



Australian Government

australian consumer law 

Implementation of the Australian Consumer Law

A report on progress IV (2013-14)

December 2014

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LETTER TO THE CHAIR OF CAF, THE HON BRUCE BILLSON MP

The Hon Bruce Billson MP
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c/- CAF Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

December 2014

Dear Minister

This is the fourth report on progress of the Australian Consumer Law (ACL) that commenced on 1 January 2011. It highlights the administration of the ACL by consumer agencies across Australia during 2013-14.

During the year, consumer agencies continued to strengthen the coordination, collaboration and consistency of their work to ensure business compliance, to educate consumers and businesses about their rights and obligations under the ACL, and to support policy development that will ensure the ACL remains current and provides appropriate protections to consumers in a changing environment.

Consumer affairs officials collaborated through Consumer Affairs Australia and New Zealand (CAANZ) on a range of initiatives including:

- commencing policy research and reform initiatives to improve the efficient administration of the ACL, to consider extending unfair contract terms protections to small business, and to investigate consumer issues relating to travel agents and property spruikers;
- disseminating information to consumers and businesses, with a particular focus on the online environment and vulnerable and disadvantaged consumers; and
- enforcing the ACL effectively, with over 350 actions brought and more than \$18.4 million in infringement notices, fines, costs awarded, compensation and penalties.

In providing an account of activities during 2013-14, this report outlines a number of illustrative case studies highlighting the effort of consumer agencies in the administration of the ACL for the benefit of the Australian community.

I am pleased to provide this report on behalf of CAANZ.



Ben Dolman
Chair, Consumer Affairs Australia and New Zealand

LIST OF ACRONYMS

ACCC	Australian Competition and Consumer Commission
ACFT	Australian Consumer Fraud Taskforce
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	Governance and Legislative Forum on Consumer Affairs
CAV	Consumer Affairs Victoria
CCA	<i>Competition and Consumer Act 2010</i>
CCAAC	Commonwealth Consumer Affairs Advisory Council
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</i> , signed by members of the Council of Australian Governments on 2 July 2009
OFT	Office of Fair Trading
PC	Productivity Commission
PRAC	Policy and Research Advisory Committee
PSCC	Product Safety Consultative Committee
SCOCA	Standing Committee of Officials on Consumer Affairs
TPA	<i>Trade Practices Act 1974</i> (now the CCA)

EXECUTIVE SUMMARY

THE MULTIPLE REGULATOR MODEL OF THE ACL

The ACL has been established to operate under a 'multiple regulator model', that is, where a uniform Commonwealth, state and territory law is jointly administered by the ACCC and by state and territory consumer affairs agencies. ASIC administers similar provisions under the ASIC Act in relation to financial services. The multiple regulator model requires effective communication, cooperation and coordination regarding the administration and enforcement of the ACL and allows for the delivery of different but complementary consumer empowerment and protection services. As highlighted in this report, consumer agencies have, throughout 2013-14, continued to strengthen their communication, coordination and cooperation in relation to ACL enforcement, education, and policy and research initiatives, for the benefit of consumers throughout Australia.

A STRENGTHENED CONSUMER PROTECTION FRAMEWORK

Consumer agencies continued to focus on a range of policy improvements, including the development of a Bill to improve the efficient administration of the ACL and work towards extending unfair contract term protections to small business. Agencies also coordinated on approaches to reform in relation to travel agents, concern about property spruikers and responded to other emerging consumer issues.

FOCUSED EDUCATION AND INFORMATION

Consumer agencies coordinated education campaigns on consumer rights and raised awareness with business about their obligations focusing on the online environment and vulnerable consumers such as Indigenous Australians, people from diverse cultural and linguistic backgrounds, and people with disabilities. They also conducted a national audit of communication activities and materials to ensure that these are appropriately coordinated, consistent and shared across consumer agencies to maximise reach and minimise impact on resources.

TARGETED COMPLIANCE AND DISPUTE RESOLUTION

ACL regulators progressed work on a range of national projects and consumer protection challenges during 2013-14. These included taking action in the areas of testimonials, was/nor pricing, cash back schemes, property spruikers, romance scams, training providers, extended warranties, drip pricing, national enforceable undertakings, trader engagement, and conduct targeting consumer protection action for vulnerable and disadvantaged consumers.

In undertaking this work, regulators continued to achieve significant outcomes in the enforcement of the ACL including in over 350 actions with a value of over \$18.4 million in infringement notices, fines, costs awarded, compensation and penalties.

A NATIONAL PRODUCT SAFETY APPROACH

Consumer agencies took action to improve safety outcomes for consumers and assist businesses to understand their safety responsibilities. This included campaigns to keep children safe around trampolines, a national surveillance program resulting in increased compliance within the sunglasses market and addressing a range of other safety issues, including in the supply of small high-powered magnets, non-compliant children's clothing and raising awareness about safety responsibilities among online businesses.

INTRODUCTION

The ACL commenced on 1 January 2011 as a single, integrated and harmonised consumer law by bringing together 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.

This report provides an update on the work of the Commonwealth and the states and territories in implementing, strengthening and improving the ACL. It highlights the enhanced coordination between consumer agencies and more 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 1.

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 replaced approximately 900 substantive provisions of at least 20 national, state and territory Acts. Through the ACL 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.

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

MULTIPLE REGULATOR MODEL OF THE ACL

The ACL operates under a ‘multiple regulator model.’ This means that a uniform Commonwealth, state and territory law is administered jointly by the ACCC and by state and territory consumer affairs agencies. ASIC administers similar provisions under the ASIC Act in relation to financial services. These regulators have complementary roles. While all regulators contribute to the education of businesses and consumers about the law, the ACCC’s enforcement function focuses on taking cases that result in substantial consumer detriment or have national significance, while the state and territory agencies typically engage more closely in resolving disputes and well as court enforcement of local issues.

There are a number of advantages to this approach where there is effective communication, coordination and cooperation between regulators. These advantages include that:

- regulators can respond quickly to issues emerging in their jurisdiction;
- enforcement and education projects can be delivered more efficiently than if jurisdictions acted alone, and sending a clear and uniform national message can have a greater impact on business behaviour and consumer understanding of the law;
- regulators draw on cross-regulatory experiences where state and territory agencies enforce generic consumer laws alongside other regulatory roles, for example, the enforcement of industry-specific laws such as motor vehicle dealer and real estate licencing regimes;
- policy development is informed by the experience and knowledge of agencies in all jurisdictions; and
- constitutional issues are avoided that may occur in a single regulator model, for example where the national regulators do not have powers with respect to non-corporate entities.

The ACL regulators have continued to strengthen the multiple regulator model during 2013-14 through a range of activities underpinned by effective communication, coordination and cooperation. Examples are provided through the illustrative case studies and other work outlined in this report.

ACL GOVERNANCE FRAMEWORK

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 Legislative and Governance Forum on Consumer Affairs (CAF) is the peak governance body for the ACL and consists of all Commonwealth, state and territory and New Zealand Ministers responsible for fair trading and consumer protection laws. CAF was formerly known as the Ministerial Council on Consumer Affairs (MCCA).

CAF’s role is to administer the Ministers’ collective responsibilities under the IGA, including considering consumer affairs and fair trading matters of national significance and mutual interest and develop a consistent approach to those issues where possible.

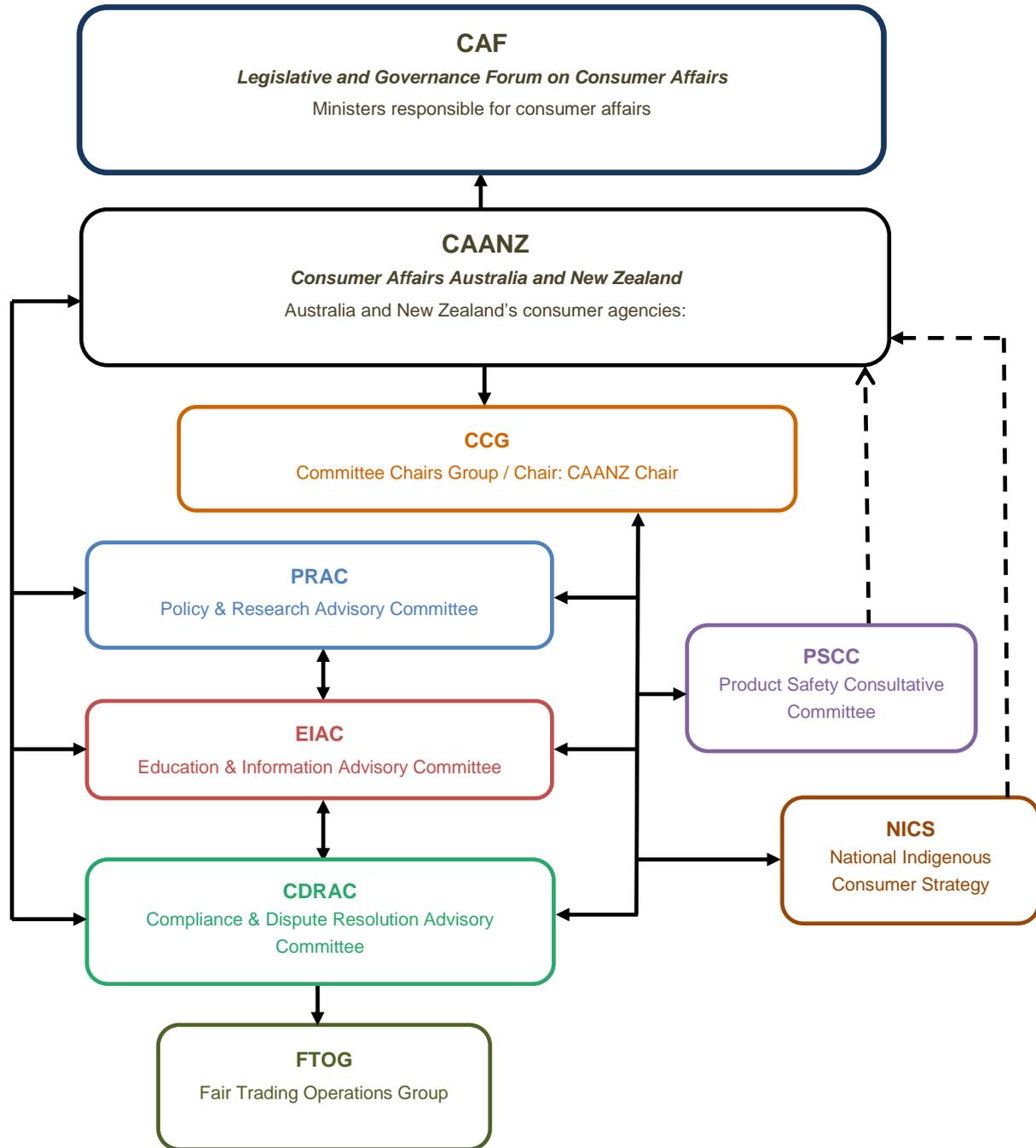
CAF is supported by **Consumer Affairs Australia and New Zealand (CAANZ)** (formerly known as the Standing Committee of Officials on Consumer Affairs) as the principal national forum for day-to-day policy and enforcement cooperation and coordination between consumer agencies. Its membership comprises the most relevant senior officer of Commonwealth, state and territory, and New Zealand government agencies responsible for consumer affairs or fair trading. CAANZ receives advice, information and other support from four 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.

From time to time, CAANZ may create other specific operations groups to aid it in achieving its objectives. In 2013-14, CAANZ established a **Fair Trading Operations Group (FTOG)** and the **National Indigenous Consumer Strategy Reference Group (NICS)** as specific operations groups.

The ACL governance framework for 2013-14 is outlined in **Figure 1**.

Figure 1: CAF governance arrangements



CONSUMER POLICY AND RESEARCH

Summary

During 2013-14, PRAC continued to focus on a range of policy improvements in preparation for the five-year review of the ACL in 2016. In particular, policy agencies began the development of a Bill to improve the efficient administration of the ACL and consider extending unfair contract term protections for small business. Agencies also coordinated on a number of other approaches to reform and responded to emerging consumer issues.

OVERVIEW

During 2013-14, PRAC undertook a number of key activities to streamline and strengthen the ACL. It also worked together to ensure a harmonised and consistent approach to the ACL by encouraging the use of a guide to assist jurisdictions to identify inconsistent, complementary or duplicative provisions in legislation. It continued to coordinate on effective approaches to reform in the travel sector and considered responses to emerging concern regarding the conduct of some property spruikers.

Streamlining and strengthening the ACL

During 2013-14, consumer agencies progressed key pieces of work to streamline and strengthen the ACL and extend unfair contract term protections to small business.

Case study 1 — Improving the efficient administration of the ACL

At their meeting of 13 June 2014, CAANZ agreed to consider how to streamline parts of the administration of the ACL with the aim of reducing compliance burdens, whilst preserving the protections available to consumers. This is intended to form part of the red tape reduction agendas across all levels of government, with the amendments considered to address well known concerns with the operation of the ACL ahead of the broader review, which is scheduled to commence in 2016.

Some of the changes that are being considered as part of this process include attempting to reduce reporting requirements for businesses where there may be duplication with other regulatory regimes, addressing minor gaps in the regulations to provide clarity to business, and amending other aspects of the *Competition and Consumer Act 2010* to ensure the ACL, the Act and the regulators can operate effectively under the framework.

Case study 2 — Extending unfair contract term protections to small business

The ACL includes protections for consumers from unfair contract terms in standard form contracts. The rationale for this law is that consumers generally do not have the expertise to understand the implications of unfair terms in contracts presented to them, or have sufficient power to modify contracts to remove these terms.

The Commonwealth Government made an election commitment in 2013 to extend unfair contract term protections to small business and CAF agreed to consider such an extension in November 2013. Small businesses, like individual consumers, are often offered pre-prepared standard form contracts on a 'take it or leave it' basis and can lack the resources to effectively navigate or negotiate these contracts. Sometimes these contracts contain unfair terms that increase the cost of doing business and undermine trust, which is vital to business relationships.

The Treasury, on behalf of CAANZ, conducted a consultation process on *Extending Unfair Contract Term Protections to Small Businesses* from 23 May 2014 to 1 August 2014. A consultation paper was released as part of this process.

More than 80 submissions were received in response to the consultation paper, as well as around 300 responses to an online business survey.

The majority of submissions were supportive of extending unfair contract terms protections to small business. Respondents to the survey and feedback from formal submissions suggest that unfair terms are an issue for a wide range of industries. Common terms raised in submissions included terms which permit one party to unilaterally vary terms, limit their obligations, terminate or renew the contract, or levy excessive fees.

Over the past year, consumer agencies also continued to promote a harmonised and consistent approach to the ACL by encouraging the use of the ACL Guide: *Maintaining consistency with the Australian Consumer Law*. The guide and assessment form (available at www.consumerlaw.gov.au) assist jurisdictions to identify inconsistent, complementary or duplicative provisions in new legislation or existing legislation under review.

Coordinating effective approaches to reform

During 2013-14, PRAC continued to coordinate effective approaches to reform. It implemented the remaining major milestones set out in the *Travel Industry Transition Plan* (the Transition Plan) which was approved by a majority of CAF Ministers in December 2012. This plan served as a pathway to modernising regulation of the travel intermediary sector, following significant changes to the way consumers purchase travel products and the introduction of the ACL. The Transition Plan was developed in collaboration with all states and territories and was the subject of public consultation in August 2012.

Case study 3 — Repeal of travel agent laws and launch of voluntary industry accreditation

Under the Travel Industry Transition Plan, from 1 July 2014 travel agents in Australia are no longer required to hold a licence or be members of the Travel Compensation Fund (TCF) in order to conduct business as a travel agent.

However, travel agents are still required to comply with the ACL and may obtain a particular ‘tick of approval’ or other accreditation from an organisation that may set standards for the travel industry.

By early 2014, all remaining states and territories had endorsed the Transition Plan, ensuring national cooperation to complete key remaining activities by 1 July 2014. These consisted of:

- securing the passage of legislation repealing state and territory Travel Agents Acts;
- completing a contestable grants process to award a one-off grant of almost \$2.8 million to consumer advocate CHOICE for the development of a Consumer Travel Hub;
- continuing ongoing consultation with the Australian Federation of Travel Agents (AFTA), CHOICE and Austrade on AFTA’s Travel Agent Accreditation Scheme (ATAS) and, in particular, reviewing the ATAS Charter and Code of Conduct to ensure basic best practice features were included prior to the scheme’s launch on 1 July 2014;
- publishing detailed agent and consumer FAQs, a factsheet, and other materials developed in consultation with EIAC, on www.consumerlaw.gov.au; and
- obtaining CAF’s approval to a grant of between \$2 million and \$3 million out of TCF reserves for a national consumer education campaign aimed at raising awareness of the reforms and regulatory arrangements for travel purchases going forward.

In addition, PRAC continued to wind down the TCF operations by instructing the TCF’s Board of Trustees to release any securities held against existing members. Further changes to the TCF Substitution Deed were endorsed by CAF to clarify that agents could neither become, nor remain, TCF members from 1 July 2014. The TCF also ceased to provide compensation for consumers affected by an agent’s failure to pass on their money to an end supplier after 1 July 2014. The TCF will cease all operations by 31 December 2015 or as soon possible after 30 June 2015 once all related obligations are met.

Responding to emerging consumer issues

PRAC also focused on identifying and coordinating responses to emerging consumer issues. In particular, during the reporting period PRAC proactively considered responses to emerging concern regarding the conduct of certain property spruikers. In light of the favourable market conditions for such conduct, PRAC, CAANZ and CAF agreed that a program be initiated to respond to these activities via a series of short-, medium- and longer-term actions.

Case study 4 — Property Spruikers

The activities of property spruikers have long been an area of concern to consumer affairs agencies.

The issue tends to ebb and flow over time. Property spruikers become more active when conditions in the market place are conducive to their business practices. This occurs when property prices are rising and property investment becomes attractive because it appears to offer higher returns.

Recently, these conditions saw property spruikers once again appear in the market place and on the national agenda.

Over a decade of observations have given jurisdictions a vast body of knowledge about the extent of the harm that property spruikers can inflict on consumers, and the corresponding agility in which they structure their business affairs to evade the law.

As a result, regulators are now exploring the different forms that property spruiking takes, including the specific harmful activity and whom it targets, via a multilayered-approach that allows for tailored responses to mitigate the consumer detriment.

The ACL includes a broad set of enforcement tools to moderate the misconduct of property spruikers to the extent that their conduct is misleading, deceptive, unconscionable or involves false or misleading representations. In their traditional role, spruikers sell property investment systems, often through seminars, to people who then behave as intermediaries between vulnerable buyers and sellers, and to inexperienced investors (including SMSFs) in the form of one-stop-shop services, off-the plan developments, and various 'investor-mentoring' services.

Victoria, as lead jurisdiction, is considering a new focus which is targeted at intermediaries that profit from the scheme without bearing any of the risks. By targeting specific harmful activities, tailored responses can be designed to mitigate the consumer detriment.

EDUCATION AND INFORMATION FOR CONSUMERS AND BUSINESS

Summary

During 2013-14, EIAC undertook coordinated education campaigns on consumer rights and raising awareness with business about their obligations, with a focus on the online environment. It invested significant effort to ensure that communication activities across ACL regulators, including their various consumer publications, were appropriately coordinated and shared to maximise reach and minimise resources. It also concentrated on getting information about consumer rights to vulnerable consumers such as Indigenous Australians, people from diverse cultural and linguistic backgrounds, and people with disabilities. Finally, it met regularly to consider emerging consumer protection issues and how best to work together to raise awareness in the community.

OVERVIEW

Through EIAC, ACL regulators have collectively continued to focus on ensuring cost-effective, coordinated, innovative and effective mechanisms are used to provide information, increase knowledge and change behaviour of both consumers and business to protect consumers across Australia.

Raising the awareness of vulnerable and disadvantaged consumers

Some consumers may need additional support in order to make appropriately informed purchasing decisions and to protect them from the small number of traders that may play on any vulnerability or disadvantage they may possess.

While not all consumers with these characteristics will experience vulnerability or disadvantage, historically, concerns have been raised in relation to consumers who:

- have a low income;
- are from a non-English speaking background;
- have a disability – e.g. an intellectual, psychiatric, physical, sensory, neurological or a learning disability;
- have a serious or chronic illness;
- have poor reading, writing and numeracy skills;
- are homeless;
- are very young or old;
- come from a remote area; or
- have an Indigenous background.

ACL regulators, through EIAC, have continued to focus on raising awareness and providing support to these consumers during 2013-14.

A particular focus of EIAC this past year was on providing information to Indigenous consumers who are vulnerable due to a range of factors including limited choice and competition, low financial literacy and a lack of understanding of their rights. There are also unscrupulous operators who seek to exploit these consumers.

A corresponding publication for businesses dealing with Indigenous consumers was also developed and distributed to outline their obligations under the ACL.

Case study 6 — Supporting Indigenous consumers

Example 1: *Be Smart — Buy Smart* publication

The *Be Smart – Buy Smart* booklet was developed to help protect Indigenous consumers against unfair trading practices by providing helpful information about their shopping rights and responsibilities under the ACL. The booklet also promotes the existence and availability of consumer protection agencies across Australia as a source of advice.

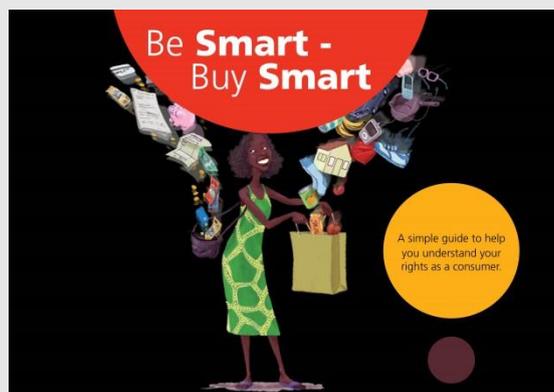
The booklet covers shopping rights, credit and book up, refunds, guarantees and warranties, lay-by, contracts, scams, resolving issues and lodging a complaint.

The project was a joint consumer awareness initiative of EIAC, with support from NICS.

The booklet was adapted from South Australia’s ‘Talk about Shopping’ booklet. It includes a refreshed design, updated content and NICS artwork on the front cover, endorsed by both NICS and EIAC.

The booklet complements the suite of other culturally appropriate materials developed by Australian consumer protection agencies including a series of short YouTube videos, a reference kit for community organisations, fact sheets and social media accounts.

Booklets were distributed to Indigenous consumers, including communities in regional and remote areas, and are available through agency websites.



Source: Inside front cover of *Be Smart — Buy Smart* booklet

Example 2: FairStore publication

In December 2013, the ACCC jointly launched with ASIC *FairStore: a best practice guide for stores serving remote and Indigenous communities*, on the suggestion from CDRAC. FairStore explains traders' obligations under the ACL, including fair sales practices, consumer guarantees and product safety. It also has important information for traders who offer credit services or 'book up' (sometimes referred to as 'tiki') to their customers. As part of the launch, the ACCC sent copies of FairStore to hundreds of traders.

Taking stock of the ACL's communication tools

As a national law for consumer protection, ACL regulators need to work together collaboratively in a coordinated and effective manner. This collaboration assists ACL regulators to deliver consistent messages to the public about consumer protection matters in a resource effective way.

It also enables ACL regulators to ensure that they are employing the most effective and creative means to communicate their messages about consumer protection to the public and to focus on mediums that will enable the greatest reach to consumers.

To ensure that ACL regulators are communicating with these objectives in mind, an audit was conducted during 2013-14 on their information and education tools.

Case study 7 — EIAC Information and Education Tool Audit: Efficiency and effectiveness through collaboration

In 2010, EIAC commissioned a national communications audit of the publications, campaigns and online content of all member agencies.

This audit was repeated in 2014 to both identify the benefits EIAC is experiencing from implementing recommendations from the 2010 audit, as well as to make recommendations for the future.

Results indicate that in the period between the two audits, EIAC has achieved:

1. A reduction in printed publications and duplication, due to a joint approach in publication development

A comparison of data across both audits indicates that EIAC has experienced a significant reduction in printed publications: 511 in 2010 and 88 in 2014, equating to an 82 per cent reduction.

Since the original audit, most agencies have moved to hosting more content online, increasingly using audio-visual content, and plan to continue to reduce the quantity of printed publications in future. There is also increased emphasis on having a coordinated, collaborative approach to developing information on common topics, particularly areas covered by the ACL.

2. Increased reach for campaigns and more effective communication to Australian consumers, due to collaborative efforts

Collaborative projects, for example the national Travelling Con Men campaign, have benefited agencies due to the reduced pressure on resources and the additional reach achieved for campaigns by using ACL regulator distribution channels.

Anecdotal feedback from agencies indicates that most agencies have experienced time and effort savings from collaboration on national projects.

Work is underway to implement recommendations from the 2014 audit to achieve further benefits for EIAC members, including:

- generating a national bank of visual and audio-visual material and templates to increase consistency and accessibility for jurisdictions with less funding for creating information and education resources;
- sharing annual plans in order to strategically prepare for information/tool development and to identify opportunities for collaboration on common projects;
- research sharing by individual agencies with all members; and
- establishing a Commonwealth copyright for campaigns, tools (such as apps) and creative elements to enable sharing and use by other agencies.



Source: Travelling Con Men campaign image

Raising awareness about the online environment

Consistent with the results of the findings of the information and communications tool audit, EIAC and ACL regulators have been focusing more on the increased prevalence of consumers shopping online.

In fact, Australians are increasingly going online to buy goods and services and taking advantage of the benefits it brings through increased competition, choice and convenience.

From 2011 to 2014, Australian online shopping expenditure grew by 17.6 per cent and is projected to reach \$26.9 billion by 2016.²

While the digital economy can bring many benefits, it also presents challenges in terms of consumer protection from scams, breaches of consumer guarantees and product safety. With the predictions for this trend to continue, EIAC and ACL regulators will continue their focus towards the online environment as a platform to educate consumers about their rights.

Case study 8 — Empowering Australian consumers to Shop Smart Online

To educate consumers about their rights and obligations under the ACL and create confident online shoppers, EIAC developed the Shop Smart Online video. The video provides key tips to consumers about what to look out for when shopping online and promotes Australian consumer protection agencies as a place to go for help. Small businesses were also considered an audience for the video due to their tendency to shop online for business-related products and services.

Shop Smart Online was independently produced by the creators behind *The Checkout* television series. The video provides hints and tips to consumers in an entertaining and humorous way, by using popular internet memes.

The video was launched during the four-week festive season between December 2013 and January 2014 in order to capitalise on the peak period when Australians are shopping online for Christmas presents, as well as post-New Year sales and post-Christmas returns.

By the end of January 2014, the video had been viewed over 32,000 times. YouTube viewers rated the video very highly with a score of 4.56/5.00. This is above average for Australian Government videos and YouTube videos more broadly. The video is available through consumer agencies websites and YouTube channels.



Source: Screen from Shop Smart Online YouTube video

² PWC & Frost & Sullivan, Australian online shopping market and digital insights: An executive overview, July 2012.

COMPLIANCE AND DISPUTE RESOLUTION

Summary

In 2013-14, ACL regulators, through CDRAC, have progressed work on a range of national projects and have considered a number of consumer protection challenges. These include taking action in the areas of testimonials, was/nor pricing, cash back schemes, property spruikers, romance scams, training providers, extended warranties, drip pricing, national enforceable undertakings, trader engagement, and conduct targeting vulnerable and disadvantaged consumers.

OVERVIEW

In 2013-14, CDRAC worked closely to integrate compliance and enforcement operations and supported CAANZ through its role in coordinating compliance and enforcement action. CDRAC also supported consumers by delivering efficient and effective redress in response to emerging national consumer issues.

Of particular note, CDRAC began to collectively record statistics on the outcomes achieved by regulators in enforcing the ACL (Table 1). This outlines a total number of 350 actions at a value of over \$18.4 million in infringements, fines, costs, compensation and penalties.

Table 1: ACL Enforcement Outcomes

Activity	Number	Value
Infringement notices	126	\$600,930
Enforceable Undertakings	66	
Public Warnings	28	
Court cases initiated	130	
Court action fines		\$661,949
Court action costs		\$236,699
Compensation awarded*		\$1,065,162
Civil pecuniary penalty orders		\$15,916,500

* As a result of court action or enforceable undertaking negotiations.

Collaboration and coordination of enforcement operations

Over the period, ACL regulators focussed on working more collaboratively under the 'one law, multiple regulators' model and implemented a lead agency approach for compliance and enforcement action to ensure collaboration, coordination and information sharing is strengthened. This benefits ACL regulators and the community as regulators are able to best utilise resources to achieve desired outcomes for consumers.

Case study 9 — Collaboration with a lead agency model

The ACCC, acting as a lead agency, conducted negotiations with event organisers on behalf of all ACL regulators to obtain immediate refunds on tickets purchased for a postponed Rolling Stones concert scheduled for late March 2014. Regulators then provided information to consumers to assist them to understand their ACL rights, and key messages were developed by CDRAC members within 24 hours of meeting. The early collaboration by jurisdictions minimised the impact on regulators and the early advice provided to consumers resulted in few complaints.

Another significant improvement by ACL regulators has been to develop protocols for national enforceable undertakings. The aim is for ACL regulators to seek national enforceable undertakings as a measure to address trader conduct that crosses state and territory borders. So far these actions have had some success in the courts.

The advantage of a national enforceable undertaking coordinated between jurisdictions is that action is taken only once to address trader compliance, reducing regulatory complexity for business and achieving national outcomes for all consumers. It also promotes consistency in compliance and enforcement approaches among jurisdictions, as well as the sharing of information and resources. Development of this initiative will continue.

ACL regulators collaborated on several national compliance projects during 2013-14, including:

- property spruikers and rent-to-buy schemes;
- false testimonials used by businesses to promote their products and services;
- cash back promotions and consumers' ability to claim their rebate;
- testing the truth of discounted 'was/now' pricing in advertising;
- finalising the extended warranties national project;
- drip pricing, where fees and charges are added on during a booking process;
- scams including romance scams and general scam awareness; and
- traders targeting vulnerable or disadvantaged consumers.

Case study 10 — Property spruikers and rent-to-buy schemes

As a part of the national project outlined earlier in this report, CPWA has taken action against a number of traders promoting property investment or rent-to-buy schemes. These included court enforceable undertakings with Mr Rick Otton and his companies Rick Otton.com Pty Ltd and We Buy Houses Pty Ltd, after he failed to substantiate marketing claims. The undertakings prevent Mr Otton and his companies from running seminars and promoting their schemes in WA for two years.

CPWA also commenced proceedings against people who had attended Mr Otton's seminars and implemented the business models, resulting in Supreme Court of WA rulings against No Home Loan Pty Ltd in May 2012 and Patricia and Bryan Susilo in February 2014. A third case against Rowan Lines was commenced in February 2013 and is ongoing.

Case study 11 — Testimonials

During 2013, NSW led a national project to identify traders using fake online reviews and testimonials as a promotional tool. Regulators wanted to learn more about the way traders use fake testimonials, which are significantly under-reported given the difficulty consumers have in determining the veracity of testimonials. Regulators reviewed 290 traders in 20 market sectors and issued substantiation notices to 40 businesses.

As with previous projects, the use of substantiation notices put the focus on self-compliance by traders and several agreed to remove unsubstantiated testimonials from their websites. Regulators are now using key indicators to monitor testimonials, which continue to be considered as part of other investigations.

Key action on testimonials included the following:

- the Queensland OFT entered into an enforceable undertaking with Darren Howard Berry and Craig Timothy Burgess as co-directors of AWON Pty Ltd (Australian Warranty Online Network);
- the ACCC obtained a Federal Court ruling against P&N Pty Ltd, P&N NSW Pty Ltd (trading as Euro Solar) and Worldwide Energy and Manufacturing Pty Ltd (formerly trading as Australian Solar Panel);
- Federal Court proceedings were commenced against A Whistle (1979) Pty Ltd, the franchisor of the Electrodry Carpet Cleaning business; and
- The ACCC addressed misleading conduct related to fake online reviews by releasing best practice guidance about online product reviews for businesses and review platforms.

Case study 12 — Cash Back Schemes

The Queensland OFT led a project focusing on retailers offering cash back incentives to consumers in return for the purchase of consumer goods. Regulators noted concerns from consumers about delays and hurdles experienced when redeeming cash back offers, along with insufficient information being provided at the point of purchase. Regulators have been targeting high volume retailers to review representations, encourage compliance and take enforcement action where instances of non-compliance are identified.

As a result of monitoring, 21 traders were asked to substantiate the payment of consumer claims and the bona-fides of advertised cash back offers, and responses are being assessed for any contraventions of the ACL.

Regulators are communicating through mainstream and social media to inform both industry and consumers of their rights and obligations regarding cash back offers.

Case study 13 — Was/Now Pricing

Price is a key factor for many consumers buying goods or services in a competitive retail environment. Unless consumers have been monitoring prices for particular goods or services over an extended period, they often assume that claims of promotional prices and savings are legitimate, when this may not be the case.

CDRAC endorsed the Queensland OFT as the leader of a national project to focus on addressing this issue.

High volume retailers and those offering goods for purchase at heavily discounted prices from the recommended retail or advertised 'was' price were targeted and forty one traders were called upon to substantiate the bona-fides of the discounted price offer, with responses continuing to be assessed.

Regulators are also delivering communications through mainstream and social media to inform both industry and consumers of their rights and obligations regarding discounted pricing offers under the ACL. This includes an update of the ACCC advertising and selling guide for businesses. This guidance highlights a number of recent enforcement outcomes to explain the courts' interpretations of the ACL. The ACCC has also released a short video for small businesses using 'was/now' pricing.

Case study 14 — Extended Warranties

ACL regulators finalised the extended warranties national project in 2013-14, which involved identifying retailers who offered extended warranties and reviewed their representations, encouraging compliance and identifying matters for enforcement action. The principal concern of regulators was the practice of businesses to sell extended warranties by falsely representing the statutory protections available for free to consumers under the consumer guarantee provisions of the ACL. In effect, consumers might be asked to pay for rights that already exist in law.

Covert operations (mystery shopping) with representations being recorded were undertaken and as a result, 15 traders received warning letters and 72 traders received educational letters about their key obligations under the ACL.

Educational material, including letters to traders, contained information about a key case that involved the Federal Court ordering Hewlett-Packard Australia to pay a \$3 million civil pecuniary penalty for making false or misleading representations to customers and retailers regarding consumer guarantee rights.

Case study 15 — Drip Pricing

Drip pricing involves the incremental disclosure of fees and charges in an online booking or purchase process. As a part of its new priority area focusing on drip pricing, the ACCC has worked with ASIC to develop a consistent and coordinated approach to non-transparent fees and charges.

The ACCC has instituted proceedings against Jetstar Airways Pty Ltd and Virgin Australia Airlines Pty Ltd for using drip pricing practices. In each of these cases, the ACCC alleged that each airline engaged in misleading or deceptive conduct and made false or misleading representations in relation to particular airfares. The ACCC alleged that the airlines made representations on their websites and mobile sites that certain domestic airfares were available for purchase at specific prices, when in fact those prices were only available if payment was made using particular methods.

Case study 16 — Scams

Example 1: Romance Scams

Project Sunbird was an initiative of CPWA and the WA Police. Sunbird targeted suspected frauds, where a romantic relationship develops online by the perpetrator for the purpose of duping a victim into sending them money. Victims are asked to transfer funds overseas, commonly to the West African countries of Nigeria, Sierra Leone, Ghana, Benin or Togo, for a variety of reasons using services such as Western Union and bank transfer.

CPWA notified victims of the fraud after WA Police identified suspect money transfers to overseas destinations using AUSTRAC financial reporting data. This contact was successful in convincing 60 per cent of recipients to stop sending money.

If funds continued to be sent, a second letter, developed with the aid of a psychologist, was sent to the person named as having sent the money. This letter was successful in getting 40 per cent of those victims to stop sending funds. If a person continued to send money, the WA Police personally visited the victim to demonstrate they were being defrauded.

The WA Police Major Fraud Squad collaborated with the Nigerian Economic and Financial Crimes Commission, resulting in arrests of people involved in frauds against WA citizens. In one case, a victim was able to recover most of the money they sent overseas. Regulators have also successfully worked with Western Union to have suspect accounts closed down and individual senders blocked from sending funds.

In 2013, as a direct result of Project Sunbird, 1,100 relationship fraud victims stopped sending money to fraud perpetrators and prevented a loss to consumers of approximately \$100 million over 5 years.

Following this, in 2014 the ACCC announced it would be conducting a national scam disruption project with ACL regulators, similar to WA's Project Sunbird, in conjunction with the ACFT.

Example 2: SCAMwatch

SCAMwatch (www.scamwatch.gov.au), operated by the ACCC, is the Australian Government website for information on scams. In 2013–14, 20 SCAMwatch radar alerts on current scams were issued to over 26,000 subscribers as part of a free alert service. The ACCC also tweets about scams targeting Australian consumers and businesses via the SCAMwatch Twitter profile (@SCAMwatch_gov). The Little Black Book of Scams also continued to be the ACCC's most popular publication and continues to be considered international best practice. In March 2014, the Canadian Competition Bureau launched an e-book version of this publication. The ACCC also raised consumer awareness of scams through hundreds of media interviews throughout the year.

As chair of the ACFT, the ACCC works closely with the public, private and community sectors, plus other Commonwealth and state and territory regulators, to educate the public and disrupt scams. One of the Taskforce's initiatives is an annual National Consumer Fraud Week campaign. In 2014, the Taskforce urged Australians to 'Know who you're dealing with', and provided advice on how to identify, avoid and disengage from scammers. Over 150 partners helped to raise community awareness about relationship scams.

The ACCC also released its fifth annual Targeting Scams report during Fraud Week, which received widespread media coverage and noted that:

- nearly 92,000 scam-related contacts were made to the ACCC in 2013, with almost \$90 million reported lost;
- dating and romance scams moved to number one for financial losses, with over \$25 million reported lost; and
- scammers continued to favour phone delivery, with over half of the scams delivered via a telephone call or text message. However, scams delivered online caused the greatest financial harm, with nearly \$42 million reported lost in online scams.

Regulators continue to exchange information on the latest scams and discuss strategies for minimising consumer detriment and catching those responsible.

CPWA also worked with Australia Post to seize 346,000 scam letters between February and August 2014, containing more than 100 different scams. The letters were shredded.

Achieving compliance with the ACL

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 notices, infringement notices 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.

Some examples of the action and remedies obtained by ACL regulators during 2013-14 are outlined below.

Case study 17 — Enforceable undertakings

Example 1: E'Co Australia Pty Ltd

E'Co Australia Pty Ltd had 300 clothing collection bins at 205 prominent locations around the Perth metropolitan area which displayed text and images which gave the impression that the clothing donations would ultimately be given to poor children in Africa. The overall impression was that the operator was itself a charity or not-for-profit organisation when it was not.

In November 2011, the company agreed to an enforceable undertaking with CPWA to place notices on the bins clearly stating to users that the items deposited may be sold for profit. The trader continued the conduct and further action was taken which resulted in a negotiated outcome whereby E'Co Australia Pty Ltd entered into another enforceable undertaking and was required to pay \$100,000 in monthly instalments over 18 months to appropriate charities and publish in a national newspaper a prominent advertisement apologising for any deceptive conduct.

Example 2: Kmart Australia Limited and Tyre and Auto Pty Ltd (Kmart Tyre and Auto Services) & AutoCo Tuggeranong Pty Ltd (Bridgestone Select Belconnen)

The ACT Office of Regulatory Services (ORS) found that Certificates of Compliance had been issued for vehicle registration by Kmart Tyre and Auto and Autoco where the vehicles' brakes had not been tested to the standard required by law. As a result, consumers had potentially been misled and charged for a service that was not completed to the required standard.

In May and July 2013, the ACT ORS accepted undertakings from Kmart and Autoco, with a further business entering into an undertaking in June 2014 after it took over the Kmart Tyre and Auto business to ensure that the conduct did not continue.

Case study 18 — Substantiation and infringement notices

Annah S Pty Ltd

Country of origin labelling plays an important role when consumers are considering product choices. Australian consumers will often pay a premium price to support Australian businesses and products, while New Zealand citizens residing permanently in Australia are likely to pay a premium price to support New Zealand businesses and products.

The Queensland OFT received, via the New Zealand Commerce Commission, customs information that Annah S Pty Ltd, trading in Queensland as Annah Stretton, was importing clothing from China into New Zealand, labelling those products as 'Made in New Zealand' and then exporting them to Queensland for sale in retail stores.

The trader admitted the facts, however, submitted that the incidents were the result of unfortunate and unintentional circumstances surrounding the incorrect labelling of the products. Annah S Pty Ltd was fined for breaching the ACL.

This case study demonstrates the value of interaction between New Zealand and Australian consumer protection agencies.

Case study 19 — Public warning notices

Construction Mining & Resource Media/Peter Sorensen

Mr Peter Sorensen used agents or contractors to issue invoices to mining companies which included details that appeared to be legitimate and encouraged companies to make payment for services they had not received.

On 11 June 2014, the NSW OFT issued a public warning in relation to Peter Noel Anthony Sorensen and the business entities Construction Mining & Resource Media, and Mining & Resource Media, as the business names were being used in the ongoing false billing scam targeting the mining sector.

Five companies assisted the NSW OFT with its investigation and on 15 October 2013, Mr Sorensen pleaded guilty to a total of 32 charges of ‘asserting right for payment for unsolicited services’. These consisted of 25 charges under the ACL and seven under the *Fair Trading Act 1987 (NSW)*. Mr Sorensen was convicted and fined \$40,000 with \$3,200 costs, and ordered to pay \$96,600.50 to five mining companies.

Case study 20 — Civil penalties

Example 1: TPG Internet Pty Ltd

In December 2013, the High Court of Australia, hearing the matter on appeal from the ACCC, ordered that TPG pay total penalties of \$2 million in respect of misleading television advertisements and its failure to prominently display the single price in its initial advertisements.

This case is of great significance to ACL regulation because the High Court recognised that penalties must be fixed to ensure that they are not regarded by businesses as an acceptable cost of doing business. The ACCC also sought the court’s guidance on the practice of headline advertising and the extent to which advertisers can rely on the knowledge of consumers about possible offers. In its judgment, the High Court said, ‘The tendency of TPG’s advertisements to lead consumers into error arose because the advertisements themselves selected some words for emphasis and relegated the balance to relative obscurity’.

Example 2: Coles Supermarkets Australia Pty Ltd

In June 2014, in proceedings initiated by the ACCC, the Federal Court found that false, misleading and deceptive claims were made by Coles Supermarkets Australia Pty Ltd in relation to its bread branded as Cuisine Royale and Coles Bakery.

The Court found that the ‘Baked Today, Sold Today’, ‘Freshly Baked’ and ‘Baked Fresh’ claims made by Coles amounted to a misleading representation as it suggested that the bread, which was par-baked, had been baked on the day of sale or baked in a fresh process using fresh, not frozen, product.

The judgment was important for ACL regulation as it reinforced a number of principles underlying the ACL. Claims of this kind have been an enforcement priority area for the ACCC.

Example 3: AGL South Australia Pty Ltd / CPM Australia Pty Ltd

At the end of 2013, the ACCC finalised its compliance and enforcement project to address the harm caused by many energy retailers involved in door-to-door selling. This case significantly raised consumer and business awareness, imposed substantial penalties and resulted in beneficial behavioural changes from businesses.

In December 2013, the Federal Court ordered by consent that AGL South Australia Pty Ltd and its marketing company, CPM Australia Pty Ltd, pay penalties totalling \$60,000 for failing to leave a consumer’s premises despite the ‘do not knock’ sign on their front door. The salesperson nonetheless knocked on the consumer’s door and attempted to negotiate an agreement to supply energy.

This was in addition to penalties of \$1.755 million that the Federal Court ordered AGL Sales Pty Ltd, AGL South Australia Pty Ltd and CPM Australia Pty Ltd to pay in May 2013 as part of the same proceedings, for other unlawful selling practices that included making false representations to consumers.

Example 4: Dimmeys Stores Pty Ltd

On 17 December 2013, CAV won a landmark case against Dimmeys Stores Pty Ltd and others, which upheld the right of state-based regulators to take ACL matters to the Federal Court. CAV obtained one of the largest civil pecuniary penalties that a court has issued under the ACL.

Dimmeys Stores Pty Ltd was ordered to pay a civil pecuniary penalty of \$3 million, while Starite Distributors Pty Ltd and company director, Mr Zappelli, were ordered to pay penalties of \$600,000 and \$120,000 respectively. Mr Zappelli was also disqualified from managing corporations for a period of six years. The Federal Court granted the declaratory relief sought and restrained Dimmeys from selling any product subject to a safety standard for six years. They were ordered to place advertisements about the court's decision in newspapers across Victoria and New South Wales, on their website and in all their stores. The court also ordered the destruction of all seized products, at Dimmeys' expense.

Case study 21 — Criminal penalties

Bulk Imports & Exports Pty Ltd/George Sekuloski

Mr George Sekuloski, also known as Goce Sekuloski, was the sole director of Bulk Imports and Exports. He also traded under other names and advertised online and in magazines. Mr Sekuloski's companies sold solar panels, generators, spas, regulators, invertors, camper trailers, dirt bikes, golf buggies, saunas, fridge/freezers, treadmills, awnings and camping and caravanning equipment.

NSW OFT issued public warnings about Mr Sekuloski on 10 August 2012 and 7 June 2013, and also shut down two websites operated by him for failing to supply products, supplying products that were not of acceptable quality, failing to honour warranties and being unable to be contacted by consumers seeking redress. On 19 November 2013, Bulk Imports and Exports pleaded guilty to multiple charges under the ACL and were fined \$10,800.

Case study 22 — Damages and injunctions

Elevisi Moli

A joint operation between Queensland OFT and the South Australian regulator resulted in a successful Federal Court injunction against itinerant door-to-door tree-lopper, Mr Elevisi Moli.

On 28 July 2014, the Federal Circuit Court in Brisbane granted an injunction under the ACL against Mr Moli for breaches of the unsolicited consumer agreement provisions.

Mr Moli was prosecuted by the Queensland OFT in 2011 and 2013 for failing to give details of his identity, failing to tell the consumers he had to leave on request, failing to give written agreements that complied with the law and misrepresenting that he had full insurance when he did not. He was subsequently fined and was ordered to pay substantial compensation to elderly customers in South East Queensland.

However, Mr Moli continued this conduct in South Australia. As a result of shared intelligence and cooperation between Queensland OFT and the South Australian regulator, Mr Moli was located and served with a Federal Circuit Court injunction. The injunction has force nationally and orders Mr Moli to stop committing offences. Failure to comply will result in a contempt of court order.

Example 2: Solareco Pty Ltd

In April 2014, Solareco Pty Ltd, a company which supplied and installed solar energy systems, was convicted of three charges in Melbourne Magistrates' Court after CAV commenced criminal proceedings against the company for breaches of the ACL. The breaches related to making false representations to consumers about their refund rights and accepting payment for solar energy systems that it failed to supply within the agreed time. The company was convicted of three offences after falsely representing to consumers that their deposit would be refunded if they chose not to proceed with the contract, as well as committing to supply and install the systems within an agreed time and then failing to do so.

The company was convicted, fined a criminal penalty of \$60,000, ordered to pay compensation to two consumers and ordered to pay costs in the amount of \$1,200.

Case study 23 — Disqualification orders

ACL regulators can target egregious or recidivist behaviour by company directors by seeking banning orders under the ACL. The Victorian regulator found that tackling the people behind the corporate entities has been an effective approach to avoid problems with targeted companies going into liquidation or 'phoenixing'.

As a result of applying this approach, the regulator banned five directors from managing corporations, some for significant periods.

Taking action for consumers in financial services

ASIC is the regulator with primary responsibility for the ACL for credit and financial services. This includes banking, insurance, financial advice, investments and superannuation. ASIC has achieved some significant outcomes for consumers of financial services. Many matters that raise concerns under the ACL also contain potential breaches of other legislation, such as the *National Consumer Credit Protection Act 2009* (National Credit Act) and the *Corporations Act 2001*.

Case study 24 — Misleading conduct in financial services

Example 1: SuperHelp Australia Pty Ltd

In February 2014, ASIC took action against SuperHelp after it potentially made misleading statements in the advertising of its self-managed superannuation fund (SMSF). SuperHelp indicated in its advertisements that Fund Setup and Pension Setup were free, subject to '*conditions'. However, no conditions were disclosed in the advertisement.

Although advertised as free, the conditions for SMSF setup required investors to pay \$475 upfront – half the annual administration fee – to be eligible for free fund setup. There were also restrictions on the number of members a fund could have and how many investments could be made. In addition, Pension Setup was not free under any circumstance for investors under 60 years of age.

SuperHelp Australia Pty Ltd paid an infringement notice of \$10,200 issued by ASIC and took steps to correct its advertising and developed improved processes for the sign-off of advertisements.

Example 2 — Paid International Ltd

In April 2014, Paid International Ltd, formerly known as First Stop Money Ltd, paid \$30,600 in penalties after ASIC issued three infringement notices for making misleading representations in its online advertisements.

The small amount lender, which operates nationally online, stated on certain websites that it offered ‘instant decisions’ and loan approvals ‘within minutes’ for small amount loans.

ASIC was concerned the ads were false or misleading because the lender’s assessment of a loan application was not ‘instant’ or completed ‘within minutes’. In some instances, loan applications took up to 72 hours to be assessed.

ASIC noted that credit licensees, such as small amount lenders, must make reasonable enquiries about the consumer, verify their financial situation and assess the suitability of the loan for that particular consumer before providing them with a loan. It is not appropriate or possible for a small amount lender or any other credit licensee to make an instant decision or approve a loan ‘within minutes’ if they are complying with their obligations.

Taking action for vulnerable and disadvantaged consumers

A national priority of ACL regulators is to assist vulnerable consumers as they engage with the marketplace, and to respond to unfair trade practices. Although regulators set their own priorities annually they are jointly committed to target conduct at a national level, especially where the conduct affects vulnerable consumers. Most compliance and enforcement action, whether it is taken individually or coordinated nationally, benefits other jurisdictions as the activities of many businesses cross state borders.

It should also be noted that working effectively with vulnerable witnesses is becoming increasingly important for ACL regulators, with recent ACL cases encountering challenges relating to the evidence of affected vulnerable consumers. The ACCC is currently undertaking a project that will work with vulnerable consumers in investigations and enforcement actions.

Some examples of action taken by ACL regulators in 2013-14 for vulnerable and disadvantaged consumers are outlined below.

Case study 25 — Elderly consumers

Lux Distributors Pty Ltd

The ACCC alleged that between 2009 and 2011, Lux Distributors Pty Ltd engaged in unconscionable conduct in relation to the sale of vacuum cleaners to elderly consumers. The ACCC alleged that a Lux sales representative called upon five elderly women in their homes under the premise of a free vacuum cleaner maintenance check, and that each of the women was then subjected to unfair and pressuring sales tactics to induce them into purchasing a vacuum cleaner for a price of up to \$2,280.

In August 2013, the Full Federal Court handed down its decision (on appeal) and made a declaration that Lux had engaged in unconscionable conduct in relation to the sale of vacuum cleaners to three of the elderly consumers in their homes.

This is a significant decision for ACL regulation. It clarifies the scope and operation of the unconscionable conduct provisions, with implications for the protection of vulnerable consumers. The Full Federal Court said, 'The norms and standards of today require businesses who wish to gain access to the homes of people for extended selling opportunities to exhibit honesty and openness in what they are doing, not to apply deceptive ruses to gain entry'. At the time of this report the penalty hearing was yet to be held.

Case study 26 — Indigenous consumers

Example 1: Titan Marketing Pty Ltd

Titan Marketing Pty Ltd sold first aid kits and water filters through door to door sales, including to consumers in Indigenous communities of Far North Queensland and the Northern Territory. Since 2011, Titan entered into over 7,900 unsolicited consumer agreements. After an ACCC investigation, in June 2014, Titan was ordered by the Federal Court, by consent, to pay total penalties of \$750,000 for engaging in unconscionable conduct, making false and misleading representations, breaches of the unsolicited consumer agreement provisions of the ACL and failing to specify a single price for goods. The Court also declared by consent that Titan's director, Mr Paul Giovanni Okumu, was knowingly concerned in the systemic unconscionable conduct engaged in by Titan and ordered him to pay a penalty of \$50,000.

Mr Okumu was disqualified from managing a corporation for five years and both Titan and Mr Okumu were conditionally restrained for five years from entering Indigenous communities that require permission from Elders or Administrators to enter to sell any goods. Titan was also ordered to deliver any remaining first aid kits to Indigenous Community Health Care Centres in two Indigenous communities particularly affected by Titan's conduct.

Titan's conduct was identified by the ACCC with the assistance of the Indigenous Consumer Assistance Network (ICAN) and following a visit to a remote Indigenous community.

Example 2: Home Essentials Australia Pty Ltd, I Love My Water Pty Ltd, Triple Bay Group Pty Ltd and Triple Bay Pty Ltd

In February 2014, ASIC accepted an enforceable undertaking with Home Essentials Australia Pty Ltd, I Love My Water Pty Ltd, Triple Bay Group Pty Ltd and Triple Bay Pty Ltd (the companies), and the companies' principals for conduct in relation to the hire and sale of water coolers and first aid kits. Water coolers and first aid kits were marketed to consumers by door-to-door sales representatives, in many cases to vulnerable consumers, including those living in remote areas such as the Pilbara region in Western Australia.

ASIC was concerned that the companies breached the ASIC Act by engaging in conduct that was unconscionable. They breached the National Credit Act, by providing credit while unlicensed, despite being told by ASIC of the need to be licensed and the rent-to-buy agreements used by the companies contained unfair terms.

The companies and principals agreed in the undertaking to make a payment of \$250,000 to be split equally between the Pilbara Community Legal Service and ICAN (to assist those organisations in educating and advising consumers on financial products and dealings with financial services), stop collecting payments owed by customers under existing rent-to-buy agreements, allow customers to keep the goods they were renting with no further payments required, make refunds (of approximately \$100,000) to customers who had made payments under a rent-to-buy agreement but had not received their rental goods, and not engage in credit activities or apply for a credit licence for a period of five years.

PRODUCT SAFETY

Summary

In 2013-14, consumer agencies took action to improve safety outcomes for consumers and assist businesses to understand their safety responsibilities. The PSCC supported coordinated actions from ACL regulators to improve safety outcomes including campaigns to keep children safe around trampolines and a national surveillance program resulting in increased compliance within the sunglasses market.

Consumer agencies also addressed a range of other safety issues during the year including the supply of small high-powered magnets, non-compliant children's clothing and raising awareness about safety responsibilities among online businesses.

OVERVIEW

In 2013-14, consumer agencies took action to improve safety outcomes for consumers and assist businesses to understand their safety responsibilities.

Coordinating safety outcomes for consumers

During 2013-14, ACL regulators, through the PSCC, worked together on strategies to improve safety outcomes for consumers. This was achieved through a range of methods, including national surveillance, education campaigns and events, employing the national ban framework and enforcement action in the courts.

In conducting this work, ACL regulators undertook joint surveillance programs to increase compliance with the sunglasses and fashion spectacles standard, and a joint campaign to educate consumers about how to keep children safe around trampolines products.

As a result of the combined national surveillance, consumer agencies have removed banned, non-compliant and unsafe goods from sale. This protects Australian consumers from harm, including physical and psychological injury, financial burden (lost income due to incapacity for work), and costs of medical treatment.

Regulators also worked jointly to issue a temporary ban on the sale of synthetic drugs across the country. This gave state and territory health and law enforcement agencies time to update their drug enforcement laws to comprehensively outlaw synthetic drugs to protect the safety of consumers.

Case study 27 — Surveillance, education and bans

Example 1: Sunglasses surveillance strategy

In 2013-14, consumer agencies coordinated a joint surveillance program in the sunglasses market to increase compliance with the mandatory safety standard. The program involved two stages of surveillance, with the first to identify levels of non-compliance occurring in August 2013. Following initial surveillance, stores were advised that future non-compliance may result in enforcement action.

The second stage of surveillance demonstrated significant improvement in the level of compliance, with 86 per cent of suppliers identified as supplying non-compliant sunglasses in the initial surveillance now selling compliant sunglasses.

The activity resulted in 20,317 sunglasses being removed from sale, 184 warning letters being issued to suppliers, five voluntary recalls, five infringement notices being issued amounting to \$10,000 in fines, and an enforceable undertaking which included a \$5,000 contribution to the Victorian Consumer Law Fund.

Example 2: Trampolines education campaign

Each year there are more than 3,000 reports of trampoline-related injuries to Australian children, or more than eight per day. Children between the ages of five and nine are the most likely to be injured.

A national trampoline safety campaign was coordinated by consumer agencies between October 2013 and June 2014. The campaign aimed to raise awareness amongst parents, carers and suppliers about the risk of injuries that trampolines pose to Australian children and provide safety tips for children when using trampolines.

The key educational outcomes achieved through this integrated approach included a live media launch and a safety video featuring the campaign ambassador, Australian Olympian trampolinist Blake Gaudry, extensive online promotion via social media tools and a facts sheet for carers (pictured below).



'What you Need to Know About: Trampoline safety – it's flippin' important.'

Example 3: National interim ban on goods containing synthetic drug substances

Between June and October 2013, consumer agencies implemented national short-term bans to protect consumers from the risk of injury associated with products containing synthetic drug substances. The bans prohibited the supply of 19 products containing synthetic drug substances. The bans were a necessary short-term solution to protect consumers from harm during a period when state and territory drug laws did not regulate these dangerous products. Once the state and territory drug and poisons laws were modified to include these products, the bans lapsed.

These short-term bans highlight the power of the ACL framework and regulators to produce quick and effective responses to protect consumers from potentially harmful products.

During October 2013, ACL regulators banded together to run Product Safety Week. A key event during Product Safety Week was the first international product safety conference in Australia involving international regulators, businesses, researchers and consumer groups, with activities happening around Australia and online to raise awareness about making, buying and using safe products.

A 'Risk Assessment Workshop' was also held, co-hosted by the ACCC and the Organisation for Economic Cooperation and Development. The workshop included ACL, non-ACL and international regulators with discussions focusing on current risk assessment practices. The outcome of the workshop was a shared understanding of tools and approaches to be used when conducting risk assessments.

During 2013-14, ACL regulators also obtained key product safety enforcement outcomes in relation to the retailing of goods, including clothing, toys, sporting equipment and cosmetics. They worked together to issue a national ban on small, high powered magnets that posed a safety risk to children when swallowed. As a result of this ban, CAV is taking action against Qantas for the continued supply of these banned products.

Case study 28 — Court action

Example 1: Dimmeys Stores Pty Ltd

On 17 December 2013, CAV won a landmark case against Dimmeys Stores Pty Ltd and others which upheld the right of state-based regulators to take ACL matters to the Federal Court and resulted in one of the largest civil pecuniary penalties that a court has issued under the ACL.

CAV took action against Dimmeys following over 18,000 unsafe products being removed by inspectors from its Victorian and NSW stores. The products removed included girls' padded swimwear missing labelling required under the floatation aid safety standards, toys that posed a choking hazard, basketball rings missing the required warnings, and cosmetics sets missing the required ingredient labelling.

Dimmeys Stores Pty Ltd was ordered to pay a civil pecuniary penalty of \$3 million, while Starite Distributors Pty Ltd and company director, Mr Zappelli, were ordered to pay penalties of \$600,000 and \$120,000 respectively. Mr Zappelli was also disqualified from managing corporations for a period of six years. The Federal Court granted the declaratory relief sought and restrained Dimmeys from selling any product subject to a safety standard for six years. They were ordered to place advertisements about the court's decision in newspapers across Victoria and New South Wales, on their website and in all their stores. The court also ordered the destruction of all seized products, at Dimmeys' expense.

Example 2: Small high powered magnets

The national ban on small high-powered magnets took effect in November 2012 after a number of young children required surgery from swallowing multiple magnets. It was found that if a child swallows more than one small high powered magnet, the magnets can stick together across the walls of the child's intestine or other digestive tissue which can lead to internal injuries and even death. Following this ban, consumer agencies took further action in 2013-14 in relation to small magnets and CAV is now taking action against Qantas for the continued supply of these banned goods.

Addressing new and emerging safety issues

Some of the key work that ACL regulators undertake in the product safety area is ensuring that they are responsive to new and emerging product safety issues.

During 2013-14, regulators have undertaken this in a variety of ways, including coordinating national recalls, engaging with international regulators and consumers in an online environment to address unsafe products being sold into Australia from overseas, and introducing new or amending existing mandatory standards.

Case study 29 — New and emerging safety issues

Example 1: A national recall of unsafe electrical cables

During the year, the ACCC established a national taskforce to respond to potentially unsafe electrical cable that had been supplied to hardware retailers, electrical wholesalers and electricians by importer Infinity Cable Co Pty Ltd (Infinity Cable). A national taskforce brought together electrical safety regulators, consumer agencies and building regulators. The aim of the taskforce was to find a solution for thousands of consumers who may have unsafe electrical cables installed. The taskforce was successful in facilitating product recalls by retailers and wholesalers who are arranging for replacement of unsafe installed cables.

Example 2: Engaging with international regulators and consumers online

During 2013-14, the ACCC worked with international safety regulators to address product safety concerns that arise in the online environment. In March 2014, the ACCC produced a public report to communicate guidance for online businesses, including businesses based overseas. It is understood that this report is one of the first of its kind in the world and leads the way in addressing emerging consumer safety issues. The guidance aims to empower businesses and enable consumers to make safe and confident online purchasing decisions.



Consumer product safety online: This Australian Competition and Consumer Commission (ACCC) report is for Australian and overseas based businesses that supply, or intend to supply, products to Australian consumers via the internet. It tells you steps that you can take to address product safety issues and foster better outcomes for consumers.

Example 3: Mandatory standards

In 2013-14, a new mandatory portable swimming pool standard was implemented. It covers important labelling requirements for portable pools and took effect from 30 March 2014. The existing baby walkers' mandatory standard was updated in line with current requirements for design, testing and labelling, with requirements being enforced from 1 April 2014. A new mandatory service standard for the installation of corded internal window coverings was made in 2013 and will take effect from 1 January 2015.

APPENDIX 1 — AUSTRALIA'S CONSUMER POLICY FRAMEWORK

Summary

To support the ACL, Australia's governments and their 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 former MCCA³ 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 Legislative and Governance Forum on Consumer Affairs (CAF).

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

