

Implementation of the Australian Consumer Law

Report on progress V (2014–15)

February 2016

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LETTER TO THE CHAIR OF CAF, THE HON JOHN ELFERINK MLA

The Hon John Elferink MLA
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c/- CAF Secretariat
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February 2016

Dear Minister

This is the fifth report on progress of the Australian Consumer Law (ACL) that commenced on 1 January 2011. It highlights the administration of the ACL by Australia's consumer agencies during 2014-15.

Commonwealth, state and territory consumer agencies continued their active engagement throughout the year, including through undertaking a range of initiatives to strengthen the collaboration, coordination and consistency of their work on compliance and enforcement, consumer and business education, and policy development. Consumer affairs officials, through Consumer Affairs Australia and New Zealand (CAANZ) and their advisory committees, collaborated in a wide range of areas, including:

- designing a legislative extension of unfair contract term protections to small business, developing a package of proposals to improve the efficient administration of the ACL and exploring issues relating to the reform of travel services;
- 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 \$42 million in infringement notices, fines, costs awarded, compensation and penalties.

In detailing the range of activities undertaken during 2014-15, this report highlights the extent of consumer agency cooperation and collaboration in administering the ACL for the benefit of the Australian consumers, business and the broader community.

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



Gary Clements
Chair, Consumer Affairs Australia and New Zealand

LIST OF ACRONYMS

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	Legislative and Governance Forum on Consumer Affairs
CCA	<i>Competition and Consumer Act 2010</i>
CDRAC	Compliance and Dispute Resolution Advisory Committee
COAG	Council of Australian Governments
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
PRAC	Policy and Research Advisory Committee
PSCC	Product Safety Consultative Committee

EXECUTIVE SUMMARY

THE MULTIPLE REGULATOR MODEL OF THE ACL

The ACL operates under a 'multiple regulator model'. Uniform Commonwealth, state and territory laws are jointly administered by the ACCC and by state and territory consumer affairs agencies. ASIC administers similar provisions for financial services. This multiple regulator model allows for the delivery of different but complementary consumer empowerment and protection services. This also means that effective administration and enforcement of the ACL requires effective communication, cooperation and coordination. As highlighted in this report for 2014-15, consumer agencies continued to strengthen their ACL enforcement, education, and policy and research initiatives, for the benefit of consumers throughout Australia.

A STRENGTHENED CONSUMER PROTECTION FRAMEWORK

Consumer agencies focused on initiatives to strengthen the consumer policy framework, including the development of legislation to extend unfair contract term protections to small business and to improve the efficient administration of the ACL, exploring issues in the context of recent travel services reform and examining approaches to ACL penalties and remedies in each jurisdiction. Preparations commenced for the 2016 Review of the ACL with CAF Ministers agreeing the terms of reference in June 2015.

FOCUSED EDUCATION AND INFORMATION

Consumer agencies coordinated education campaigns on consumer rights and business obligations, focusing on the online environment and vulnerable consumers. Key areas included travel services reform and education and training providers. ACL regulators continued their collaborative approach to consumer education campaigns that align with cyclical events such as the January sales period.

TARGETED COMPLIANCE AND DISPUTE RESOLUTION

ACL regulators worked on a range of national projects and consumer protection challenges during 2014-15. These included taking action in the areas of property spruikers, cash back schemes, 'was/now' pricing, training providers, travel and accommodation, travelling consumers, financial services, and taking action for vulnerable and disadvantaged consumers. Regulators achieved significant outcomes in the enforcement of the ACL including \$42 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 consumers safe when using ethanol burners, a national surveillance program that increased compliance within the portable pools market, the ongoing recalls of Infinity electrical cable and certain models of Samsung washing machines, and important changes to the mandatory standard for the installation of evaporative air conditioners in bushfire zones.

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* 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* and in Acts in each state and territory. 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 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
- enforcement and consumer redress provisions.

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

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.

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. ACL regulators collaborate to ensure dispute resolution, compliance and enforcement are consistent and coordinated across Australia. ASIC administers similar provisions under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) in relation to financial services. These regulators have complementary roles.

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 2014-15 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.

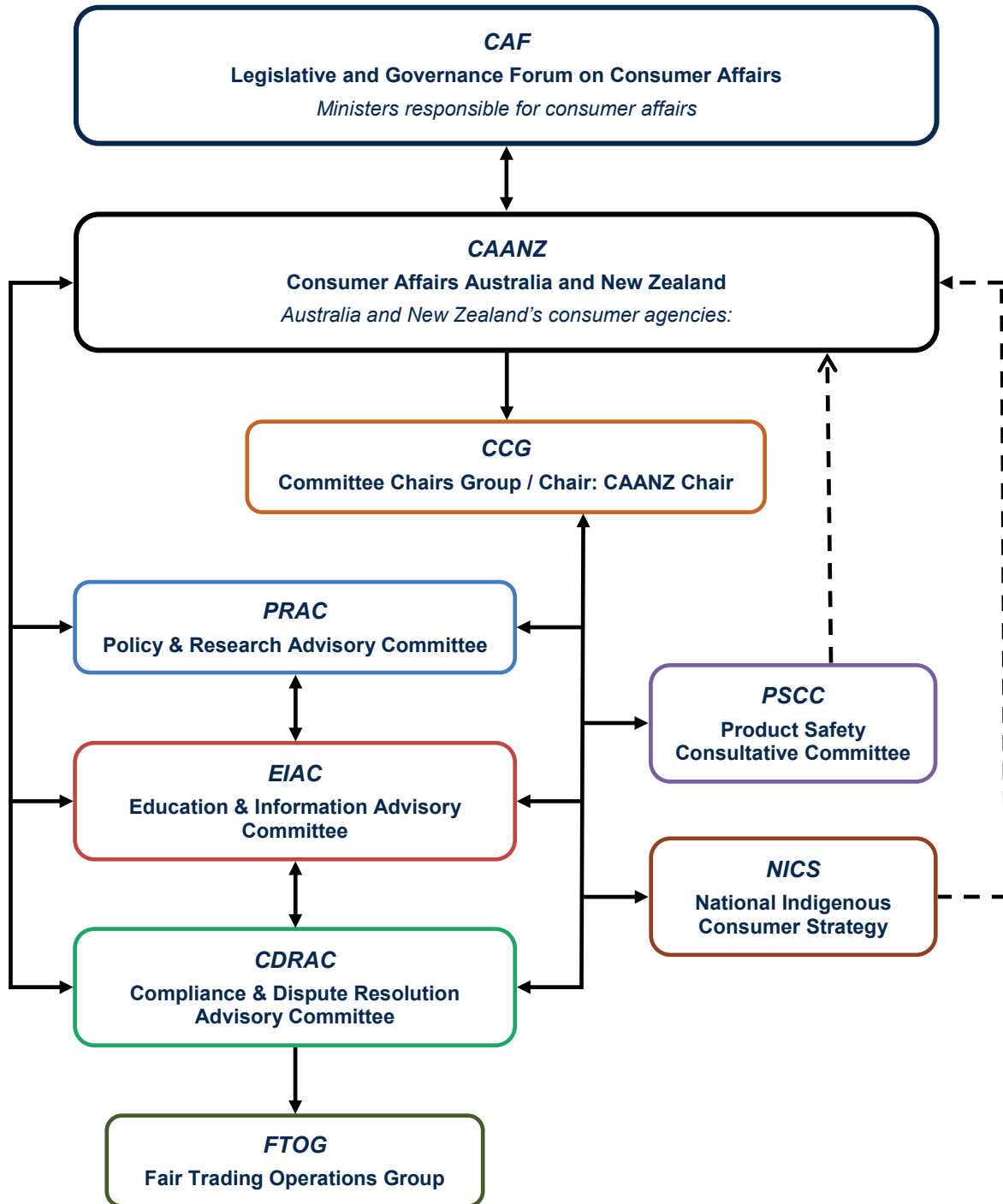
CAF's role is to administer the Ministers' collective responsibilities under the IGA, including considering consumer affairs and fair trading matters of national significance and mutual interest and developing a consistent approach to those issues where possible.

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 received 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)** provided a forum for regular engagement with state and territory consumer agencies on product safety policy, enforcement and awareness issues, and engaged with the other committees as required.
- From time to time, CAANZ may create other specific operations groups to aid it in achieving its objectives. CAANZ has 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 2014-15 is outlined in **Figure 1**.

Figure 1: CAF governance arrangements



CONSUMER POLICY AND RESEARCH

Summary

During 2014-15, the Policy and Research Advisory Committee (PRAC) continued to focus on a range of policy improvements in advance of the five-year review of the ACL in 2016. Policy agencies developed a Bill to improve the efficient administration of the ACL which was introduced into the Commonwealth Parliament in March 2015. A commitment to extend unfair contract term protections for small businesses was also progressed, and agencies worked cooperatively on a range of policy areas in response to emerging consumer issues.

During 2014-15, PRAC undertook activities to streamline and strengthen the administration of the ACL. This included preparing legislative amendments to the ACL and encouraging the use of a guide to assist jurisdictions identify inconsistent, complementary and duplicative provisions in legislation. PRAC also progressed a commitment to extend unfair contract term protections to small business; continued to coordinate on travel reforms under the Travel Industry Transition Plan approved by CAF Ministers in 2012; undertook research into obstacles to consistent ACL enforcement outcomes; explored options to improve consumer confidence and certainty in egg labelling; and analysed potential gaps in the regulation of property spruiking activities.

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.

Case study 1 — Extending unfair contract term protections to small businesses

The Commonwealth Government made an election commitment in 2013 to extend unfair contract term protections to small business and in November 2013 consumer affairs Ministers agreed to consider such an extension.

The Commonwealth Treasury released a consultation paper and undertook extensive public consultation on behalf of consumer affairs agencies. There were over 80 submissions and around 300 responses to an online business survey during the process which concluded in August 2014.

The design of the protections was developed in close consultation with PRAC and in April 2015 the Commonwealth's proposal received the requisite support of State and Territory consumer affairs Ministers as required under the IGA. Exposure draft legislation underwent public consultation from 28 April to 12 May 2015 and there were almost 50 submissions from stakeholders. The Bill was introduced into Federal Parliament on 24 June 2015.

PRAC ensured that all jurisdictions were actively engaged in the policy development and this enabled the proposal to progress in a timely manner. This engagement is expected to continue into the policy implementation phase.

Case study 2 — Improving the efficient administration of the ACL

In June 2014 consumer affairs agencies 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.

Consumer affairs agencies, through PRAC, developed a package of proposals to amend the ACL, some of which were developed in consultation with other state and territory bodies, including food regulators. The package was presented to CAANZ at their November 2014 meeting and received the requisite support of State and Territory consumer affairs Ministers in March 2015. The agreed measures include:

- Removing food reporting requirements under section 131(2);
- Strengthening the ACCC's ability to disclose notices of product-related death, injuries and illnesses to other government agencies;
- Extending jurisdiction for pyramid selling and unsafe goods liability to State and Territory courts; and
- Clarifying requirements for the cooling-off period for unsolicited consumer contracts.

The *Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015* was introduced into the Commonwealth Parliament on 18 March 2015. The bill was referred to the Senate Committee on Economics for inquiry, and the majority report of the committee released on 13 May 2015 recommended that the bill be passed.

Case study 3 — ACL Penalties and Remedies

PRAC examined the civil remedies and criminal penalties available to courts in each jurisdiction under the ACL. These remedies and penalties are important in supporting effective enforcement of the law. Regulators researched the similarities and differences between jurisdictions in relation to the:

- powers of local lower-level courts to dispense ACL civil remedies;
- penalties for breaches of ACL civil remedies ordered by lower-level courts exercising their civil jurisdiction;
- powers of ACL regulators to prosecute ACL offences in local lower-level courts;
- powers of ACL regulators to issue infringement notices, and the associated penalties;
- powers of ACL regulators to publicly identify recipients of infringement notices; and
- availability of additional local remedies for ACL breaches.

This work helped identify issues for the ACL Review commencing in 2016 and opportunities for improved consistency in enforcement to ensure that the ACL operates as intended in reducing consumer detriment, and deterring non-compliance.

Case study 4 — Travel Services Reform

From 1 July 2014 Australian travel agents no longer had to hold a licence or be members of the Travel Compensation Fund. In response to these reforms, ACL regulators established a compliance working party (CDRAC Case Study 12) and implemented a national education campaign (EIAC Case Study 7) to help consumers and stakeholders to understand their rights in the new environment.

Travel agents still need to comply with the ACL and can also be accredited to industry standards, such as the Australian Federation of Travel Agents (AFTA) Travel Accreditation Scheme (ATAS), which was developed after CAF Ministers awarded a \$2.8 million grant from the Travel Compensation Fund.

ACL regulators also commissioned consumer research about the travel industry. In July 2014, following a tender process, CAF Ministers awarded a one-off \$2.8 million funding deed to CHOICE for its proposed consumer 'travel hub' project, offering consumer research and advocacy.

In June 2015, CHOICE concluded the first research phase of the project with the release of its report, Australian Consumers in the Travel Market. The report includes survey findings on the most common consumer issues for travelling Australians, following a 'Holiday Horrors' campaign in December 2014 and January 2015 that gathered information on common travel problems in the holiday period. CHOICE has also published tips on its website for avoiding these common problems.

EDUCATION AND INFORMATION FOR CONSUMERS AND BUSINESS

Summary

During 2014-15, the Education and Information Advisory Committee (EIAC) coordinated education campaigns on consumer rights and raised awareness with business about their obligations. 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 make efficient use of resources. EIAC 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. It met regularly to consider emerging consumer protection issues and how best to work together to raise awareness in the community.

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 their vulnerability or disadvantage.

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 2014-15.

Case study 5 — Education training providers

ACL regulators received reports of training providers using door-to-door sales techniques and offering incentives – such as the promise of a laptop or tablet device – to entice consumers to sign up for expensive courses offered via a loan, leaving them thousands of dollars in debt. Consumers were often not told up-front that the laptop or tablet was only a loan and had to be returned once the student completed the course. Some consumers never received the item at all. In some cases, consumers were unaware that they were signing up for a Commonwealth Government VET FEE-HELP loan in their name, and were told by the salespeople that they would not have to repay the loan.

ACL regulators worked together to monitor the conduct and undertook compliance activities where required (see CDRAC Case Study 11). A national education campaign ‘a ‘free’ gift could cost you thousands’ was developed by NSW Fair Trading in consultation with community, legal and education sectors to warn consumers about the conduct and educate them about their rights and responsibilities under the ACL. The communications materials included website content, a brochure, postcard, poster, media release and social media. The brochure was also produced in Arabic, Chinese, Hindi, Korean, Spanish and Vietnamese. The campaign included engagement with community stakeholders in remote and regional areas including those populated by Indigenous communities.



Source: “A ‘free’ gift could cost you thousands” campaign image

TAKING STOCK OF ACL COMMUNICATION TOOLS

In 2014 ACL regulators adopted an ongoing collaborative approach to developing consumer education campaigns that align with cyclical events. Campaigns are developed around recurring events such as the annual pre-Christmas shopping peak, the January sales period, Valentine’s Day, Mothers’ Day, Fathers’ Day and World Consumer Rights Day.

The cyclical communications campaigns have allowed the ACL regulators to plan educational activities on an annual basis, by aligning key messaging with relevant events and ensuring that the campaign messages are well timed and resonate with target audiences.

The ACL is a national law for consumer protection, so ACL regulators need to work together. This helps deliver consistent consumer protection messages to the public in a resource efficient way that enables ACL regulators to use the most effective and creative messages and media that will reach the most consumers.

Case study 6 — Cyclical communications activity: January Sales

The 2015 January sales campaign focused on the traditional peak in retail sales at the start of the year. It aimed to empower consumers to make informed purchases of goods and services during the sales period by understanding their rights and obligations under the ACL. The campaign also reinforced traders' obligations under the ACL when offering products for sale. Messaging was developed to tie in with the summer holiday season, featuring the tagline 'Don't get burnt'.

The campaign was launched in early January 2015 and generated articles published online, media coverage and social media engagement. The most popular campaign Facebook post about proof of purchase garnered an organic reach of 16,632 people. This was closely followed by a business-focused message about when traders are required to provide a receipt, with a total organic reach of 12,768 people.



Source: Don't Get Burnt campaign image

RAISING AWARENESS ABOUT THE ONLINE ENVIRONMENT

Australians are increasingly going online to buy goods and services. 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 through increased competition, choice and convenience, 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 7 — Travel service reform education campaign

As part of the regulatory changes in the Australian travel agent industry, ACL regulators commissioned consumer research (PRAC Case Study 4), established a compliance working party (CDRAC Case Study 12) and implemented a national education campaign to help consumers and stakeholders understand their rights in the new environment.

The 'Pack some peace of mind' campaign made use of a range of communications including website content, an online video, digital, print and radio advertising, media engagement, blogger and social media activities, stakeholder support, and participation in travel expos around the country. The advertising component of the campaign included materials targeted at culturally and linguistically diverse (CALD) communities. The campaign also featured in ethnic publications, translated into relevant target languages, and across SBS Radio in selected language placements.

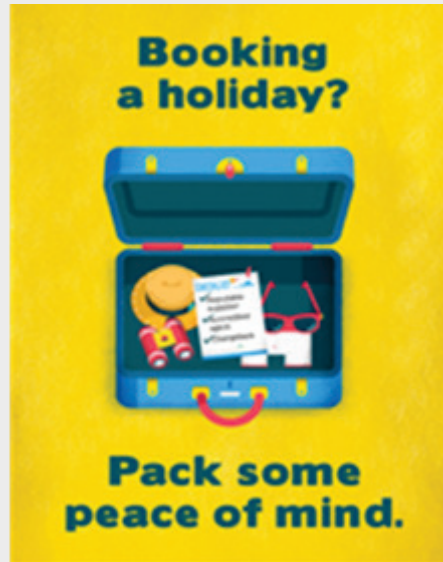
Online advertising was a key element of the campaign, in the form of banner placement on key news and travel websites, such as Yahoo7, Trip Advisor and Lonely Planet, to drive visits to the campaign website.

The campaign achieved the following:

- Visits to the campaign website: over 66,469;
- Media engagement reach: 16 million users;
- YouTube video views: 247,120;
- Radio ad reach: 2.6 million users;
- Factsheets distributed at travel expos: 24,000; and
- Information published in 169 CALD publications with a combined circulation of 1,897,972.

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

The campaign received widespread media coverage, with NewsCorp media featuring the campaign theme across their mastheads in New South Wales, Victoria, South Australia and Queensland and in the travel insert, 'Escape'. A 45-second YouTube video was also embedded onto NewsCorp websites. It also generated an article in The Senior - a national newspaper for senior citizens. This was an important inclusion as an older demographic was identified as possibly being more vulnerable to changes in the travel regulatory environment.



Source: *Pack Some Peace of Mind* campaign image

COMPLIANCE AND DISPUTE RESOLUTION

Summary

In 2014-15, ACL regulators worked through the Compliance and Dispute Resolution Advisory Committee (CDRAC) on a range of national projects and consumer protection challenges:

- property spruikers and rent-to-buy schemes;
- cash back promotions;
- 'was/now' pricing;
- training providers;
- travel and accommodation;
- travelling con men;
- taking action for consumers in financial services; and
- taking action for vulnerable and disadvantaged consumers.

Regulators secured enforcement outcomes including \$42 million in penalties, fines, costs and compensation.

COLLABORATION AND COORDINATION OF ENFORCEMENT OPERATIONS

ACL regulators continued to collaborate and strengthen relationships to ensure dispute resolution, compliance and enforcement were consistent and coordinated across Australia. Three national dispute resolution, compliance and enforcement based projects were completed during 2014-15: Property spruikers and rent-to-buy schemes; Cash back promotions; and 'Was/now' pricing.

Case study 8 – Property spruikers and rent-to-buy schemes

Between 2013 and 2015, Western Australia led a national compliance project focused on a number of high-risk property spruiking industry participants. As a result, twenty traders received legal notices to substantiate claims made in advertisements and at seminars. This prompted legal action against at least 10 entities and their associates including:

- Benjamin David Chislett, Creative Property Australia Pty Ltd and Benny Bull Pty Ltd (led by Consumer Affairs Victoria); and
- No Loan Home Pty Ltd trading as Perth's Easyhomes WA, Filip Butkovic, Nikola Butkovic, Patricia Susilo, Bryan Susilo and Rowan Lines (led by Consumer Protection Western Australia).

In March 2015, following a joint investigation with NSW Fair Trading, the ACCC instituted proceedings against We Buy Houses Pty Ltd and Rick Otton, alleging representations to consumers that, by attending seminars and boot camps, they would be taught how to:

- buy a house for \$1;
- buy a house using little or none of their own money; and
- build property portfolios without investing their own money and without new loans.

Seven traders gave regulators legally-enforceable undertakings to modify their behaviour. Regulators also issued 67 education and warning letters.

This work informed a 2015 education campaign to raise consumer awareness about the pitfalls of high-risk property schemes. Victoria is leading research on the regulatory options for addressing the conduct of property spruikers, including through national and jurisdiction-specific legislation.

This integrated strategy combines compliance, education and policy over the short, medium and long term to address long-held concerns about the property spruiking industry. This is an example of ACL regulators working successfully with a nationally coordinated approach.

Case study 9 – Cash back promotions

Queensland Office of Fair Trading led a project during 2013 and 2014 focused on retailers offering cash back incentives in return for the purchase of consumer goods. Consumers were concerned about the hurdles they experienced when redeeming cash back offers, and a lack of information at the point of purchase.

Regulators targeted high volume retailers and manufacturers with previous complaints about cash back offers to review representations, encourage compliance and take enforcement action where necessary. The project included whitegoods, small electrical appliances, computers and one brand of motor vehicle.

The project scrutinised 40 cash back offers from 10 retailers and 16 manufacturers. 20 of these 26 businesses were asked to substantiate claims about their cash back offers. A regulator gave one business an educational letter but 85 per cent of these businesses satisfied the regulator's enquiries, which means businesses take their ACL obligations seriously.

However, consumers had redeemed around only 30 per cent of these cash back offers. This suggests that traders, rather than consumers, are the main beneficiaries of cash back offers when compared with a straight out discount on price. The project highlighted the need for improvements in the way information about cash back offers, particularly terms and conditions, is made available. Some of the businesses proactively improved their information about cash back offers once regulators identified this problem.

This project focused on compliance operations and on education. Key messages were developed with EIAC and promoted in social media, website updates, articles in publications, and media releases.

Case study 10 – ‘Was/now’ pricing

The attraction of a bargain can overwhelm a consumer’s judgement when making a purchasing decision. Consumers observing products with a ‘was’ price and a discounted ‘now’ price are unlikely to be able to assess the truth of such representations. Mostly they assume the claimed savings are legitimate, when this may not always be the case.

Queensland Office of Fair Trading led a project during 2013 and 2014, to inform both industry and consumers of their rights and obligations under the ACL regarding ‘was/now’ pricing. Furniture retailers, supermarkets, department stores, jewellers and other specialist retailers, on-line retailers and aggregator sites were asked to substantiate ‘was/now’ pricing claims.

Around 300 products offered by 78 traders were checked and regulators issued substantiation notices to 36 traders: nine traders were then issued with an educational letter, one with an official warning and six cases were referred for full investigation. Two NSW Fair Trading investigations into Recommended Retail Price (RRP) advertising claims remain open. Regulators found no breach of the ACL for 90 per cent of the traders.

A common misconception among traders was that it was acceptable to advertise a ‘recommended retail price’ as a ‘was’ price even when the product had never been offered for sale at that price. However, a genuine ‘was’ price means that products were actually offered and sold at that price for a period of time.

EIAC helped develop key messages for promotion to traders and consumers throughout the project via social media, website updates, articles in publications, media releases and an educational letter for traders. The ACCC also updated its advertising and selling guide for businesses to explain the courts’ interpretations of this issue and released a small business video on ‘was/now’ pricing.

In 2014-15, CDRAC started national projects about:

- issues and emerging trends in the real estate industry at a national level;
- the ‘most complained about businesses in Australia’ - a relatively small number of businesses are responsible for a large proportion of consumer disputes and this project aims to improve those businesses to prevent consumer detriment and reduce demand on ACL regulator resources by targeting poor customer service and any systemic non-compliance with the ACL;

- creating tools to help ACL regulators respond to complaints about unfulfilled credit card transactions and to understand the rules that govern credit card chargebacks when consumers seek a refund.

CDRAC also continues work on the following national projects about training providers, travel and accommodation, and travelling commen.

Case study 11 – Training providers

Increased complaints about vocational education triggered a NSW led national project about unscrupulous training organisations and marketers offering incentives such as iPads and cash to Indigenous and vulnerable consumers, who were unknowingly signed up for training courses and student loans through the Commonwealth VET FEE-HELP scheme.

ACL regulators developed education material, such as the NSW led education campaign, *A 'free' gift could cost you thousands* (EIAC Case Study 5).

A joint investigative taskforce of ACL regulators (NSW Fair Trading and the ACCC) investigated a number of training organisations and marketers. Other ACL regulators, community networks and government agencies provided information to the taskforce. NSW Fair Trading officers conducted covert visits to 42 places such as shopping centres and outside Centrelink offices where vulnerable consumers had been approached by marketers. Many consumers were misled to believe the incentives were free and the training was optional.

NT Consumer Affairs secured cancellations of enrolments and loans, including 300 enrolments for consumers in the Northern Territory and Western Australia with one training organisation alone. A series of coordinated investigations in multiple states and territories continued beyond 2014-15.

ACL regulators liaised with vocational education and training agencies, including the Australian Skills Quality Authority and Commonwealth Department of Education and Training, to coordinate compliance activities and promote regulatory reform. The NSW Fair Trading Commissioner, as CDRAC Chair, also sits on the Commonwealth VET FEE-HELP reform taskforce. New Commonwealth standards for registered training organisations were introduced in 2015, holding them responsible for marketers they engage. Incentives such as iPads were also banned for marketing VET FEE-HELP courses.

Case study 12 – Travel and accommodation

The regulatory environment for travel agents changed nationally on 1 July 2014 and ACL regulators implemented a national education campaign to help consumers and stakeholders understand their rights (EIAC Case Study 7). Queensland Office of Fair Trading also led a national project to identify consumer protection issues in this new environment. With the closure of the Travel Compensation Fund there has been interest in travel agents who become insolvent or act unconscionably. One part of the project is to set-up an information bank about insolvent travel agents and possible unconscionable conduct in this industry.

The working party is reviewing 16,500 records covering nearly 9,000 complaints and 4,000 enquiries made to regulators in 2013 to 2014 and related to the \$30 billion plus consumer travel and accommodation industry. Preliminary results show no notable change in the number, or nature, of consumer complaints since the changes. The working party will complete its analysis before considering whether further compliance or education action is necessary.

Case study 13 – Travelling con men

NSW Fair Trading is leading the development of national strategies to disrupt increased activity by travelling con men in multiple jurisdictions across Australia. These typically unlicensed tradespeople go from door to door, offering unsolicited home repair services with misleading representations and high pressure sales tactics that often target the vulnerable or elderly. They often seek early payment and disappear before the job is finished, leaving consumers to pay licensed tradespeople to finish or rectify the poor work. This project complements the work of local ACL regulators who have prosecuted offenders and issued several warnings to home owners. Interagency coordination is critical to identify, track down and disrupt these often itinerant traders so that dissatisfied consumers can get refunds.

ACHIEVING COMPLIANCE WITH THE ACL

The ACL provides for penalties, enforcement powers and consumer redress options:

- 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.

ACL enforcement outcomes in 2014-15, including penalties, fines, costs and compensation of \$42 million, are summarised for all ACL regulators in Table 1.

Table 1: ACL Enforcement Outcomes

Activity*	Number	Value
Infringement notices	166	\$1,032,528
Enforceable Undertakings	63	
Public Warnings	28	
Court cases	137	
Court action fines		\$994,665
Court action costs		\$1,837,195
Compensation awarded**		\$14,080,503
Civil pecuniary penalty orders		\$23,808,000

* *Actions taken under the ACL, or under the ACL with other legislation.*

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

Some examples of ACL regulator actions and remedies during 2014-15 are outlined below.

Case study 14 – Coles 'Baked Fresh' litigation

In April 2015, in proceedings brought by the ACCC, the Federal Court ordered Coles Supermarkets Australia Pty Ltd to pay penalties of \$2.5 million for making false or misleading representations and engaging in misleading conduct in promoting its par-baked bread products.

Over a three-year period, Coles promoted products as 'Baked Today, Sold Today' and in some cases 'Freshly Baked In-Store', when they were in fact partially baked and frozen offsite by a supplier, transported and 'finished' at in-store bakeries within Coles supermarkets. Coles sold a significant number of par-baked products and generated substantial revenue from these sales.

The ACCC took this action because it was concerned that Coles' claims were likely to mislead consumers. The conduct also placed bakeries that entirely bake bread from scratch each day at a competitive disadvantage.

The Chief Justice said 'the courts should be astute and careful not to permit consumers to be misled on available meanings or connotations of phrases deliberately chosen to sell products on the basis that everyone takes advertising with a pinch of salt.'

The court also restrained Coles from making this kind of representation for three years and ordered Coles to place a corrective notice on its website and in its in-store bakeries.

Case study 15 – Coles Active Retail Collaboration program

In December 2014, the Federal Court declared (by consent) that Coles Supermarkets Australia Pty Ltd engaged in unconscionable conduct in 2011, in its dealings with over 200 smaller suppliers. The court ordered Coles to pay penalties of \$10 million and costs.

The ACCC alleged that Coles developed the Active Retail Collaboration program as a strategy to improve its earnings by gaining better trading terms from its suppliers. Coles asked suppliers to pay ongoing rebates for the program. Coles' target was to obtain \$16 million in rebates and an ongoing percentage of the price it paid for the suppliers' grocery products. The conduct included:

- providing misleading information to suppliers;
- using undue influence and unfair tactics against suppliers to obtain the rebate;
- taking advantage of its superior bargaining position by seeking payments with no legitimate basis; and
- requiring suppliers to agree to the ongoing rebate with insufficient time to assess the purported benefits of the program.

Coles entered a court enforceable undertaking for a process to redress affected suppliers. Coles appointed the Hon Jeff Kennett AC as independent arbiter. Kennett instructed Coles to refund over \$12 million to suppliers and also allowed suppliers to exit the Active Retail Collaboration program without penalty or have their contribution rebates reviewed.

Case study 16 – Peter Sorensen

In February 2015, Peter Noel Anthony Sorensen was jailed for 15 months – the first time a person has been jailed in New South Wales for an offence under the ACL. He was found guilty of defrauding mining companies of over \$124,000 in a fake advertising scam. Mr Sorensen sent invoices to eight mining companies demanding payments for advertisements he claimed to have placed in magazines. The publications never existed. The court ordered Mr Sorensen to pay \$100,000 in compensation. In sentencing, the court took into account that Mr Sorensen was previously convicted and fined for the same charges in 2013.

Case study 17 – Keat Enterprises Pty Ltd

A Melbourne training company was prosecuted by Consumer Affairs Victoria and convicted and fined \$165,000 for more than 30 breaches of the ACL, including engaging in conduct likely to mislead job seekers and recent accounting graduates into enrolling in its courses.

Keat Enterprises Pty Ltd, trading as Keat Partners and now in liquidation, posted 23 online ads for internships or employment between February 2013 and May 2014. The ads offered employment with \$30,000 to \$50,000 salary and did not mention any costs to be paid by the job seeker. Applicants for the jobs were invited to an 'interview' where they were marketed or sold training courses priced from \$2,000 to \$3,000.

At the sentencing hearing in the Melbourne Magistrates' Court, Magistrate Gerard Lethbridge remarked that the company perpetuated a deliberate fraud designed to encourage job seekers to undertake its courses.

Case study 18 – Westpoint and Carey

In 2015, the Western Australia Department of Commerce successfully prosecuted Westpoint Realty Pty Ltd (in liquidation). The company was fined \$30,000 and its Director Norman Phillip Carey was fined \$6,000 and ordered to pay \$97,449 costs for making false or misleading representations to consumers.

Mr Carey was found guilty on 11 February 2011 of five charges of breaching the *Fair Trading Act 1987* in relation to the sale of a residential property development in Rivervale in 2005. The Supreme Court dismissed Mr Carey's first appeal on 10 January 2012 and the Court of Appeal dismissed a second appeal on 28 August 2013. Westpoint Realty Pty Ltd was also convicted, but did not appeal.

The original trial found the company, via its agents, misled purchasers of units in the Regent Apartments development by falsely informing them there had been indefinite delays to the project due to planning approvals. The agents caused purchasers to terminate their contracts of sale, then each of the units were re-sold at a higher price within a short period of time.

This case highlights the need for those involved in promoting property to be completely honest in their dealings with clients and potential buyers. Property transactions must be totally transparent and the perpetrators of deception cannot be rewarded and must face the consequences of their actions.

Two former Westpoint Realty Pty Ltd sales representatives pleaded guilty to related charges in September 2010, were fined \$2,000 and \$750 respectively and granted spent convictions. A third sales representative, Thomas Haynes, pleaded guilty in December 2010, was fined \$1,000 and ordered to pay court costs of \$1,180.

Case study 19 – Eddie Kang/Singapore Oil

Eddie Kang, through his immigration business Singapore Oil, spent years targeting international students with false promises of employment and a subclass 457 visa. In some instances up to \$45,000 was swindled from students. NSW Fair Trading joined NSW Police and Department of Immigration officers in a joint raid on three premises linked to the business. In February 2015 Mr Kang was arrested for fraud related offences and was charged with four breaches of the ACL relating to misleading conduct in connection to employment. In addition 14 court attendance notices were issued for alleged fraud, false and misleading, and non-supply offences under the ACL.

Case study 20 – Nicholas and Gerasimos Lord

In April 2014, NSW Fair Trading issued a public warning about potentially dangerous spas sold by Euromax Spas, Euromax Imports, www.euomaxspas.com.au, www.euomaxdirect.com.au, Urban Boutique Pty Ltd and its directors Gerasimos Lord and Nicholas Lord. NSW also issued an embargo notice preventing the businesses and directors from selling the products.

It was alleged that the company was selling banned spas that contained potty skimmers that did not have a protective cover. A protective cover prevents a person from becoming lodged or caught in the skimmer box preventing serious injury and death. There were also a number of consumers who had paid large deposits (70 per cent of the price) and had not received their products within the agreed time frame.

In August 2015, Gerasimos Lord and Nicholas Lord pleaded guilty to offences under the ACL and *Fair Trading Act (NSW)*, including accepting payment and not supplying goods in time and acting in contravention of an embargo notice. The brothers were ordered to pay \$18,000 in fines and over \$45,000 in compensation to victims.

Case study 21 – Matthew Rixon and associated entities

On 18 March 2013 the NSW Local Court issued \$72,500 in fines and \$6,400 in compensation against Matthew Rixon for carrying out unlicensed, substandard and incomplete work while an undischarged bankrupt. Mr Rixon had previously been issued with 28 penalty infringement notices totalling \$19,000.

On 17 April 2013, under the ACL and the *Home Building Act 1989 (NSW)*, the NSW Supreme Court made consent orders permanently banning Mr Rixon from undertaking any residential building or landscaping work in New South Wales. On 9 May 2014, the Supreme Court found Mr Rixon to be in contempt of its orders. On 19 September 2014 Mr Rixon was sentenced to 18 months imprisonment. The sentence was suspended provided that, throughout the period of the term, Mr Rixon is of good behaviour; complies with the order of the Court made in April 2013; and undertakes 300 hours of community services.

NSW Fair Trading commenced further contempt proceedings against Mr Rixon in the Supreme Court.

Case study 22 – Wilson Parking

On 20 August 2014, the ACT Commissioner for Fair Trading accepted an enforceable undertaking from Wilson Parking after concerns that Wilson-owned car parks made potentially false or misleading representations between 1 February and 9 April 2014. Consumers approached Access Canberra with concerns about insufficient signage in the car parks and parking breach notices issued by Wilson represented that they were enforceable under local council by-laws, which was not the case.

Wilson Parking undertook to review policies and procedures, amend parking breach notices, signage and car park terms and conditions and to waive and reimburse parking breach notices from the period. They also donated \$10,000 to Snowy Hydro South Care.

Case study 23 – Alwyn Healy

In July 2015, Alwyn Robert Healy of Tapping, an air conditioning salesman who was the subject of numerous warnings and legal actions by the Western Australia Department of Commerce over many years, accepted a five-year ban from the industry.

Complaints against Mr Healy related to misleading claims that air conditioning systems he installed would both cool and heat clients' homes but, when installed, they had no heating function. Complaints also related to failures to install systems or not within a reasonable time, despite accepting substantial deposits.

The negotiated settlement brings an end to long-running Supreme Court action in which the Western Australian regulator sought to address Mr Healy's trading practices and seek redress for his customers. In 2011 the Supreme Court ordered Mr Healy to repay almost \$127,000 he owed 50 consumers; however, in 2015 Mr Healy was still not in a financial position to comply with that order.

Case study 24 – Vehicle testing businesses

The ACT Commissioner for Fair Trading accepted enforceable undertakings from: ILEARP Pty Limited trading as Ultra Tune Belconnen and Seed Holdings trading as Ultra Tune Tuggeranong; Commonwealth Motors Pty Limited; and Blue Kombi Pty Limited in relation to potentially misleading vehicle inspection services.

Access Canberra was concerned that the businesses charged consumers for inspections and issued certificates of compliance for vehicles that were not tested in accordance with the vehicle brake testing standard.

Case study 25 – All Rock Landscapes and Constructions

After continuing to take deposits from consumers for landscaping works and either not commencing or failing to complete the work, an injunction was issued against the trader for noncompliance with an existing enforceable undertaking with the ACT Commissioner.

Case study 26 – Joshua Abel trading as All That Property Services

The Queensland Office of Fair Trading received 47 complaints about a trader who accepted payments to provide cleaning services including end of tenancy bond cleans. The trader's website offered a '100% bond back guarantee' and undertook to return free of charge if landlords or property managers were not satisfied.

An investigation found that services were not performed at all or done to an unsatisfactory standard. Of those actually completed, the poor standard of cleaning meant consumers either had to pay another cleaner to redo the job or forfeit their bond. The trader was approached numerous times to honour their guarantee but failed to return or refund consumers. The Office of Fair Trading commenced prosecution action and issued a public warning advising consumers not to deal with the business.

On 13 March 2015, the court found the trader guilty of seven counts of misleading consumers and three counts of failing to supply a service under the ACL. The trader was fined \$40,000 and ordered to repay \$19,788 to affected consumers. A conviction was recorded. This case is significant as the court ordered non-party redress under the ACL.

Case study 27 – Carlson Hotels Asia Pacific Pty Ltd

Carlson Hotels Asia Pacific Pty Ltd advertised Radisson hotel rooms in Australia at a price that was only available in hotels in Asia. Carlson also advertised using an image of a hotel in Melbourne when the offer was not available anywhere in Australia. The promotions were in an electronic direct mail to Carlson club members, and the logistics of taking action against an international entity for a breach via an electronic medium was a significant challenge. The Queensland Office of Fair Trading issued the trader with a civil penalty notice for \$10,200 under the ACL for making misleading representations.

Case study 28 – Qantas Airways Limited

The Federal Court of Australia ordered Qantas Airways Limited and the operator of its duty-free program, Alpha Flight Services Pty Ltd to pay penalties of \$200,000 and \$50,000 respectively, for supplying banned small, high-powered magnets that can cause severe internal injuries if swallowed. 'Nano Magnetics Nanodots Onyx/Gold' was available on Qantas international flights and 'In Sky Shopping' website from August to September 2013.

Qantas and Alpha were also required to publish public notices on their websites, in the 'In Sky Shopping' catalogue, and in The Australian and the Australian Financial Review newspapers. Both companies were ordered to refund consumers returning the Nanodots, pay \$60,000 in costs, and pay the costs for Consumer Affairs Victoria, who initiated the proceedings, to destroy and dispose of the unsafe goods.

The Director of Consumer Affairs Victoria appealed the civil pecuniary penalty and the Full Court of the Federal Court of Australia dismissed the appeal on 28 May 2015.

Case study 29 — Fisher & Paykel Customer Services Pty Ltd

On 12 November 2013 the ACCC instituted proceedings against Fisher & Paykel Customer Services Pty Ltd and Domestic & General Services Pty Ltd for misleading representations in letters inviting consumers to purchase extended warranties. In December 2014 the Federal Court ordered by consent that both companies pay penalties of \$200,000 each, make declarations and implement compliance programs.

Consumers under the ACL may have a right to a repair, replacement or refund beyond the time period covered by the manufacturer's warranty. While some extended warranties may offer protection over and above that provided by the ACL, they do not replace the underlying consumer guarantees. This is an important case as the allegations involve false or misleading representations by businesses about consumers' statutory rights in the context of offering extended warranties.

TAKING ACTION FOR CONSUMERS IN FINANCIAL SERVICES

ASIC is the regulator with primary responsibility for the ACL for credit and financial services including banking, insurance, financial advice, investments and superannuation. ASIC achieved some significant outcomes for consumers of financial services. Many concerns under the ACL also potentially breach other legislation, such as the *National Consumer Credit Protection Act 2009* (National Credit Act) and the *Corporations Act 2001*.

Case study 30 — The Cash Store Pty Ltd and Assistive Finance Australia Pty Ltd

In February 2015, the Federal Court awarded record penalties totalling \$18.975 million against payday lender, The Cash Store Pty Ltd (in liquidation) and loan funder, Assistive Finance Australia Pty Ltd for failing to comply with responsible lending obligations under the National Credit Act. The majority of their consumers had low incomes or received Centrelink benefits.

The court also held that The Cash Store acted unconscionably in selling consumer credit insurance in relation to these loans when it was unlikely the insurance could ever provide any benefit to their customers. The unconscionable conduct occurred on a systemic scale. Of the 182,000 consumer credit insurance policies sold, only 43 consumers received a payout. The Cash Store retained income of approximately \$1.3 million from the sale of the insurance. The Court imposed the maximum penalty of \$1.1 million under the ASIC Act. These are the largest civil penalties ever obtained by ASIC.

Case study 31 — GE Capital Finance Australia

On 1 July 2014, the Federal Court made declarations and ordered consumer credit provider GE Capital Finance Australia, which trades as GE Money, to pay a penalty of \$1.5 million for making false or misleading representations to more than 700,000 of its credit card customers.

The court found that at various times between 5 January and 27 May 2012, GE Capital told certain customers that to activate their credit card, or apply for or obtain an increased credit limit; they also had to consent to receiving invitations to apply for credit limit increases.

These representations were false or misleading because GE Capital did not require such consent for credit cards to be activated or for credit limits to be applied for or increased. GE Capital engaged in the conduct shortly before the Government's prohibition on unsolicited invitations to increase credit card limits came into effect. During the court proceedings, GE Capital admitted to breaking the law.

The court found that, 'the contraventions were serious and the reach of GE Capital's conduct was extensive and substantial [and that it] was a systematic and deliberate attempt to mislead cardholders into giving their consent to receive invitations for future credit increases so as to avoid losses of up to \$6 million which were projected to be suffered by GE Capital as a result of the tightening regulatory environment.' The court also made orders requiring GE Capital to send emails or letters to approximately 210,000 affected cardholders advising them what the decision means for them and publishing a notice on its website.

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.

Many of the previous case studies feature important and significant action for vulnerable and disadvantaged consumers in 2014-15. The following examples further demonstrate the work of ACL regulators for vulnerable and disadvantaged consumers.

Case study 32 — Adata Pty Ltd

On 30 June 2014 the ACCC instituted proceedings against Adata Pty Ltd, Adata (Vic) Pty Ltd and Adata's sole director, Wayne Wright, for alleged breaches of ACL unsolicited consumer agreement provisions. The ongoing case relates to Adata's role as a registered tax agent supplying tax return services to Indigenous consumers who received Centrelink payments in remote communities in the Northern Territory and Western Australia. The alleged breaches include:

- receiving payments from consumers within the 10 business day cooling-off period;
- failing to inform consumers of their termination rights;
- failing to provide consumers with an Agreement Document;
- failing to use an Agreement Document that complies with the ACL; and
- calling on consumers on a Sunday.

Case study 33 — Chrisco Hampers

In December 2014 the ACCC instituted proceedings against Chrisco Hampers Australia Ltd. Chrisco offers food and drink hampers and a variety of other goods including homewares and gifts by lay-by agreement, to consumers throughout most areas of Australia including remote Indigenous communities. Consumers make interest-free lay-by payments and Chrisco delivers the goods after the final payment, usually in time for Christmas.

The ACCC alleged Chrisco contravened the ACL by using an unfair contract term, making false or misleading representations and for lay-by termination charges that exceeded reasonable costs. The allegations include that Chrisco told consumers they could not cancel their lay-by agreement after their final payment, whereas the ACL provides that consumers have the right to terminate a lay-by agreement at any time before delivery of the goods.

The Indigenous Consumer Assistance Network alerted the ACCC to the alleged conduct during an Indigenous outreach visit to Palm Island (Bwgcolman). The case is ongoing.

Case study 34 — Lindsay Gordon Kobelt

The Federal Court reserved its decision in civil penalty proceedings ASIC commenced against Mr Lindsay Gordon Kobelt, the owner and operator of Nobby's General Mintabie Store in Mintabie, in remote South Australia. The proceedings relate to Mr Kobelt's conduct as a provider of 'book up' - a type of credit commonly used in Indigenous communities that allows a customer to buy goods now and pay for them later.

ASIC's investigations indicate that Nobby's book up customers are required to provide Mr Kobelt with their debit cards and PINs, as well as details about their income, when they purchase goods. ASIC alleges that Mr Kobelt then uses the customer's card to withdraw all or nearly all of the customer's money from their bank account on or around the day they are paid. ASIC says this forces customers to ask Mr Kobelt for more credit and creates a relationship of dependency between the customer and Mr Kobelt. ASIC has taken action against Mr Kobelt because it says that this amounts to unconscionable conduct that breaches the ASIC Act.

ASIC also alleged that Nobby's charged customers more for buying second hand vehicles on book up, which essentially amounts to payment of a fee. Under the National Credit Act, payment of a fee in association with the provision of credit requires the provider to be licensed but Mr Kobelt does not hold an Australian credit licence.

PRODUCT SAFETY

Summary

In 2014-15, consumer agencies took action to improve safety outcomes for consumers and assist businesses to understand their safety responsibilities. The Product Safety Consultative Committee (PSCC) supported projects conducted by ACL regulators to improve product safety, including campaigns to keep consumers safe when using ethanol burners and a national surveillance program resulting in increased compliance within the portable pools market.

Consumer agencies addressed a range of other safety issues during the year, which included the ongoing recalls of Infinity electrical cable and certain Samsung washing machine models, and important changes to the mandatory standard for the installation of evaporative air conditioners in bushfire zones.

COORDINATING SAFETY OUTCOMES FOR CONSUMERS

During 2014-15, ACL regulators worked together through the PSCC on strategies to improve safety outcomes for consumers by coordinating recalls, national and international surveillance, education campaigns and research.

Case study 35 — National Infinity electrical cable safety recall

The voluntary recall of faulty Infinity electrical cable continued, led by the ACCC and supported by a Taskforce of State and Territory Regulators and an Industry Reference Group. The Taskforce is made up of electrical safety regulators, consumer agencies and building regulators. It has facilitated product recalls by more than 50 retailers and wholesalers, who are arranging for replacement of unsafe installed cables.

In June 2015 the ACCC undertook effective national advertising to raise and emphasise the urgency of remedial actions. Monthly suppliers' progress reports showed that 38 per cent of the cable had been located and replaced, rendered safe or scheduled for remediation. These extraordinary measures were necessary due to the large number of second-tier suppliers and the unprecedented scope and cost of the recall.

A list of frequently asked questions about the recalled cables, including specific questions for electricians, builders and suppliers, is available at www.accc.gov.au/update/infinity-cables-frequently-asked-questions.

Case study 36 — Evaporative air conditioners

In February 2011 a bushfire destroyed 71 homes and damaged a further 39 in the Perth Hills area. Forty two of the affected houses had evaporative air conditioners. While the cause of fire was not conclusively attributed to the presence of an evaporative air conditioner, filter pads in evaporative air conditioners are flammable and provide a potential route for a bushfire to enter the roof space of a house.

A PSCC working party recommended an amendment to existing electrical standards for evaporative air conditioners. The Electrical Equipment Standards Committee (EL2) established a working group of Energy Safe Victoria, ACCC, Australian manufacturers and other interested parties to consider the recommendation.

Standards Australia amended the relevant mandatory electrical safety standard AS/NZS 60335 on 1 December 2014. It requires that evaporative air conditioners supplied in specific bushfire zones from December 2016 to be fitted with an automatic fire damper or a non-combustible, corrosion-resistant cover.

The ACCC also corresponded with the Australian Building Codes Board and Standards Australia to recommend a review of the National Construction Code (NCC) to ensure that it aligns with the amendment.

Case study 37 — International online sweep

The ACCC led a coordinated sweep of online shopping websites in May 2015. The sweep investigated the availability of unsafe products from suppliers online. Twenty five countries participated in this project including Australia, New Zealand, Canada, Chile, Japan, Korea, Turkey, and 17 member states from the European Union. A total of 1162 individual websites were visited.

During the sweep, participants surveyed a number of online shopping websites to identify banned or recalled products that were available for sale, non-compliant product labelling and products with potential unsafe design features and compliance issues.

The results from this online sweep will be available from September 2015 and will help regulators work together, or individually, to tackle issues in online product safety.

Case study 38 — Portable pools

In 2014-15, the ACCC coordinated with the States and Territories to survey bricks and mortar retailers for compliance with the newly introduced mandatory product safety standard for portable pools.

The campaign was a success, with significantly increased compliance across all market sectors. The project also teamed with the Royal Life Saving Society of Australia to provide guidance to consumers on the safe use of portable pools, especially about drowning hazards for young children. The campaign reached an estimated audience of almost 3 million people.

This was an example of successful ACL regulator collaboration.

Case study 39 — Quad bikes

In 2012 the NSW Government announced a \$1.5 million research project for the University of New South Wales (UNSW) Transport and Road Safety Research Unit to assess the stability and crash-worthiness of quad bikes, similar to the ANCAP rating for motor vehicles. The ACCC joined the Project Reference Group to oversee this research.

The ACCC completed a number of consumer education initiatives regarding quad bike safety, including the 'Prepare Safe, Wear Safe, Ride Safe' campaign. The initiatives focused on making consumers aware of the risks associated with riding a quad bike, being well prepared and trained, making good choices on who rides a quad bike and where, as well as the need for proper protective equipment. In April 2014, the ACCC launched a YouTube video, 'Would You Risk It?' This campaign includes specific warnings against allowing children to ride quad bikes that are meant for adults – even as passengers.

The ACCC also commissioned the QUT Report - 'Recreational Quad Bike Related Injuries in Australia'. The report identified Quad Bikes as the leading cause of unintentional death on farms in Australia with 213 deaths reported between January 2001 and July 2015.

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.

Case study 40 — Inflatable spas

The ACCC became aware of the dangers posed by M Spa control boxes after two reports of electric shock incidents were made in Australia and a near fatality was reported overseas. Multijurisdictional cooperation, including the Australian Customs and Border Protection Service, has resulted in multiple recalls of the spas. Suppliers have been very proactive and responsive to the recalls, which has resulted in high rates of remediation. In January 2015 the Commonwealth Minister for Small Business issued a safety notice alerting consumers to the hazards associated with the spas. The ACCC continues to monitor the recalls.

Case study 41 — Ethanol burners

Ethanol fireplaces and table top burners are home décor items that are used both indoors and outside. A number of Australian consumers have suffered serious burn injuries whilst using ethanol burners. Generally, injuries occur when the burner is being refuelled whilst still alight.

ACL regulators have worked together to educate consumers and suppliers on the hazards associated with ethanol burners. On 10 July 2014, the Queensland Attorney-General and Minister for Justice issued a safety warning notice under the ACL with information on how to use ethanol burners and fireplaces safely.

In January 2015, the ACCC and Queensland Office of Fair Trading released a jointly-developed guide, 'Ethanol fuelled burners: information for suppliers'. The guide provides suppliers with information about markings, labelling and warning information suitable for this type of product.

The European Union (EU) is currently implementing a safety directive for these types of products that will likely eventuate in a European Standard. The ACCC- Queensland Office of Fair Trading supplier guide is based on an early draft of the expected European Standard.

In April 2015 the Poisons Standard was changed at the request of the ACCC. From 1 February 2016, ethanol burner fuel containers must declare the following:

WARNING: Do not attempt to refill burner while it is in use or still warm; it could lead to serious burn injury.

THE FUTURE OF THE PSCC

At the end of 2014-15, the Product Safety Consultative Committee was disbanded and its role in coordinating the product safety work of the ACL regulators was shared amongst the other committees. EIAC took on product safety education, PRAC incorporated product safety policy coordination and CDRAC increased its work in coordinated product safety compliance and enforcement.

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 Table 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.

Table 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
- 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

On 12 June 2015, Consumer Affairs Ministers agreed Terms of Reference for the review of the ACL which will commence in 2016.

The review satisfies the requirements of the Intergovernmental Agreement for the Australian Consumer Law (IGA), signed by COAG on 2 July 2009. The IGA provides that a review of the enforcement and administration arrangements supporting the ACL be undertaken within seven years, and a review of the operation and terms of the IGA be undertaken after seven years. The review will also consider the effectiveness of the provisions of the ACL.

The review will be undertaken by Consumer Affairs Australia and New Zealand (CAANZ) with a final report to be provided to Consumer Affairs Ministers in early 2017. CAANZ will consult widely with consumer representatives, businesses and the wider public, with public consultation on the review to formally begin in 2016.

The review will also be informed by the second Australian Consumer Survey which will be conducted from the end of 2015. This survey will assess consumer and business awareness of their rights and obligations under the ACL and how this has changed since its commencement in 2011.

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;
- **Tasmanian Consumer, Building and Occupational Services**, within the Tasmanian Department of Justice;
- **Access Canberra**, within the ACT Chief Minister, Treasury and Economic Development 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.