (EIAC)** focuses on national cooperation and coordination for education and information activities relating to the ACL and consumer issues more generally.
- The **Compliance and Dispute Resolution Advisory Committee (CDRAC)** focuses on national cooperation and coordination for compliance, dispute resolution and enforcement activities relating to the ACL. CDRAC is supported by a Fair Trading Operations Group (FTOG), which deals with day-to-day liaison on enforcement issues.
- The **Product Safety Consultative Committee (PSCC)** provides a forum for regular engagement with state and territory consumer agencies on product safety policy, enforcement and awareness issues, and engages with the other committees as required.

1 Ministerial Council on Consumer Affairs (2009). *A new approach to consumer policy: Strategy 2010-2012*, p 4.

2 Case studies are intended to highlight key work rather than provide an exhaustive list of work in 2012-13.

Governance papers outline the roles and governance arrangements for CAF, CAANZ and its advisory and consultative committees. This includes the terms of reference, decision-making responsibilities, accountabilities and reporting frameworks for the committees as well as the strategic agenda, goals and priorities for CAF and CAANZ. The governance papers are available at www.consumerlaw.gov.au. Figure 2 at Appendix 1 demonstrates the alignment of CAANZ committees' operational objectives with work undertaken in 2012-13.

Figure 1: CAF governance arrangements



CONSUMER POLICY AND RESEARCH

Summary

In 2012-13, consumer agencies have continued work to build on the consumer policy evidence base, strengthen and improve Australia's consumer protection framework and deliver on strategic goals. Key work included the formation of a working party to progress travel services reform, consideration of petrol price board signage, commencement of preparation for the scheduled 2016 implementation review of the ACL and consideration of component pricing amendments.

OVERVIEW

Following the ACL's commencement on 1 January 2011, PRAC has continued work to build on the consumer policy evidence base and has commenced preliminary work to support the scheduled 2016 implementation review of the ACL.

PRAC has progressed work on a range of projects to reduce business compliance costs by removing unnecessary, outdated or inconsistent regulation. This has included facilitating amendments to reduce compliance costs for the café and restaurant sector in relation to menu surcharges, examining the consistency of information that is provided to consumers on fuel price boards and developing guidelines to ensure that legislation remains consistent with the ACL.

Strengthening the evidence-based approach to consumer policy

A central role for PRAC is to support the consideration of consumer policy issues through an evidence-based approach. In 2012-13, PRAC has progressed work to strengthen and build on existing policy frameworks and to plan for further consumer policy research.

Preliminary planning for the scheduled 2016 implementation review of the ACL commenced with PRAC developing and seeking agreement on the governance arrangements to support the review. This included planning for the necessary evidence base to support an informed implementation review of the performance of Australia's consumer protection framework. Consideration has been given as to what data sets will be required to support the review, including in relation to complaints, education and engagement activities, and compliance and enforcement activities.

PRAC has also had the opportunity to consider consumer research on a range of topics including the Commonwealth Consumer Affairs Advisory Council's (CCAAC) review of app purchases on mobile and handheld devices and the Consumer Action Law Centre's (CALC) Regulator Watch report. PRAC members were also afforded the opportunity to engage with consumer advocacy organisations at the 2013 National Consumer Congress.

An important guide used by PRAC members is the Organisation for Economic Co-operation and Development's (OECD's) *Consumer Policy Toolkit* (the Toolkit). The Toolkit provides a framework for understanding consumer issues, as well as for developing policy responses. PRAC members continued to apply and advocate for the approach to consumer policy

making outlined within the Toolkit, including by ensuring that policy development is evidence based. In doing so, PRAC developed a formal process for considering new policy issues so that agencies can apply the Toolkit's key principles when presenting issues to jurisdictions for further consideration.

Implementing amendments to the ACL and reducing compliance costs

In its monitoring and maintenance role for the ACL, PRAC facilitated amendments to provide a conditional exemption to restaurant and café menu surcharges on specified days (see Case study 1).

PRAC considered the Productivity Commission's recommendation to exempt restaurants and café menus from the component pricing provisions of the ACL. The component pricing provisions of the ACL require businesses making price representations to provide, in a prominent way and as a single figure, the single price for the goods or services. Prior to the amendments made this year, the component pricing provisions covered percentage surcharges applied by restaurants and cafés on public holidays and weekends.

Case study 1 — Component pricing amendments

In its 2010 *Annual Review of Regulatory Burdens on Business: Business and Consumer Services* (the Report), the Productivity Commission recommended that restaurant and café menu surcharges for specific days be placed outside the scope of the component pricing provision of the then *Trade Practices Act 1974* (which is now contained within the ACL). The intention of this recommendation was to reduce red tape for restaurants and cafes by allowing them to continue to be able to apply weekend or public holiday surcharges by listing the surcharge as a percentage of the final bill.

To support state and territory Ministers' consideration of the Productivity Commission recommendation; PRAC facilitated consultation with consumer and industry stakeholders. Further consultation occurred when exposure drafts of legislative amendments and amendments to the *Competition and Consumer Regulations 2010* were released. The final form of the amendments were developed in close consultation with PRAC members.

Following a successful vote under the *Intergovernmental Agreement for the Australian Consumer Law 2009* (IGA), the *Competition and Consumer Amendment Act 2013* (the Act) was introduced into the Commonwealth Parliament on 29 May 2013. The Act amended the component pricing provision in the ACL to insert a regulations making power to enable regulations to be made to exempt certain representations from the component pricing requirement in the ACL.

The Act passed the Parliament and received the Royal Assent on 29 June 2013 and came into effect on 30 June 2013. Following passage of the Act, the *Competition and Consumer Amendment Regulation 2013* (No. 3) was registered on the Federal Register of Legislative Instruments on 16 July 2013 and commenced on 17 July 2013. The Regulation provides a conditional exemption to restaurant and café menu surcharges for specific days from the component pricing requirement in the ACL. To receive the exemption, the percentage amount must be clearly indicated on the menu in the prescribed manner.

Supporting a nationally consistent approach to consumer protection challenges

In 2012-13, PRAC progressed work on the Travel Industry Transition Plan (the Transition Plan) which is expected to reduce the regulatory burden on the travel services sector (see Case study 2). The Transition Plan was approved in light of significant changes in the travel services market and the enhanced consumer protections of the ACL. As part of the Transition Plan, a one-off grant of almost \$2.8 million will be provided to fund the establishment and first year of operation of an industry-led accreditation scheme. A similar amount has been approved for the purposes of consumer research and advocacy initiatives, to be decided on through a contestable grants process.

Case study 2 — Voluntary industry accreditation and travel services reform

On 7 December 2012, a majority of CAF Ministers approved a Travel Industry Transition Plan setting out reforms to travel agents' regulation. The Transition Plan was developed in collaboration with all states and territories and was the subject of a public consultation in August 2012.

All states and territories cooperated to ensure that key activities were completed by 1 July 2013 as part of the first phase of implementing the Transition Plan. These consisted of:

- developing and endorsing a Substitution Trust Deed to replace the existing Travel Compensation Fund Trust Deed; and
- issuing formal withdrawal notices from the existing national regulatory scheme for travel agents.
- These activities were supported by a coordinated communications campaign overseen by EIAC representatives, including a dedicated web page hosted on the ACL website (located at: www.consumerlaw.gov.au), social media posts, FAQs and trade articles.

PRAC also convened a consultative committee to provide the Australian Federation of Travel Agents with a monthly forum to consult with consumer protection regulators, consumer advocate CHOICE and the Department of Resources, Energy and Tourism on its proposed voluntary industry accreditation scheme and address any regulatory concerns prior to the intended launch of its scheme in 2014.

In 2012-13, PRAC members considered an information standard for petrol price boards to enable consumers to make better fuel purchasing decisions. PRAC supported the development of a consultation paper and engaged closely with both stakeholders (see Case study 3).

Case study 3 — Fuel price board signage

At the July 2012 CAF meeting, following concerns that some consumers may experience confusion when viewing prices displayed by fuel retailers, Ministers agreed to consider a national approach to fuel price board signage.

At the December 2012 CAF meeting, Ministers released a CAANZ public consultation paper: *Consumers and Fuel Price Boards*. The consultation paper invited stakeholders to comment and make submissions on options for a national approach to the display of information on fuel price boards. PRAC conducted consultation meetings with large and small fuel retailers, industry associations and motoring organisations, and received 18 written submissions in the first quarter of 2013.

This consultation indicated that while formal complaint data is low, survey data consistently revealed some level of dissatisfaction with some practices in the fuel retailing industry. This included the display of discounted prices that are subject to terms and conditions, the display of discounted prices more prominently than other prices, and when prices on fuel price boards are lower than the prices that consumers must actually pay (for example where there is operator error in price changeover periods).

Following consultation, PRAC members developed options for an information standard to be made under the ACL. Information standards seek to ensure that consumers are provided with relevant and consistent information in relation to a product to enable them to make appropriate choices. An information standard made under the ACL in relation to fuel price boards would aim to lower the transaction costs for consumers when identifying the fuel price that is relevant to them and facilitate easier comparison of prices between fuel sites in a market.

At the July 2013 meeting, CAF Ministers discussed the value of information standards for petrol price boards to assist consumers to make better fuel purchasing decisions. Ministers noted the consultation that had been undertaken with industry and consumer groups to date.

While agreement was not reached over a national information standard, Ministers agreed to undertake further consultation and to revisit this issue at the next CAF meeting.

PRAC was instrumental in the development of a principles-based guide to support jurisdictions' efforts to identify any inconsistencies with the ACL when assessing new legislation or reviewing existing legislation. The guide, *Maintaining consistency with the Australian Consumer Law*, supports CAF Ministers in their commitment to pursue an integrated and harmonised approach to protecting consumers across all states and territories pursuant to clause 3 of the IGA (see Case study 4).

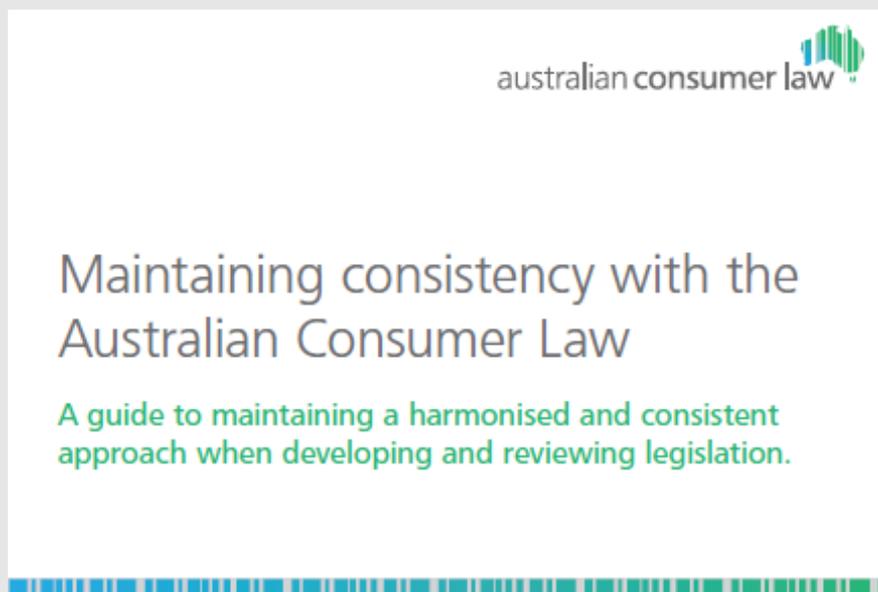
Case study 4 — Maintaining consistency with the Australian Consumer Law

The IGA provides that the Commonwealth, states and territories will endeavour to repeal, amend or modify any legislation that is inconsistent with or alters the effect of the ACL. It also provides that the Ministerial Council on Consumer Affairs (now CAF) develop a process for jurisdictions to review legislation to identify any inconsistencies with the ACL, and as part of this, provide guidelines on the meaning of 'inconsistent with or alters the effect' of the ACL.

The aim of reviewing existing or proposed laws for consistency with the ACL is to reduce red-tape experienced by business.

During the first half of 2013, PRAC developed a principles-based guide: *Maintaining consistency with the Australian Consumer Law*, to assist Commonwealth, state and territory consumer agencies to identify inconsistent, complementary or duplicative provisions in new legislation or existing legislation under review.

The guide is available on the www.consumerlaw.gov.au website and also includes a suggested assessment form that jurisdictions may wish to use when assessing new or existing legislation against the ACL.



Source: <http://www.consumerlaw.gov.au>

EDUCATION AND INFORMATION FOR CONSUMERS AND BUSINESS

Summary

In 2012-13, education and information activities have improved consumer understanding of the ACL by focussing on consumers' understanding of their rights, and have complemented the compliance activities of consumer agencies. Key communications strategies were delivered, including the publications: Small business self-assessment checklist and My consumer rights, and the development of industry guides.

OVERVIEW

The collaborative leadership model for the ACL has provided new opportunities for EIAC to support and promote policy and compliance activities. Resources are developed collaboratively to minimise duplication and distributed nationally to ensure consistent messaging. Consumer agencies continued to engage with consumer advocacy organisations, including through the 2013 National Consumer Congress.

Improving consumer understanding of the ACL

EIAC has used a range of communication tools to disseminate information on the ACL to wide and diverse audiences. For example, EIAC developed the national project: *My consumer rights* – an educational resource kit targeted at newly arrived and emerging communities around Australia. The project involved the development, production and provision of various video and static storyboards in numerous languages, covering key consumer issues such as consumer guarantees, refunds and purchasing rights (see Case study 5). In addition, five videos targeted towards Indigenous consumers were produced by the Australian Competition and Consumer Commission (ACCC), and South Australia produced a 'talking poster' in various Indigenous languages.

The Australian Securities and Investments Commission (ASIC) developed a Money Management Toolkit which comprises a suite of multilingual educational resources for community settlement workers who help new arrivals learn about Australia's financial system. The Money Management Toolkit includes fact sheets, audio and video content and teaching resources. Topics include household budgeting, saving money, paying bills, contracts, banking, credit, debt, insurance and superannuation and ACL focused factsheets on shopping, product safety, door to door sales and scams.

Case study 5 — *My consumer rights* project supporting culturally and linguistically diverse consumers

The *My consumer rights* national project was developed for culturally and linguistically diverse (CALD) communities to raise awareness and understanding about their shopping rights and responsibilities under the ACL, and to promote the existence and availability, roles and obligations of consumer agencies across Australia.

Consultations were undertaken in several major states to identify the target language groups and the key issues experienced by individual communities. The consultations examined language and cultural challenges experienced by CALD communities, and identified how more effective processes for accessing government services could be implemented.

The *My consumer rights* educational resource kit includes a series of animatic videos in seven languages (Arabic, Dinka, English, Farsi, Karen, Nepalese and Tamil). The animatic videos feature the identified consumer rights topics: my shopping rights, shopping refunds, guarantees and warranties, contracts, lay-by agreements, resolving issues and lodging complaints.

The videos outline consumers' basic rights using appropriate language and visual cues to support viewer understanding. The videos use universal symbols and gestures to create animated stories to explain potentially complex subjects. Educators and intermediaries – including English language teachers, settlement services, community workers and community leaders – were consulted to ensure the videos' effectiveness as a resource.

The *My consumer rights* animatic videos are available through YouTube and on agency websites.



Take your time when you shop. Don't be rushed into signing any paperwork.

Source: My Shopping Rights video uploaded to <http://www.youtube.com>

Supporting and promoting compliance activities

In 2012-13, EIAC promoted business compliance with the ACL by improving businesses' understanding of their obligations under the law. A number of communication tools were produced, with consumer agencies working together to develop a series of detailed ACL guides and other educational materials to support the achievement of this priority.

Feedback received from traders during ACL education activities undertaken by consumer agencies revealed that some businesses did not know which sections of the law applied to them. Feedback also revealed that some small businesses did not have sufficient resources, particularly staff or time, to read through detailed education materials. To engage with these businesses, the *Small business self-assessment checklist* (the Checklist) was designed as a quick reference guide, with examples that businesses could readily relate to. The Checklist was launched nationally to coincide with World Consumer Rights Day on Friday 15 March 2013. The Checklist was widely accessed through consumer agencies' social media channels and websites (see Case study 6).

To further assist businesses to understand their ACL rights and obligations, EIAC developed a series of guides aimed at providing an easy-to-use reference tool for operators in the rental car, personal services, travel and accommodation, motor vehicle sales and repairs, and electrical and whitegoods sectors (see Case study 7).

Case study 6 — Small business self-assessment checklist

EIAC developed and produced the *Small business self-assessment checklist* (the Checklist) to reduce confusion and make it easier for businesses to become aware of their rights and obligations under the ACL.

The Checklist was designed as an interactive online tool for businesses to conduct a self-audit to identify which of their business activities are regulated under the ACL. The Checklist also connects businesses to useful information on the ACL.

The Checklist includes 25 questions over three sections relevant to small businesses such as 'setting up your business', 'selling your goods and services' and 'solving your consumer problems'. The Checklist allows businesses to perform self-audits on matters such as contracts, advertising, consumer guarantees, refunds, lay-bys, billing and receipts.

The Checklist was widely distributed with 15,000 copies mailed to consumer agencies for distribution amongst stakeholders and regional offices as well as for use during education and engagement activities. An interactive version of the Checklist was released as a Portable Document Format (PDF) file and is available on consumer agencies' websites across Australia.

Feedback received from businesses indicates that the resource is easy to understand and has supported them in understanding their obligations under the ACL. Consumer agencies have indicated that the Checklist has been effective in supporting existing education activities for businesses and has provided a base for further online small business education programs.

Selling your goods or services

Advertising your goods and services ✓

Q14 Do you understand concepts such as puffery, bait advertising and fine print? Yes No

There are principles that apply to what you say in your advertising and how you say it. To make sure your advertising complies refer to the [Advertising and sales practices](#) guide available from [www.consumerlaw.gov.au](#)

The publication [Advertising and selling](#) available on the [Australian Competition and Consumer Commission \(ACCC\)](#) website [www.accc.gov.au](#) may also be useful when understanding or assessing your advertising and selling activities.

Itemised billing ✓

Q15 Do you supply itemised bills for every transaction? Yes No

If you provide goods or services valued over \$75 (excluding GST) you have to give a proof of transaction, if the value is under \$75 a consumer can still request a proof of transaction and you have seven days to provide it to them.

Q16 Do you provide itemised bills on request? Yes No

Q17 Do you provide this bill free of charge? Yes No

If you answered no to Question 16 or 17, you should be aware that bills must be provided on request and this must be done free of charge.

If your business provides services you should familiarise yourself with the provisions of the ACL relating to itemised billing.

For more information about itemised bills refer to Chapter 8 in the [Sales practices](#) guide available from [www.consumerlaw.gov.au](#)

Giving receipts (proof of transaction) ✓

Q18 Does your proof of transaction do the following? Yes No

- Identify you the supplier, state your ABN and/or ACN (if any), state what was supplied, the date of supply and the price?

If a proof of transaction does not meet those criteria it may not comply with the ACL.

For more information about requirements relating to proof of transaction refer to Chapter 8 in the [Sales practices](#) guide available from [www.consumerlaw.gov.au](#)

Providing lay-by facilities ✓

Q19 Do you have agreements that allow consumers to pay off goods in instalments? Yes No

If you answered 'yes' and:

- you call such agreements lay-bys OR
- you allow the consumers to make three or more instalments to pay for the goods

then the agreements are considered lay-bys under the ACL. There are certain requirements for lay-by agreements, such as that the agreement must be in writing and a copy given to the consumer.

For more information about lay-bys refer to Chapter 5 in the [Sales practices](#) guide available from [www.consumerlaw.gov.au](#)

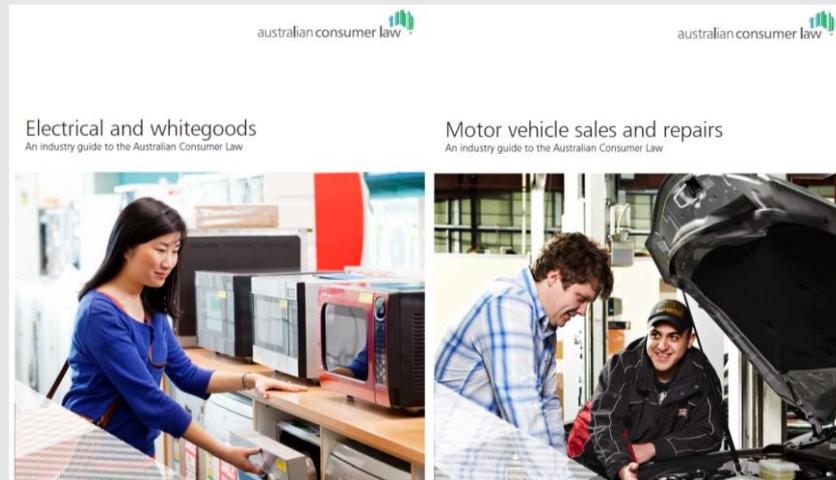
Small business self-assessment checklist

Source: Small business checklist available on consumer agencies' websites

Case study 7 — Industry guides

Industry guides were developed to address key concerns and detriment, encountered by both industry and consumers, that were identified through a survey of EIAC member agencies and feedback from industry organisations. They cover key aspects of the law such as contract terms, deposits, refunds and cancellations, and focus on issues where:

- industry bodies requested more detailed guidance for business; and
- consumers frequently reported problems to national, state and territory consumer agencies.



Source: Industry guides available on agency websites

In addition, the electrical and whitegoods industry guide incorporates information obtained from the 2011-12 CDRAC consumer guarantees national project.

These new industry guides supplement the series of guides developed for business and legal practitioners in 2011 that covered the following areas:

- *A guide to unfair contract terms law;*
- *Avoiding unfair business practices;*
- *Consumer guarantees;*
- *Sales practices;*
- *Compliance and enforcement: how regulators enforce the Australian Consumer Law; and*
- *Product safety.*

The industry guides are available on agency websites and have been distributed to relevant industry sectors as well as promoted via social media.

Assisting consumers as they engage with the marketplace

In 2012-13, EIAC continued its use of multiple channels to inform consumers and businesses about their rights and obligations under the ACL. Information and education was provided through traditional channels such as printed publications and face-to-face delivery, and there was a continuing focus on online channels to better align with the information seeking behaviour of consumers and businesses.

Some of the key projects undertaken reflect a tailoring of approaches for different audiences and the use of social media (Facebook, Twitter, YouTube) to engage with consumers and businesses is now a common component of education and information projects. For example, EIAC’s travelling conmen project consisted of a mix of activity including a dedicated Facebook page supported by Twitter activity, a national interactive map, as well as television, radio and print advertisements.



Source: www.facebook.com/StopTravellingConMen



Source: www.stoptravellingconmen.org

COMPLIANCE AND DISPUTE RESOLUTION

Summary

In 2012-13, consumer agencies have progressed work on a range of national projects and have considered a number of consumer protection challenges including in relation to extended warranties, food labelling, energy switching, Indigenous consumer issues, travelling comen, group buying and dispute resolution.

OVERVIEW

CDRAC has worked closely to integrate compliance and enforcement operations and has supported CAANZ through its role in coordinating compliance and enforcement action. CDRAC has supported consumers by delivering efficient and effective redress in response to emerging national consumer issues.

Closer integration of compliance and enforcement operations

As a result of a CDRAC face to face meeting a number of work programs were developed with a view of increasing the effectiveness of CDRAC and to assist in achieving CAF's strategic objectives. As a result of close working relationships among ACL regulators:

- closer engagement between policy, compliance and education operations has been facilitated through a communications protocol;
- senior leaders are committed to a greater level of collaboration, including more face to face planning days;
- a review of the Compliance and Enforcement Protocol was conducted;
- a crisis management protocol including a message bank of consistent and agreed messages was developed (awaiting final approval);
- an agreed process for engagement with administrators was developed;
- possible solutions for state-based regulators undertaking national compliance and enforcement activities were identified;
- complaint handling language and standard definitions were developed; and
- a review of a trader intervention process to engage traders where conduct is causing, or likely to cause, consumer dissatisfaction or detriment was commenced.

In keeping with the 'One Law – Multiple Regulator' model of the ACL, CDRAC has identified a number of discrete national projects to identify and redress instances of market failure. Typically, matters for consideration are raised by one or more jurisdictions at monthly teleconferences, having been identified from complaints, inquiries and other information received. A lead agency is then assigned to intervene in the matter on behalf of

all jurisdictions, with a central contact point established to disseminate information and act upon complaints from consumers across Australia.

Alternatively, if a trading concern arises from similar data but is identified as an industry-wide problem, a national project may be launched and managed according to the formal CDRAC protocols. A lead agency and other supporting jurisdictions will be engaged to participate and report to the committee. These approaches are integral to achieving nationally consistent outcomes for all affected consumers.

In addition, during December 2012, representatives from all jurisdictions combined efforts towards a national complaint reporting and resolution program. The group worked to develop national processes to improve use of intelligence and to coordinate cross-jurisdictional complaints. Information received by all jurisdictions contributed to a 'top 50 trader list' to support the identification of traders that presented issues across jurisdictions. Other matters that were considered included how each state and territory managed a complaint, what constituted a complaint to be registered, and what solutions could be universally adopted to best resolve the complaint. Efforts are now under way to create a coordinated national approach.

CDRAC also progressed work on its national dispute resolution project, which aims to facilitate the exchange of information to assist in the resolution of disputes nationally. A set of definitions has been developed and reporting will occur on a quarterly basis. This work will build on the existing information sharing architecture, including ACLink, which provides consumer agencies with a means to communicate on compliance and enforcement issues and alerts members to emerging issues and complaints of interest.

Achieving compliance with the ACL

In 2012-13, consumer agencies relied on the broad range of powers provided under the ACL (including disqualification orders from managing corporations) to protect the community from malfeasant trader behaviour (see Case study 8).

CDRAC also considered a range of consumer protection challenges, including the continuation of the national project on extended warranties. The extended warranties project focused on both communication and enforcement and identified a range of businesses that provide extended warranties that are of concern (see Case study 9).

CDRAC has progressed work on its national project on Indigenous consumer issues, with a coordinated regulatory and communications approach aimed at encouraging compliance with the ACL and raising awareness of assistance that can be provided by consumer agencies. Between December 2012 and January 2013 businesses in twenty remote communities were examined. Four traders were referred for investigation including Zamm Rentals, Tiny Tots photography, Awesome Water and Expression Sessions photography.

CDRAC also continued its work on existing national projects including in relation to travelling comen (see Case study 10) and group buying. CDRAC also considered issues relating to energy switching (in light of the ACCC's cases against Energy Watch) and positive changes to other traders' behaviour.

Case study 8 — Disqualification orders under the ACL

The Director of Consumer Affairs Victoria has undertaken two recent civil proceedings under section 36 of the ACL resulting in the first use of the ACL, by a state or territory regulator, to persuade a court to disbar a person from being a director of the company the subject of the proceedings, as well as from being a director of any other company. The disbarments are for periods of 5 and 15 years respectively.

In the first, in December 2012, the Melbourne Magistrates' Court disqualified Mr Mehmet Mehmet from being the director of a company until 2017 and ordered Mr Mehmet, Architeck Homes Pty Ltd and Unibase Homes Pty Ltd to pay \$14,300 costs. Final injunctions were granted against the companies for accepting payments from nine customers then failing to build their homes within the required time under the contracts. Mr Mehmet, Architeck Homes Pty Ltd and Unibase Homes Pty Ltd were found to have breached the ACL, *Domestic Building Contracts Act 1995* and the *Fair Trading Act 1999*.

The second, against Victorian rent roll business Connection Blue Pty Ltd and its sole director Mark Whittingham, was for accepting deposits of almost \$300,000 but failing to provide promised products and refunds. In June 2013, the Magistrates' Court ordered that the defendants transfer the sum of \$198,331.57 to CAV for the benefit of four persons who had paid such deposits but where Connection Blue had failed to supply the rent rolls and had not returned the deposits.

On 27 August 2013, the court disqualified Mark Whittingham, from managing any corporation until 1 September 2028. In its final orders, the court also required the defendants to pay nearly \$20,000 in costs, and advertise the court's decision in the *Herald Sun* newspaper.

Case study 9 — Extended warranties

In the second half of 2012-13, a national project commenced targeting the conduct of extended warranty providers and retailers offering extended warranties to consumers. The project addressed concerns that retailers were:

- seeking to avoid their consumer guarantee obligations by representing extended warranties as the only way of receiving remedies in the event of a problem, or creating ambiguity around the nature of an extended warranty;
- applying high-pressure sales tactics encouraging consumers to make uninformed decisions about the need for extended warranties;
- failing to properly disclose terms and conditions before the sale of extended warranties, including with regards to exclusions such as consequential losses; and
- unclear about how extended warranties interact with their obligations under the ACL.

Particular industries and businesses were targeted following research by jurisdictions, including examination of complaints data. The project focussed on retailers of whitegoods, computers and cars. A total of 66 retailers or extended warranty product providers were targeted, with around 70 other companies identified to receive educational letters. Initial compliance activity included obtaining and reviewing extended warranty products, undertaking mystery shopping to assess compliance levels and close engagement with national stakeholders through national forums.

Investigations to date have found approximately 11 per cent of identified businesses no longer offered extended warranties, 41 per cent achieved substantial compliance and required no further action, 9 per cent were sent educational letters, 3 per cent were sent a warning, and 36 per cent are still being reviewed, investigated or awaiting legal advice on enforcement actions. The project will continue in 2013-14 with the focus on finalising the outcomes of compliance efforts and achieving a consistent national approach to any subsequent enforcement action.

The project also included liaison with ASIC to consider whether the extended warranties under review may be 'financial products' under the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001*. Whether or not an extended warranty product is a financial product has implications for agencies' jurisdiction to take action. The regulators worked to ensure referral arrangements were in place to ensure that relevant agencies had necessary powers to allow for comprehensive consideration of conduct.

Case study 10 — An update on travelling conmen

In the *Implementation of the Australian Consumer Law Report on progress II (2011-12)*, jurisdictions outlined efforts to establish a national project to adopt a consistent and coordinated enforcement approach to eradicate unlawful selling of goods and services by travelling conmen. A national taskforce was established in September 2011. This taskforce liaised closely with customs officers, and immigration and law enforcement agencies. Work on the project continued in 2012-13. Successful outcomes of the project include:

- the establishment of operational links with other fair trading jurisdictions, police services, customs officers, immigration and traffic authorities resulting in the exchange of valuable intelligence;
- 53 individuals being prosecuted for 210 breaches of the ACL and other laws, resulting in fines and related court costs of \$475,772;
- assisting Commonwealth authorities to arrange for the departure from Australia of 46 individuals for breaching various visa conditions;
- the cross-agency appointment of investigators across three jurisdictions to each other's jurisdiction (New South Wales, Victoria and Tasmania);
- New South Wales, Victoria, Queensland and Tasmania signing a Memorandum of Understanding; and
- a public awareness campaign including a national hotline, launch of the 'stop travelling conmen' website, Twitter and Facebook announcements, and the distribution of at least 15,000 brochures, posters and stickers.

The effectiveness of the national campaign in addressing the problem of travelling conmen in Australia was recognised by Crime Stoppers at its recent International Conference, where the campaign received a Crime Stoppers International Award. Against a field that included South Africa, the UK, the Netherlands and Canada, the campaign was awarded the highest honour in the community service category.

The project was formally closed in February 2013; however, regulators continue to work together to take enforcement action and disrupt the business model of travelling conmen operating throughout Australia.



australian
consumer law

**Can you pick
the travelling
con man?**

Report suspicious tradespeople:
1300 133 408
Monday to Friday
8.30am - 5pm EST
(Daylight Saving Time)

Visit the Travelling Con Men Facebook page at
facebook.com/stoptravellingconmen

Source: Travelling Conmen Campaign Brochure located at <http://www.stoptravellingconmen.org>

Responding to unfair trade practices

The ACL contains penalties, enforcement powers and consumer redress options which enhance the ability of regulators to enforce the ACL and for effective remedies to be obtained for parties affected by a breach. These powers and remedies include:

- enforceable undertakings;
- substantiation, infringement and public warning notices;
- civil pecuniary penalties and criminal penalties of up to \$1.1 million for a body corporate and \$220,000 for an individual;
- damages and injunctions;
- orders for non-party redress;
- adverse publicity and non-punitive orders; and
- disqualification orders from managing corporations.

Under the multi-regulator model for the ACL, consumer agencies have worked together to use these enforcement powers and remedies to achieve coordinated and consistent enforcement across jurisdictions (see Case study 11). Agencies have also continued to assess the effectiveness of enforcement tools, including with regards to the appropriateness and consistency of application of remedies and penalties across Australia.

Case study 11 — ACL enforcement outcomes

Example 1

Consumer Protection Western Australia (CPWA) has commenced Supreme Court proceedings against two rent-to-buy scheme promoters for promoting rent-to-buy schemes. It is alleged the promoters are carrying on business as real estate agents without the required licence and that, in promoting their scheme, they have breached the ACL by misrepresenting the nature of the services they offer, the nature of their interests in the properties advertised, the need for buyers to ultimately obtain finance and the price of advertised properties.

On 6 June 2013, CPWA successfully obtained interim injunctions against the promoters requiring greater disclosure of the true nature of the scheme, while the case is being heard in the Supreme Court. For example, the promoters were required to publish a prominent notice on their website clarifying the nature of their business and clearly outlining the purchasing and rental arrangements for the properties they are advertising for sale under the scheme. They must also provide prospective purchasers a written notice accurately stating the nature of the scheme prior to any contract being made.

ASIC and ACL regulators are also working cooperatively to address legislative breaches by property investment promoters more generally, including those involving associated arrangements for credit or financial advice about self-managed superannuation funds. In addition to a general focus by all regulators on any misleading representations, ASIC has additional jurisdiction under National Consumer Credit and Corporations legislation in relation to licensing, responsible lending and the appropriateness of financial advice.

Example 2

On 14 September 2012, the Queensland Office of Fair Trading was successful in its court action against a trader and his company, Queensland Academic Systems Pty Ltd, which was found guilty of making false and misleading representations under the *Fair Trading Act 1989* (QLD) and the ACL.

The action was in relation to misrepresentations that no refunds applied to the supply of accommodation even though poor conditions meant that the accommodation was unsuitable. Substandard conditions at the premises included serious fire hazards which posed a risk to backpackers and other nearby residents.

The trader was fined \$15,000 and ordered to pay restitution to affected consumers. A conviction was recorded. This matter was the first time a regulator has prosecuted a person for making misleading representations about rights and remedies under consumer guarantees provisions.

The trader and his company were also prosecuted by the Queensland Fire and Rescue Service resulting in fines of over \$650,000 and a suspended prison sentence for non-compliance with fire safety regulations.

Case study 11 — (Continued)

Example 3

Consumer Affairs and Fair Trading (CAFT) in Tasmania has commenced prosecution action against a furniture removals business based in Hobart. This action was in response to seven breaches of the ACL relating to wrongly accepting payment, and the matter is scheduled for trial in the Magistrate's Court in Hobart in October 2013.

Tasmania Police is also investigating several offences that the trader has allegedly committed under the Criminal Code. Charges have been laid in relation to these matters.

CAFT issued a notice in May 2013, warning consumers not to deal with the individual or his business. The notice was placed on the CAFT website and supported by advertisements in the three major Tasmanian newspapers as well as a media release from the Director of CAFT.

This was the first time CAFT had exercised the public warning provisions contained in section 223 of the ACL. The public warnings proved very effective in alerting people to the trader's behaviour, as well as bringing forward additional complaints.

Example 4

In 2012-13, NSW Fair Trading issued two public warnings urging the public not to deal with Bulk Imports & Exports Pty Ltd and its director.

On 7 June 2013, NSW Fair Trading issued a public warning in relation to the trader's failure to supply products, supplying products that were not of acceptable quality, failure to honour warranties and failure to be contactable by consumers seeking redress. The warning followed the decision by the Caravan and Camping Industry Association to expel the trader from the Association in December 2012. It also followed an additional 177 consumer complaints about the trader since the issuing of a previous public warning in relation to his conduct.

NSW Fair Trading's previous public warning about the trader was issued in August 2012, following the execution of a search warrant of his commercial business premises by investigators. At that point 240 complaints and 55 enquiries had been received about the trader and his companies over a four year period. The Consumer Trader and Tenancy Tribunal (CTTT) had received 72 applications relating to the trader and his companies.

NSW Fair Trading is considering further legal action against the trader.

Example 5

During 2012, South Australia's Consumer and Business Services (CBS) recorded 38 complaints against a company for failing to supply products. While 22 of those complaints had been successfully resolved through 'charge back' arrangements with financial institutions, the other 16 complaints had to be resolved through negotiations between CBS and the trader.

CBS successfully negotiated a settlement with the then sole director of the company on behalf the complainants. The director made full restitution to all consumers who had outstanding complaints against the company.

Case study 11 — (Continued)

After resolving the outstanding complaints, CBS became aware of another two complaints against the company. As those complaints occurred outside the period when the then director was associated with the company, CBS had to re-enter negotiations with the new director. Those negotiations revolved around securing the refund of deposit money paid by the consumers to the company.

After protracted negotiations with the new director, CBS obtained full refunds for the two consumers. Through negotiations with the former and new directors, CBS recovered over \$14,500 of deposit money paid by consumers for goods and services not provided by the company.

CBS offered the former director and current director an Enforceable Undertaking pursuant to s218 of the ACL, which both accepted. The South Australian Commissioner for Consumer Affairs accepted the signed undertakings and this matter is now closed.

Example 6

In May 2013, Consumer Affairs Victoria (CAV) was successful in its action against Hair Science International Pty Ltd, which was ordered to pay \$100,000 for engaging in misleading and deceptive conduct. Hair Science International Pty Ltd claimed that it could regrow hair, when clients were actually given a hairpiece. Hair Science International Pty Ltd made representations that it could replicate hair from a client, grow it on synthetic liquid skin and then attach this 'hair' to the client's scalp.

Consumers claimed that after paying \$6,000 to \$8,000, Hair Science gave them a poor-quality hair piece that was glued to their head. The court declared that Hair Science International Pty Ltd, breached the ACL (and the *Fair Trading Act 1999 (Vic)*) by engaging in misleading and deceptive conduct or conduct likely to mislead or deceive.

As well as the \$100,000 penalty, the court imposed injunctions restraining the company (including its employees and agents) from making false or misleading representations.

Hair Science International Pty Ltd was ordered to publish a public notice in the Herald Sun Newspaper and on its website detailing the court's decision, and advise all clients of the details of the actual treatment when they entered into an agreement.

Example 7

In October 2012, ASIC was successful in a proceeding brought against one of Australia's largest debt collection companies, ACM Group Limited (ACM). The Federal Court of Australia found that ACM harassed and coerced debtors in contravention of s12DJ of the ASIC Act and engaged in widespread and systemic misleading and deceptive conduct in contravention of s12DA of the ASIC Act when recovering money between November 2008 and June 2010.

ASIC presented to the Court 96 phone calls, mostly between ACM debt collectors and the debtors, and the ACM debt collector training manual that was in use at the relevant time as evidence of ACM's conduct. The Court found, 'the manual made it very plain that debtors should be threatened with litigation' and that ACM persistently misled debtors by making references to legal proceedings and lawyers.

Case study 11 — (Continued)

The Court also found several instances of undue harassment or coercion, including: threats to contact friends, neighbours and/or the employer of debtors; a threat to have Sheriff's officers attend a debtor's home or place of employment in a marked car; a threat to issue a warrant for a debtor's arrest; a threat to take action that would result in a debtor's taxi licence being revoked; and a threat to take action that would result in a debtor being unable to travel overseas.

The Court made declarations of misconduct and granted injunctive relief restraining ACM from future similar conduct.

Example 8

The breadth of enforcement outcomes achieved by Commonwealth, state and territory consumer agencies are enhanced by the range of enforcement and compliance tools available under the ACL. For example, highlights from the ACCC's enforcement activities in the financial year 2012-2013 included:

- civil pecuniary penalties totalling \$11.13 million, obtained in ACCC actions through the courts in 15 consumer protection and fair trading proceedings;
- integrated compliance and enforcement action in the door-to-door energy sector, resulting in significant (\$2.75 million) penalties and substantial improvements in behaviour in the sector;
- action against seven companies for unconscionable conduct, including companies targeting vulnerable and disadvantaged consumers with false and misleading representations;
- a \$1 million penalty to Cotton On Kids Pty Ltd over the supply of unsafe children's nightdresses and pyjamas, which sends a strong message to suppliers to ensure safe, correctly labelled products;
- payment for 27 infringement notices with penalties of over \$300 000 across 10 matters; and
- the issue of 18 substantiation notices.

The ACCC also continued its integrated approach to dealing with consumer guarantees including outreach and education, and the use of flagship proceedings. The ACCC instituted a number of separate cases in the Federal Court about alleged misrepresentations to consumers about their consumers' warranty and guarantee rights. Orders were subsequently made by the Federal Court in July 2013 in relation to Hewlett Packard Australia Pty Ltd; with separate proceedings against a number of Harvey Norman franchisees still before the courts.

The ACCC commenced proceedings against ByteCard Pty Ltd, trading as Netspeed Internet Communications, marking the first legal proceedings by the ACCC based exclusively on the unfair contract terms provisions of the ACL. In July 2013, the Federal Court declared that a number of clauses in ByteCard Pty Ltd's standard form consumer contracts were unfair and therefore void.

Non-party redress was also sought in relation to three matters including Sensaslim Australia Pty Ltd (in liquidation), Hewlett-Packard Australia Pty Ltd and DuluxGroup Pty Ltd.

Identifying and responding to emerging consumer issues

In 2012-13 CDRAC coordinated Commonwealth, state and territory consumer agencies' consideration of a range of other emerging issues including:

- the interaction of extended warranties and consumers' rights under the ACL;
- misleading or deceptive conduct in online reviews or expert testimonials;
- credence claims particularly in relation to food;
- door to door selling tactics in the energy sector; and
- consumer protection issues in Indigenous communities.

ACL regulators, through CDRAC, have established a national working party on traders using online false or misleading testimonials or reviews to promote their business. Some research suggests around 70 per cent of Australian consumers consider reviews and testimonials before purchasing goods or services.

Regulators are deepening their knowledge of the way in which traders use fake testimonials as a promotional tool, documenting research and lessons learned through the CDRAC forum. This type of conduct may be significantly under-reported to regulators given it is difficult for consumers to discern the accuracy of testimonials. CDRAC intends to identify traders engaging in this type of conduct and take enforcement action where appropriate.

CDRAC responded to growing concerns in relation to country-of-origin labelling of food and the labelling, quality and grade of olive oil supplied in Australia, resulting in the establishment of two national compliance and enforcement operations. The operations fostered close working relationships between ACL regulators and food regulators. It also demonstrated the importance of integration and cooperation between the policy, education and compliance functions within the ACL network. Finally it successfully demonstrated the capacity of the ACL to deal with concerns in a specific market, such as the olive oil industry, without the need to mandate an existing voluntary standard (see Case study 12). Regulators also responded to concerns about credence claims made in relation to food products including in relation to where and how they are made, grown or produced (see Case study 13).

Consumer agencies also responded to door-to-door selling practices in the energy sector in response to the large number of complaints and the considerable detriment caused by the conduct of some salespeople at the door. Complaints regarding door-to-door sales practices included misleading marketing, pressure sales, transfer of accounts between retailers without customer consent, and breaches of the unsolicited sales provisions of the ACL. Door-to-door selling more broadly remains an ongoing concern for consumer agencies (see Case study 14).

Case study 12 — Olive oil representations and country-of-origin labelling on food

In July 2012, all Australian Consumer Affairs Ministers agreed to national compliance and enforcement activities on country-of-origin labelling of food (Operation Cool) and the labelling, quality and grade of olive oil supplied in Australia (Operation Sol).

Both Operations were run concurrently, with the regulators initially surveying representations on 354 olive oil products, 42 fruit cup products, 21 frozen pea products, and 182 coffee products supplied by supermarkets, gourmet food shops and market stalls across five states. During the second phase, traders were issued with 54 substantiation notices, testing representations made on 94 olive oil products, 11 fruit cup products, 11 frozen pea products and 14 coffee products. In doing so, regulators worked with the food regulator in NSW.

A third phase that applied to olive oil products saw a small number of products chemically tested against voluntary industry standards, involving the ACL. By June 2013, ACL regulators had identified potentially false representations by nine traders producing olive oil products and three traders producing coffee products.

The ACL regulators coordinated a large number of simultaneous compliance actions and evaluated trader conduct nationally resulting in consistent enforcement outcomes.

The work from both Operation Cool and Operation Sol suggested that there is minimal evidence of consumer detriment in the market in terms of systematic misrepresentation on the origin of food in Australia or in respect of olive oil. Furthermore, where issues have been identified, the existing provisions under the ACL are considered effective in adequately addressing misleading or deceptive labelling, with consumer agencies taking enforcement action against non-compliant traders.

At its 5 July 2013 meeting, Consumer Affairs Ministers noted the outcomes of this work and agreed that consumer agencies would adopt a business-as-usual approach and consider food claims as part of their usual compliance activities under the ACL.

Case study 13 — Credence claims made in relation to food products

Credence claims were identified as an area where consumers are increasingly placing weight on premium claims of products and are likely to value the types of claims that directly affect the integrity of the product, such as where and how it was made, grown or produced. These claims can give a company a distinct competitive advantage above their competitors and be used as an important marketing strategy. As consumers rely on the honesty and accuracy of businesses' representations, the ACL regulators have taken action to ensure that consumers are not misled by these claims.

For example, the ACCC's enforcement action in credence claim matters includes court action against 'free range' claims in meat and egg products.

- On 9 July 2012, the ACCC instituted proceedings in the Federal Court in Melbourne against Pepe's Ducks Ltd in relation to alleged contraventions of the ACL arising from Pepe's use of the words 'open range' and/or 'grown nature's way' (with a pictorial image of a duck in the outdoors against a background of a lake) on its packaging, website, delivery trucks, signage, stationery and merchandise. It was alleged that the duck meat products that Pepe's sold or offered for sale were processed from ducks raised solely in indoor sheds without any access to the outdoors, and were not of a different quality from those raised solely in indoor sheds.
- In September 2012, the Federal Court ordered Ms Rosemary Bruhn to pay a civil pecuniary penalty of \$50 000 for conduct involving substituting cage eggs for free range eggs. The ACCC had alleged that from March 2007 to October 2010, Ms Bruhn, trading as Rosie's Free Range Eggs, represented that eggs she supplied to 109 business customers in South Australia including retail outlets, bakeries, cafes and restaurants, were free range when a substantial proportion of the eggs were, in fact, cage eggs.
- In March 2013, the ACCC instituted proceedings against Luv-a-Duck Pty Ltd. The ACCC alleges that Luv-a-Duck Pty Ltd engaged in false, misleading and deceptive conduct in relation to the promotion and supply of its duck meat products, through use of statements such as 'grown and grain fed in the spacious Victorian Wimmera Wheatlands' and 'range reared and grain fed'. The ACCC alleges that the duck meat products sold or offered for sale by Luv-a-Duck were in fact processed from ducks that did not have substantial access to the outdoors, or access to spacious outdoor conditions.

Case study 14 — Door-to-door selling

Consumer agencies have continued compliance and enforcement efforts to address concerns in relation to door-to-door selling. This work includes the preparation of guidance materials on agencies' websites, and the promotion and distribution of 'Do Not Knock' stickers to help consumers avoid unwanted door-to-door selling.



Source: <http://www.accc.gov.au/publications/door-to-door-do-not-knock-sticker>

In 2012-13, consumer agencies have targeted the door-to-door selling practices in specific industry sectors. For example, in 2011 the ACCC and the Australian Energy Regulator wrote to energy retailers to put them on notice that the ACCC is closely watching their use of door-to-door selling practices and the conduct of their salespeople. The ACCC followed with enforcement action against a number of energy retailers in relation to their door-to-door selling practices.

Key enforcement outcomes targeting door-to-door selling in the energy sector achieved by the ACCC include:

- instituting proceedings against EnergyAustralia, and some of its previous marketing companies for alleged breaches of the ACL by 'knocking at the door', despite the presence of a 'Do Not Knock' sticker;
- securing a \$1.555 million penalty against AGL Sales Pty Ltd and AGL South Australia Pty Ltd for illegal door-to-door selling practices, and \$200 000 against CPM Australia Pty Ltd for its role in the conduct; and
- securing penalties of \$850 000 from Neighbourhood Energy Pty Ltd and \$150 000 from its marketing company, Australian Green Credits Pty Ltd in the first case brought under the unsolicited consumer agreement provisions of the ACL.

The Court's decision in the matter of AGL South Australia Pty Ltd and its marketing company, CPM Australia Pty Ltd, confirms that consumers can use a sign to request uninvited salespeople to leave their premises and do not need to meet the salesperson face-to-face to ask them to leave.

As at 30 June 2013, the three largest energy retailers, Energy Australia, AGL and Origin announced that they have decided to cease door-to-door marketing.

Case study 14 — (Continued)

Action has also been taken against door-to-door sellers alleged to have breached their broader obligations under the ACL, including in relation to unconscionable conduct. In August 2013, the Full Federal Court upheld the ACCC's appeal against the March 2013 decision of the Federal Court in the matter of Lux Distributors Pty Ltd. The Full Federal Court set aside the judgment of Justice Jessop and made declarations that Lux had engaged in unconscionable conduct in relation to the sale of vacuum cleaners to three elderly consumers in their homes. The matter remains before the court for a decision in relation to relief, including pecuniary penalties.

PRODUCT SAFETY

Summary

In 2012-13, consumer agencies continued to promote, maintain and achieve compliance with Australia's product safety system. Key work included projects relating to sunglasses, button batteries, sporting goods, bunk beds used in commercial premises, ember protection for evaporative air conditioners and research into the safety of quad bikes. In the emerging hazards area, the PSCC developed an urgent response framework, introduced a report on deaths and severe injuries associated with consumer goods and coordinated a national response to hazards posed by small powerful magnets and synthetic drugs.

OVERVIEW

The PSCC has supported the coordination of consumer agencies' efforts to ensure suppliers are aware of their ACL product safety obligations. The PSCC has undertaken strategic compliance programs including surveillance on behalf of consumer agencies. In addition, the PSCC continues to assess emerging hazards and work collaboratively to revise existing and develop new regulations. The PSCC also worked towards a more integrated approach in dealing with product safety compliance projects.

Coordinating national strategies to reduce the risk of product related injury and death

PSCC's responsibilities include to identify and implement national strategies to reduce the risk of product related injury and death. In 2012-13, the PSCC continued to oversee the delivery of product safety projects as outlined by Consumer Affairs ministers as well as providing input into the development of product safety regulations. The PSCC also coordinated responses to urgent emerging issues, advised CAANZ of severe injuries or deaths associated with consumer products, and worked with CDRAC, EIAC and PRAC to deliver nationally coordinated product safety initiatives for consideration by CAANZ.

Achieving compliance with Australia's product safety system

During 2012-13, Commonwealth, state and territory consumer agencies partnered to undertake national surveillance programs and investigate non-compliance in the marketplace (see Case study 15).

Over 3,300 retailers – including internet-based traders Australia-wide – were surveyed across a range of products including toys for children aged under three, toys containing lead and other heavy metals, aquatic toys, projectile toys, bicycles, showbags, nursery-related products and banned products. Over 1,500 tests for lead and heavy metals in toys were conducted. More than 94,000 product lines were surveyed, resulting in recalls and the removal from sale or seizure of approximately 30,000 products.

Additionally, the Federal Court upheld state and territory agencies' right to take legal action in product safety related matters under the ACL (see Case study 16).

Case study 15 — Safety regulators dealing with urgent emerging safety issues

The ACL provides Commonwealth, and state and territory consumer agencies with a variety of tools — including interim bans which can be in effect for 120 days — that can be used in circumstances where a timely and consistent intervention is necessary to ensure the safety of the community. The Commonwealth Minister may impose permanent bans on unsafe goods, provided affected parties are afforded the opportunity to discuss any proposed ban.

These powers were used in 2012–13 to ensure that hazards posed by unsafe small powerful magnets were removed from the marketplace. On 2 July 2013 the Commonwealth Minister published a Safety Warning Notice providing Australian citizens with a warning about adult novelty products that contain small high-powered magnets.

On 22 August 2013, the PSCC identified and assessed the hazards associated with small powerful magnets, and the Commonwealth Minister signalled his intention to introduce a national permanent ban on small high powered magnets.

On 23 August 2013, most state and territory safety regulators introduced an interim ban under the ACL. The timing of the introduction of interim bans was coordinated to facilitate the Commonwealth Minister's obligation under the ACL to give suppliers an opportunity to request a conference to discuss the proposed ban. Several suppliers took advantage of this invitation. This conference allowed the ACCC to further refine the interim ban so that those products which were identified in injury data were removed from sale in Australia.

On 9 November 2012, after having considered advice from the ACCC arising from the supplier conference, the Commonwealth Minister signed a permanent ban on the supply of certain magnetic products. The national permanent ban on small, high powered magnets came into effect on 15 November 2012.

This example demonstrates the way in which state and territory powers can be used effectively to complement Commonwealth powers. In addition the consistent application of interim arrangements is a significant achievement, demonstrating effective collaboration of jurisdictions through the PSCC. Prior to the ACL, inconsistent use of these powers had resulted in a patchwork approach to regulation.

WHAT YOU NEED TO KNOW ABOUT:
Ban on small, high powered magnets

What are small, high powered magnets?
Small, high powered magnets can cause severe internal injury if they are swallowed. The magnets can attract and pierce each other, causing internal tissue, which can cause tissue death and perforation, leading to infection, sepsis and death. These magnets have been banned in Australia since 15 November 2012. These magnets are not subject to the ban. In addition, most fridge magnets are sold in single units rather than multiple units. The product consists of at least two pieces of metal.

Hazards
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What are small, high powered magnets?
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What you need to know about: Ban on small, high powered magnets

Permanent ban on small, high powered magnets
The permanent ban on small, high powered magnets came into effect on 15 November 2012.

What are small, high powered magnets?
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Source: <http://www.productsafety.gov.au>

Case study 16 — National enforcement of product safety laws

In June 2013, the Director of Consumer Affairs Victoria's (CAV) right to take action in the Federal Court for contraventions of the ACL was upheld, enabling proceedings against Dimmeys Stores Pty Ltd and others for breaches of product safety laws.

Counsel for Dimmeys Stores Pty Ltd and the other respondents argued that the Director of CAV, as the regulator under the ACL (Victoria), did not have standing to bring proceedings for an injunction under the ACL in the Federal Court and therefore that the court did not have jurisdiction to hear and determine the Director's application.

This is the first case that CAV has taken in the Federal Court. CAV are alleging that Dimmeys Stores Pty Ltd and Starite Distributors Pty Ltd breached product safety laws in Victoria and New South Wales through the supply, offer to supply, or possession for business purposes of more than 18,000 items of girls' padded swimwear, baby bath squeeze toy sets, cosmetic sets and basketball rings.

Dimmeys Stores Pty Ltd has breached product safety laws on four previous occasions and Starite Distributors Pty Ltd, was involved in the alleged contraventions. His Honour Justice Marshall has confirmed that the Director of CAV has standing to bring proceedings in the Federal Court under the ACL.

APPENDIX 1 — AUSTRALIA'S CONSUMER POLICY FRAMEWORK

Summary

To support the ACL, Australia's governments and consumer agencies have made formal agreements and administrative arrangements to provide for a cooperative and coordinated approach to the enforcement and policy development of the ACL.

THE NATIONAL CONSUMER POLICY OBJECTIVE

Australia's consumer policy framework is informed by the *National Consumer Policy Objective*, which was agreed by the Ministerial Council on Consumer Affairs (MCCA)³ on 3 December 2009. The *National Consumer Policy Objective* is:

[t]o improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.⁴

The Objective is supported by six operational objectives (see Figure 2 for the implementation of these objectives by CAANZ committees):

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

³ Now the COAG Legislative and Governance Forum on Consumer Affairs (CAF).

⁴ Ministerial Council on Consumer Affairs (2009). *A new approach to consumer policy: Strategy 2010-2012*, p 4.

Figure 2: Alignment of operational objectives with CAANZ committees

National operational objective	EIAC	CDRAC	PSCC
... ensure well informed consumers ...	Improving consumer understanding of the ACL		
... ensure that goods and services are safe...			Coordinating national strategies to reduce the risk of product related injury and death Achieving compliance with Australia's product safety system
... prevent practices that are unfair ...	Supporting and promoting compliance activities	Achieving compliance with the ACL	
... meet the needs of vulnerable consumers ...	Assisting consumers as they engage with the marketplace	Responding to unfair trader practices	
... provide accessible and timely redress ...		Closer integration of compliance and enforcement operations	
... promote proportionate, risk-based enforcement ...		Identifying and responding to emerging consumer issues	

INTERGOVERNMENTAL AGREEMENT FOR THE AUSTRALIAN CONSUMER LAW

The development and administration of the ACL, is governed by the *Intergovernmental Agreement for the Australian Consumer Law* (IGA), which was signed by COAG on 2 July 2009. The IGA provides for the operation of the ACL through:

- arrangements for the implementation and future amendment of the ACL; and
- arrangements for the administration and enforcement of the ACL.

The ACL was implemented through the following Commonwealth legislation, which commenced on 1 January 2011:

- *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010;*
- *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010;* and
- *Trade Practices Amendment (Australian Consumer Law) Regulations 2010.*

The ACL was then applied by each state and territory through their own Acts, namely:

- the *Fair Trading (Australian Consumer Law) Amendment Act 2010* (ACT);
- the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (NSW);
- the *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (NT);
- the *Fair Trading (Australian Consumer Law) Amendment Act 2010* (QLD);
- the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010* (SA);
- the *Australian Consumer Law (Tasmania) Act 2010 and Australian Consumer Law (Tasmania) (Consequential Amendments) Act 2010* (TAS);
- the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (VIC); and
- the *Fair Trading Act 2010* (WA).

The ACL commenced as a law of the Commonwealth and of each state and territory on 1 January 2011.

Review of the ACL

The enforcement and administration arrangements are to be reviewed by COAG within seven years of the commencement of the ACL. The operation and effect of the new provisions of the ACL are also subject to be reviewed within this period.

AUSTRALIA'S CONSUMER AGENCIES

Australia has two national consumer agencies: the **Australian Competition and Consumer Commission** and the **Australian Securities and Investments Commission**. Each state and territory also has its own consumer agency:

- **New South Wales Fair Trading** within the NSW Department of Finance and Services;
- **Consumer Affairs Victoria**, within the Victorian Department of Justice;
- the **Queensland Office of Fair Trading**, within the Queensland Department of Justice and Attorney-General;
- the **Western Australia Department of Commerce – Consumer Protection**;
- the **Consumer and Business Services Division**, within the SA Attorney-General's Department;
- the **Tasmanian Office of Consumer Affairs and Fair Trading**, within the Tasmanian Department of Justice;
- the **Australian Capital Territory Office of Regulatory Services**, within the ACT Justice and Community Safety Directorate; and
- **NT Consumer Affairs**, within the NT Department of the Attorney-General and Justice.

In New Zealand consumer law enforcement responsibilities lie with both the **New Zealand Ministry of Business, Innovation and Employment** (for some specific issues) and the **New Zealand Commerce Commission**.

Each of these agencies also has a range of other statutory and regulatory functions which it must fulfil under the laws of each jurisdiction, in addition to their responsibilities for general consumer protection and fair trading matters.

The ACL Memorandum of Understanding

In July 2010, Australia's consumer agencies agreed to a Memorandum of Understanding (MoU) for the administration and enforcement of the ACL. The MoU is a comprehensive framework which builds on a previously limited range of often informal arrangements which were not universal among the jurisdictions. The MoU makes arrangements for:

- enforcing the ACL, including the exchange of information and intelligence;
- informing the general public and educating consumers and businesses about the ACL;
- monitoring compliance with the ACL, including market surveillance;
- specific arrangements relating to the administration of the national product safety system; and
- ongoing reporting and review of the administration and enforcement of the ACL, including specific arrangements to report to CAF.