



Australian Government

australian consumer law 

Implementation of the Australian Consumer Law

A report on progress

June 2011

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LETTER TO THE CHAIR OF MCCA, MR SIMON CORBELL MLA

Mr Simon Corbell MLA
Chair, Ministerial Council on Consumer Affairs
c/- MCCA Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

2 June 2011

Dear Minister,

On 3 December 2011, the Ministerial Council on Consumer Affairs (MCCA) asked the Standing Committee of Officials of Consumer Affairs (SCOCA) to report on the implementation of the ACL at their next meeting.

The *Australian Consumer Law* (ACL) commenced on 1 January 2011. It is a single national law which applies in all jurisdictions, to all consumers, businesses and all industry sectors. The implementation of the ACL has been successful so far, with initiatives in:

- closer policy development, through the development of the ACL and its regulations;
- research on consumer and business issues, including the Australian Consumer Survey;
- consumer and business education and outreach, through guidance to business, online and social media tools and events around the country; and
- enhanced cooperation and coordination when dealing with compliance, dispute resolution and enforcement issues.

The ACL replaces national, state and territory consumer protection and fair trading laws. While similar, these all had differences, creating regulatory complexity, uncertainty and cost, particularly for consumers and businesses operating across state borders. A single national consumer policy framework was estimated by the Productivity Commission to provide benefits to the Australian community of between \$1.5 and \$4.5 billion per year.

The ACL is a foundation for the Australian Government and the States and Territories to work more closely to administer and enforce generic consumer laws, building on their already extensive cooperation, letting them better assist consumers and businesses.

Australia's governments also work closely with New Zealand on consumer policy issues. New Zealand is engaged in a wide-ranging reform of its consumer laws, one of the objectives of which is to achieve greater alignment with the ACL, and which provides the opportunity for closer relations between Australian and New Zealand agencies in the future.

This report is intended to explain how SCOCA agencies have worked together to implement the ACL. Given that the ACL will have only been in place for just over 5 months, it cannot provide enforcement data covering the period from 1 January 2011.

Brett Phillips
Chair, Standing Committee of Officials of Consumer Affairs
Executive Director, ACT Office of Regulatory Services

SCOCA

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

GLOSSARY OF TERMS

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CAV	Consumer Affairs Victoria
CCA	<i>Competition and Consumer Act 2010</i> (the new name of the TPA)
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
MCCA	Ministerial Council on Consumer Affairs
OCBA	The South Australian Office of Consumer and Business Affairs
OFT	Office of Fair Trading
PC	Productivity Commission
PRAC	Policy and Research Advisory Committee
PSCC	Product Safety Consultative Committee
SCOCA	Standing Committee of Officials of Consumer Affairs
TPA	<i>Trade Practices Act 1974</i> (now the CCA)

EXECUTIVE SUMMARY

A NEW CONSUMER POLICY FRAMEWORK

Since 2008, Australia's governments have developed a fundamental reform of our consumer policy framework, which:

- provides a single legislative focus for general consumer policy through the ACL;
- develops an enhanced cooperative decision-making process for national consumer policy, administrative and enforcement issues;
- develops common resources and approaches to consumer policy development; and
- provides opportunities for cooperative and coordinated consumer policy and research between agencies.

A NEW OPERATIONAL ENVIRONMENT TO PROTECT AUSTRALIAN CONSUMERS

Australia's governments and consumer agencies have made formal agreements and administrative arrangements to provide for a cooperative and coordinated approach to the administration and enforcement of the ACL, which have now been put into practice.

Education and information for consumers and business

The ACL has provided an opportunity for Australia's consumer agencies to work together to develop materials and deliver education to consumers and traders. It provides agencies a great opportunity to combine their efforts and share educational resources, as the basis for more effective outreach to business and consumers. This national approach can be and has been applied to other common areas of consumer and business education.

Since late 2010, Australia's consumer agencies have worked together to develop and publish a wide range of materials to assist consumers and businesses become aware of the ACL, using traditional and new media. Agencies have also conducted a wide range of events to discuss the ACL with consumers and businesses around Australia.

COMPLIANCE AND DISPUTE RESOLUTION

The initial period of operation of the ACL has seen Australia's consumer agencies working closely together to build an integrated and cohesive compliance and dispute resolution framework.

This framework has created a sustainable and co-operative working relationship established between agencies. Importantly, through the use of strategic planning and information sharing, agencies have developed an approach to compliance and enforcement which minimises the impact on business.

Consumer agencies have already commenced a range of collaborative projects to administer the law, through enhanced information and intelligence sharing, and to enforce it, through joint investigation and enforcement actions.

PRODUCT SAFETY: A NEW NATIONAL SYSTEM

Since mid-2010, the ACCC, in close cooperation with the States and Territories, has implemented the new product safety system under the ACL. This new system has a much greater national focus, and places primary product safety responsibility with the Australian Government.

A NEW CONSUMER POLICY FRAMEWORK

Summary

Since 2008, Australia's governments have developed a fundamental reform of our consumer policy framework, which:

- provides a single legislative focus for general consumer policy through the ACL;
- develops an enhanced cooperative decision-making process for national consumer policy, administrative and enforcement issues;
- develops common resources and approaches to consumer policy development; and
- provides opportunities for cooperative and coordinated consumer policy and research between agencies.

NATIONAL CONSUMER POLICY OBJECTIVE

Australia's new consumer policy framework is informed by the *National Consumer Policy Objective*, which was agreed by MCCA 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.¹

The Objective is supported by six operational objectives:

- 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.

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

Inter-Governmental Agreement for the Australian Consumer Law

The future development of the ACL, along with its implementation and administration, is governed by the *Inter-Governmental Agreement for the Australian Consumer Law* (IGA), which was signed by COAG on 2 July 2009. The IGA provides that jurisdictions will implement the ACL, repeal laws inconsistent with or which duplicate the ACL, and further 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.

DEVELOPMENT OF THE ACL

Legislation to implement the ACL

The Policy and Research Advisory Committee (PRAC) of SCOCA led the development of the legislation to implement the ACL (prior to 1 January 2010 its role was split between the COAG Agreed Reforms and the Best Practice Reforms Working Groups of SCOCA).

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*, which received the Royal Assent on 14 April 2010, and which created the ACL and implemented the unfair contract terms law and new investigation and enforcement powers for the ACCC and ASIC;
- *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, which received the Royal Assent on 13 July 2010, and which implemented the consumer guarantees law, product safety law, unsolicited selling and lay-by rules and moved the remaining provisions on unfair practices in the TPA into the ACL; and
- *Trade Practices Amendment (Australian Consumer Law) Regulations 2010*, which were made in November 2010, and which set out the specific requirements necessary to comply with key elements of the ACL.

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* (Queensland);
- 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* (Tasmania);

- the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (Victoria); and
- the *Fair Trading Act 2010* (Western Australia).

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

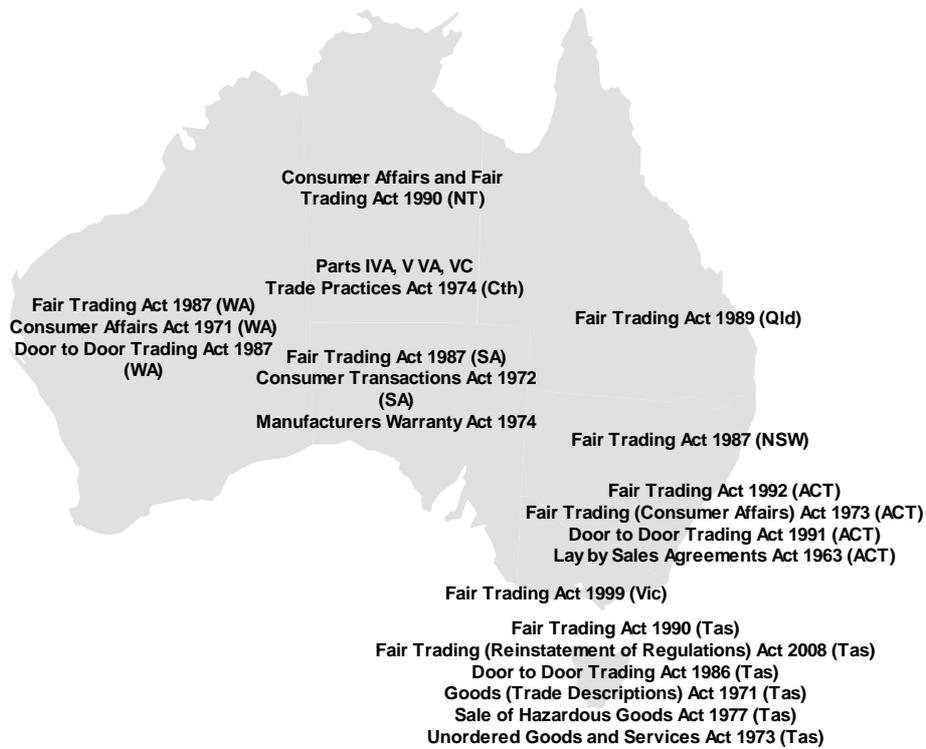
Publications to support the implementation of the ACL

In 2010, the Treasury, in close consultation with PRAC, prepared publications to support the development and passage of ACL legislation, including:

- *The Australian Consumer Law: An introduction;*
- *The Australian Consumer Law: A guide to provisions;* and
- the websites www.treasury.gov.au/consumerlaw and www.consumerlaw.gov.au.

What did the ACL replace?

The ACL is a single national consumer law, which replaces approximately 900 substantive provisions of at least 20 national, state and territory Acts.



A NEW COOPERATIVE DECISION-MAKING APPROACH

Prior to the introduction of the ACL, MCCA adopted a new cooperative decision-making approach to support it. This recognised the need to an enhanced level of engagement between Australia's consumer policy and enforcement agencies to support the ACL.

SCOCA continues to be the principal national forum of day-to-day policy and enforcement cooperative and coordination between agencies. SCOCA is also now supported by three advisory committees:

- **The Policy and Research Advisory Committee (PRAC):** which focuses on the development of common policy approaches to national consumer issues, particularly as they relate to the ACL, and to coordinate the development of any amendments to the ACL. PRAC also conducts national consumer policy research.
- **The Education and Information Advisory Committee (EIAC):** which 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):** which focuses on national cooperation and coordination for compliance, dispute resolution and enforcement activities relating to the ACL and consumer issues more generally. CDRAC is supported by a Fair Trading Operations Group (FTOG), which deals with day-to-day liaison on enforcement issues.

In addition, the Product Safety Consultative Committee (PSCC), chaired by the ACCC, provides a forum for regular engagement with the state and territory consumer agencies on product safety policy, enforcement and awareness issues, and engages with the other committees as required.

Policy and Research Advisory Committee

The ACL has provided Australian consumer policy agencies with the opportunity to share and combine resources when considering consumer policy issues. To facilitate this, PRAC advises SCOCA on policy issues and conducts research.

PRAC is composed of policy officers from the Australian Treasury (chair), NSW Fair Trading, CAV, the Queensland OFT, WA Department of Commerce, SA OCBA, Tasmanian Department of Justice, ACT Office of Regulatory Services, NT Consumer Affairs and the New Zealand Ministry of Consumer Affairs, with the ACCC and ASIC.

Since its establishment at the beginning of 2010, PRAC has focused primarily on the completion and implementation of the ACL, but also progressed the remainder of SCOCA's policy agenda.

In 2010 and 2011, PRAC has:

- developed the ACL Regulations;
- coordinated national responses to issues raised by stakeholders about the ACL (where necessary and appropriate);

- monitored the transition to the ACL and reviewed correspondence from stakeholders on the ACL;
- considered issues raised by stakeholders with the practical application or operation of specific elements of the ACL;
- conducted a planning discussion on 16 February 2011, to identify new and emerging consumer policy issues for SCOCA;
- conducted a review of consumer protection in the travel and travel-related services market, including commissioning research and consultation with stakeholders;
- assisted the Commonwealth Consumer Affairs Advisory Council with its review of ticket onselling in Australia;
- monitored a range of projects being progressed by the Business Regulation and Competition Working Group of COAG, including fundraising reform, elements of the National Occupational Licensing Scheme and the Uniform National Cooperatives Law, among others;
- discussed trans-Tasman consumer policy issues, and contributed to the development of common consumer policy approaches in Australia and New Zealand through both countries' consumer policy reform processes;
- considered and developed specific amendments to the ACL to address particular concerns or correct inadvertent errors;
- commenced its research program with the *Australian Consumer Survey*;
- prepared *Consumer Policy in Australia: A companion to the OECD's Consumer Policy Toolkit*, which was published in March 2011; and
- contributed to the development of a national conference on consumer issues: *Consumers 2011: Australian Consumer Policy, Law and Practice* to be held on 7 and 8 June 2011.

The Australian Consumer Survey

The *Australian Consumer Survey* is Australia's first national survey of consumer and business understanding, awareness and experiences of consumer issues. It was commissioned in late 2010 and the consultant — Sweeney Research — was selected after a competitive tender process. All jurisdictions were involved in the development of the Survey, and have worked closely with the consultant in the preparation of the report. The Survey report will be published at *Consumers 2011: Australian Consumer Policy, Law and Practice* on 8 June 2011.

The Survey covers the following issues:

- a baseline measure of consumer and business awareness of consumer laws;
- trends in consumer and business behaviour;
- current and potential areas of consumer detriment; and
- future considerations for consumer policy.

Other consumer laws

The ACL is a generic consumer law which applies in all sectors of the economy. The intention of COAG in agreeing to this reform was to ensure that other consumer regulation at the national, state and territory levels complements the ACL. Sector-specific consumer laws apply nationally and within each State and Territory. These cover a wide range of subjects, and are intended to provide specific or additional consumer protection and fair trading rules in addition to the generic protections in the ACL. As part of their regular reviews of other laws, consumer policy agencies are to work to remove provisions which alter or are inconsistent with the ACL, as required by the IGA for the ACL.

Better consumer policy making

The OECD's Committee on Consumer Policy (CCP) developed the *Consumer Policy Toolkit* to:

[examine] how markets have evolved and [to provide] insights for improved consumer policy making. It explores, for the first time, how what we have learned through the study of behavioural economics is changing the way policy makers are addressing problems.

It is the result of a series of discussions and roundtables hosted by the OECD CCP on consumer policy making and the economics of consumer policy.

The *Toolkit* is a general resource for consumer policy officials and the stakeholders they deal with. The publication *Consumer Policy in Australia: A companion to the OECD Consumer Policy Toolkit* is intended to place the advice set out in the *Toolkit* in an Australian context and, as such, should be used in conjunction with it.

The Australian Treasury had a leading role in the preparation of the Toolkit, in conjunction with the OECD Secretariat, and a working group composed of the United States Federal Trade Commission, the Canadian Office of Consumer Affairs, the UK Office of Fair Trading and the European Commission's Directorate-General of Health and Consumers.

A NEW OPERATIONAL ENVIRONMENT TO PROTECT AUSTRALIAN CONSUMERS

Summary

Since 2009, Australia's governments and consumer agencies have made formal agreements and administrative arrangements to provide for a cooperative and coordinated approach to the enforcement of the ACL.

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:

- NSW 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 WA Department of Commerce — Consumer Protection;
- the SA Office of Consumer and Business Affairs, within the SA Attorney-General's Department;
- the Tasmanian Office of Consumer Affairs and Fair Trading, within the Tasmanian Department of Justice;
- the ACT Office of Regulatory Services, within the ACT Department of Justice and Community Services; and
- NT Consumer Affairs, within the NT Department of Justice.

In New Zealand consumer law enforcement responsibilities lie with both the Ministry of Consumer Affairs (for some specific issues) and the NZ 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.

COOPERATION AND COORDINATION ARRANGEMENTS

The Inter-Governmental Agreement for the ACL

The IGA for the ACL makes provision for the administration and enforcement of the ACL. It adopts the National Consumer Policy Objective and commits Australia's governments to make arrangements for the cooperative enforcement of the ACL, including requiring the making of a Memorandum of Understanding (MoU) on administration and enforcement issues between consumer agencies and imposing some specific obligations on agencies in their joint activities.

Under the IGA, the MoU is to include 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 new product safety system; and
- ongoing reporting and review of the administration and enforcement of the ACL, including specific arrangements to report to MCCA.

The ACL Memorandum of Understanding

In July 2010, Australia's consumer agencies agreed a 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:

- communication, cooperation and coordination between agencies to:
 - monitor compliance with the ACL;
 - enforce the ACL, including through the exchange of information and intelligence;
 - manage consumer complaints;
 - inform the general public and educate consumers and businesses about the ACL; and
 - report on and review compliance with and enforcement of the ACL.
- exploring opportunities to communicate, cooperate and coordinate on:
 - ancillary activities;
 - inform one another of their general compliance and enforcement activities and priorities;
 - consult on recent judgments, current law reform, policy issues and other matters of common interest;

- **consult and liaise with stakeholder groups on consumer protection matters of mutual interest; and**
- **consider and implement any appropriate opportunities for collaboration on training, staff development and staff exchanges.**
- **collaborating to promote consistency in complaint management practices and principles to achieve effective outcomes for consumers;**
- **collaborating to ensure that, as far as possible, procedures exist to support the effective sharing of complaint and investigation information;**
- **developing strategies to address actual or prospective consumer harm, especially where this crosses jurisdictional borders; and**
- **specific arrangements to provide for the new national product safety enforcement framework.**

EDUCATION AND INFORMATION FOR CONSUMERS AND BUSINESS

Summary

The ACL has provided an opportunity for Australia's consumer agencies to work together to develop materials and deliver education to consumers and traders. It provides agencies a great opportunity to combine their efforts and share educational resources, as the basis for more effective outreach to business and consumers. This national approach can be and has been applied to other common areas of consumer and business education.

Since late 2010, Australia's consumer agencies have worked together to develop and publish a wide range of materials to assist consumers and businesses become aware of the ACL, using traditional and new media. Agencies have also conducted a wide range of events to discuss the ACL with consumers and businesses around Australia.

NATIONAL APPROACHES TO CONSUMER AND BUSINESS EDUCATION

The Education and Information Advisory Committee

EIAC undertakes on behalf of SCOCA to deliver cost-effective, coordinated, innovative and effective mechanisms for providing information, increase knowledge and change behaviour of both consumers and business in the interests of consumer protection in Australia.

EIAC has developed a national 'voice' on the ACL for all Australian consumer agencies, to ensure that key messages about the ACL to businesses and consumers are consistent and clear.

In developing national ACL resources and educational materials and outreach activities, consumer agencies have been able to streamline the development of education materials; avoiding duplication, sharing resources and reducing costs by sharing design, editing, product testing, printing and distribution costs.

This has provided real efficiencies for all Australian consumer agencies.

National ACL education materials

In 2010-2011, EIAC developed a wide range of ACL education materials. These are either:

- national products, which are distributed across Australia; or
- common content, which is available for use by each consumer agency.

Set out below are the key projects that Australia's consumer agencies have undertaken since late 2010 to build consumer and business awareness of the ACL.

A national ACL portal — consumerlaw.gov.au

On 24 September 2010, Australia's consumer agencies launched a single national portal about the ACL: consumerlaw.gov.au.

The site is a single repository for information about the ACL, consumer policy, consultation and agency contact information. Individual agencies can link to specific resources on consumerlaw.gov.au, rather than maintaining duplicate content on their own sites.

consumerlaw.gov.au also provides:

- a subscription service for updates on the ACL and consumer policy developments;
- access to all consumer and business resources on the ACL; and
- information about how consumers and businesses can seek advice or make a complaint in each State and Territory.

From 24 September 2010 until 12 May 2011, the site received 82,496 visits from unique visitors, which is an average of 2,660 visits per week, and has 2,897 subscribers.

Plain English guides to the ACL

During 2010, EIAC produced national guidelines to give businesses and legal practitioners guidance on the ACL in plain English. For each guide, EIAC used design, editing and plain English consultants to ensure that the guides were clear and consistent.

EIAC has developed a total of five ACL guides and one compliance and enforcement policy document:

- *Unfair contract terms*, completed in May 2010 and updated in January 2011;
- *Consumer guarantees*, completed in November 2010;
- *Sales practices*, completed in November 2010;
- *Product safety*, completed in November 2010;
- Avoiding unfair business practices, completed in November 2010; and
- *Compliance and enforcement*, completed in December 2010.

The ACL Core Toolkit

To ensure national consistency in ACL communications, EIAC developed a suite of tools to form the basis of individual agency web and print publications, and presentations.

These tools, called the *ACL Core Toolkit*, ensured that agencies' communication resources about the ACL were consistent and clear. The *Toolkit* was based on the plain English guides mentioned above and was completed in November 2010. The *Toolkit* includes:

- key messages;
- web content;

- PowerPoint presentations;
- media releases and press statements; and
- trader fact sheets and point-of-sale posters .

EIAC has also developed a national poster on refunds, which will replace the current posters used by consumer agencies in each State and Territory. This is a key element in communicating the new consumer guarantees law to consumers and retailers around Australia. The new poster will be launched in June 2011 and will be followed by posters on lay-by sales and extended warranties.

Accessible and Culturally and Linguistically Diverse (CALD) ACL materials

EIAC is developing ACL communications materials that are accessible to consumers generally and to specific community groups, which take account of the needs of culturally and linguistically diverse groups and people with disabilities. These materials include:

- ***Your Shopping Rights***: In January 2011, consumer agencies jointly published a factsheet on consumer rights, expressed in plain English and with simple examples to assist consumers. *Your Shopping Rights* is available from consumerlaw.gov.au and individual agency websites.
- ***Avoid unfair business practices***: In May 2011, consumer agencies jointly published a factsheet to assist consumers in recognising and avoiding unfair practices in the marketplace. *Avoid unfair business practices* is available from consumerlaw.gov.au and individual agency websites.
- **Translations of *Your Shopping Rights* and *Avoid unfair business practices***: In March and May 2011, consumer agencies jointly published versions of the two factsheets in 30 community languages, including: Amharic, Arabic, Bosnian, Chinese Simplified, Chinese Traditional, Cocos Malay, Croatian, Dari, Dinka, French, German, Greek, Hindi, Indonesian, Italian, Japanese, Khmer, Korean, Macedonian, Nuer, Farsi (Persian), Polish, Portuguese, Samoan, Serbian, Spanish, Swahili, Tagalog, Turkish and Vietnamese. This collection is expanding as agencies identify additional languages relevant to their communities.
- **Audio guides**: the ACL Guides have been produced in audio format (mp3).

Agency specific brochures

- ***Consumer guarantees***: NSW Fair Trading has published a *Shopping, refunds and guarantees* brochure, which has been translated into Arabic, Chinese, Vietnamese and Croatian.
- ***Unfair contract terms***: The ACCC has published *Consumers and unfair contract terms*, which helps consumers understand the law and how it might apply to their consumer contracts. It is available in accessible formats, including large print and audio.

ACL publications

EIAC's *ACL Core Toolkit* and the ACL plain English guides are the basis on which consumer agencies can develop their own, jurisdiction-specific ACL materials and update existing publications. This has also allowed agencies to make new content available for the use of other agencies.

ACCC and ASIC publications

The ACCC has made a range of new publications available to other agencies including:

- *Consumer guarantees — a guide for consumers*
- *Consumers and unfair contract terms*
- *Business snapshots* — including *Australian consumer law: what you need to know*; *Consumer guarantees* and *Fair sales practices*

ASIC has developed specific information sheets and regulatory guides to support traders' understanding of their responsibilities under the ACL:

- *Early termination fees for residential loans: unconscionable fees and unfair contract terms*
- *Australian Consumer Law infringement notices: your rights*
- *Australian Consumer Law substantiation notices: your rights*

NATIONAL EDUCATION PROJECTS

EIAC has also been active in developing and implementing a range of educational initiatives on the ACL aimed at consumers and businesses. By combining resources to develop and deliver common content and messages, all Australian consumer agencies have a greater capacity to reach further into the marketplace to build consumer and business awareness of consumer rights and business obligations.

Smart phone apps and mobile sites

Consumer agencies have been conscious of embracing the potential of new technologies in reaching consumers and businesses.

During the December 2010 post-Christmas sales, CAV released MyShopRights, a smart phone application with information about ACL refund, repair, guarantee and lay-by rights. It was based on content from the ACL consumer guarantees guide and product testing during development, which found both consumers and traders welcomed such a tool.

Following the success of the iPhone version of MyShopRights, an Android version was released on 15 March 2011. The launch of the app was accompanied by a media campaign. The app has been promoted in University O-Week bags, at regional shopping centres, on World Consumer Rights Day and in retailer tool kits.

By 17 May 2011, MyShopRights had been downloaded 7,400 times.

Feedback on MyShopRights

- ‘I am a manager in a retail chain store, and this app solves a lot of questions.’
- ‘Fantastic app. So great to have all the answers in my pocket when I need them!’
- ‘Helpful and informative tool for iPhone users. Thank you.’

CAV has made the content and technology available to all Australian consumer agencies. Several agencies are exploring an extension of their online presence with similar apps and mobile sites.

SA OCBA has developed a mobile site — ShopSmart — that has received 1,236 page views. Tasmania has released an iPhone application called ShopRight and is due to launch an Android version. Queensland and NSW are currently developing both iPhone and Android apps for shopping and refunds.

Mobile tools such as these put the information in the hands of consumers and traders when it will be most useful.

Online, social media and e-alerts

Online and social media communications tools have enabled agencies to reach traders and consumers through non traditional methods.

All consumer agencies have updated their websites to reflect and highlight the ACL. Updated ACL information has also been included on topic-specific websites that target consumers, including:

- productsafety.gov.au: an ACCC hosted site that provides information, advice and resources to businesses when dealing with products safety issues. The site also allows businesses to report product safety issues as required by the ACL;
- recalls.gov.au: an ACCC hosted site on product recalls, which has been updated to reflect the new requirements of the ACL; and
- moneysmart.gov.au: an ASIC hosted site that provides ACL information on financial matters, such as bank account contracts and contracts with financial advisers.

Through their websites, consumer agencies have also made available a wide range of web-based tools to assist businesses and consumers in understanding the ACL. These tools include:

- **Online learning modules:** The ACCC developed a six-chapter online learning module, which was aimed at retailers and their staff, and addresses the key issues relevant to suppliers of goods and of services. It is also made available on DVD and on YouTube.
- **SA ACL video:** SA OCBA developed an online video for traders outlining the key elements of the ACL and SA OCBA’s and the ACCC’s roles. The video is available on YouTube and has received been viewed about 1,080 times to date.

- **ACL seminar videos:** Consumer agencies have recorded videos of ACL seminars they have conducted, including the national ACL webinar. The Queensland OFT is also producing a series of YouTube videos based on the presentation given during its ACL Roadshow.
- **Twitter and Facebook:** Consumer agencies have used social media tools, such as Twitter and Facebook, to highlight consumer guarantees, door-to-door sales, and other ACL messages.
- **E-alerts:** the Queensland OFT and NSW Fair Trading have sent e-alerts via website to subscribers, targeting both consumers and traders. The Queensland alert was sent to 325,000 email addresses. SA OCBA sent email alerts to 4,000 subscribers to southaustralia.biz.

Communicating about the ACL with businesses

EIAC engaged in specific projects to raise business awareness of the ACL, including:

- **ACL email update:** On behalf of all Australian consumer agencies, NSW Fair Trading developed an email update series about the ACL, which included five themed updates about the ACL between October 2010 and March 2011. Each update was sent to 1,400 national, state and territory industry bodies and provided information about a specific element of the ACL, recent developments and upcoming events.
- **Trade journal articles:** Consumer agencies distributed articles about the consumer guarantees provisions of the ACL to 100 Australian trade journals.

ACL trader webinar

Consumer agencies jointly hosted an ACL webinar on 24 October 2010. The event — designed to introduce the ACL to businesses across Australia — reached a wide range of organisations. The audience ranged from sole traders to large multi-national corporations, and included retailers, manufacturers, importers, industry associations, educational institutions, lawyers and service providers. The event was promoted by all consumer agencies.

The webinar involved:

- an event at the Windsor Hotel in Melbourne attended by 100 people;
- 450 online participants watching a live broadcast of the event;
- more than 600 downloads of the event webcast since October 2010; and
- questions received during the event responded to by email, if they weren't addressed during the event.

A subsequent survey about the event received 165 responses. Most were very positive and indicated a desire to know more about the ACL. 84 per cent of survey respondents reported they understood their responsibilities towards consumers under the ACL.

Feedback on the ACL Webinar

- 'I found it very informative.'
- 'Excellent. It had lots of information that there is to be learnt about the new law.'
- 'I really enjoyed being able to sit at my desk and listen to the seminar. My note taking is a bit rusty but this has been solved with the delivery of the seminar slides.'

Newsletters and direct mail

Since 1 January 2011, consumer agencies have sent thousands of letters directly to Australian businesses including:

- the ACT Office of Regulatory Services sent about 1,200 letters to all licensed agents, motor vehicle dealers, motor vehicle repairers and security master licensees;
- the Queensland OFT has also included a postcard in approximately 7,500 letters to consumers and traders involved in conciliation; and
- CAV has included an ACL promotional card in its Business Names registration letters. There have been 70,000 distributed since 1 January 2011. CAV also included updates on the ACL and highlighted events, including the ACL Webinar, in business-as-usual mail-outs to licensed traders.

Agencies have capitalised on stakeholder relationships and existing communications channels to educate both consumers and traders.

- NT Consumer Affairs included articles on the ACL in its *Young Consumer* and *The Consumer* magazines;
- the ACT Office of Regulatory Services included articles in its electronic newsletters that are sent to approximately 2,500 business;
- NSW Fair Trading published articles on the ACL in *Think Smart*, its newsletter targeting CALD consumers; and
- the WA Department of Commerce — Consumer Protection included articles on the ACL in its *Better Trading* e-newsletter.

These have reached a wide range of industries, as well as many small to medium traders. Additionally, the Queensland OFT sent ACL information packages key stakeholders, secondary schools and tertiary institutions.

Reaching vulnerable and disadvantaged consumers

Australia's consumer protection agencies have used a variety of communications tools to educate vulnerable and disadvantaged consumers about the ACL.

Indigenous consumers

Consumer agencies are incorporating ACL messages into their usual activities, as well as designing specific initiatives to inform Indigenous consumers of their rights under the ACL. These initiatives include:

- visits to various Indigenous associations and organisations in remote communities in Central Australia and Darwin by NT Consumer Affairs;
- seminars for Indigenous consumers by SA OCBA; and
- the production of a two-minute video covering important consumer information; refund rights and door-to-door trading protections by the Queensland OFT. This video will be launched in July 2011 and made available to all agencies to adapt and use in their own jurisdictions.

Updating agency publications that target Indigenous consumers, such as:

- *Dealing with Book Up* (for consumers) and *Fair Store* (for retailers) by ASIC;
- a *Shopping, refunds and lay-bys* brochure published by NSW Fair Trading; and
- articles on the ACL in *Fair Go*, a print newsletter published by NSW Fair Trading for Indigenous consumers.

Older consumers

While older consumers are targeted through broader communication strategies, consumer agencies have also reached out to this vulnerable audience with specific initiatives, including:

- presentation to the University of Third Age and a Seniors Forum in Palmerston by NT Consumer Affairs;
- an article in Centrelink's *News for Seniors* about the ACL; and
- the launch of a new *Senior's Guide* by NSW Fair Trading in April 2011, which includes information about the ACL.

Advertising and broadcast

Consumer agencies have also used radio and print channels to reach consumers and businesses about the ACL. These media are a valuable way to reach consumers and traders who are not part of traditional networks such as community groups and industry organisations.

Radio

Consumer agencies made experts available to discuss the ACL on metropolitan and regional radio, including commercial and community stations, including:

- Tasmania's Office of Consumer Affairs & Fair Trading participated in eight radio sessions for regional country areas on ABC Radio in Tasmania (7ZR 936AM);

- SA OCBA presented 12 interviews on three community radio stations, and issued community service announcements; and
- the WA Department of Commerce — Consumer Protection appeared on regular radio spots both metropolitan (6PR 882AM, Twin Cities FM 89.7FM, Curtin FM 100.1FM and ABC Perth 6WF 720AM) and regional radio stations (ABC regional stations and Indigenous radio).

Advertising

Consumer agencies used print, radio and online advertising to promote awareness of the ACL. For example:

- SA OCBA ran a campaign that included radio and print advertisements;
- CAV ran an ACL campaign which included:
 - radio advertisements targeting consumers and retailers;
 - Adshel banners in shopping centres targeting consumers;
 - online banner ads targeting both consumers and retailers;
 - print ads in ethnic media, translated into nine languages; and
 - a current campaign focusing on businesses and the resources on the ACL available to them.
- the Queensland OFT ran an ACL campaign, which included:
 - a statewide print advertising campaign to introduce the ACL to consumers;
 - a statewide radio advertising campaign to introduce the ACL to consumers (with a separate version for Indigenous audiences);
 - a series of regional press and radio ads to publicise the ACL Roadshow;
 - search engine keyword marketing through Google Adwords; and
 - electronic advertisements on the Courier-Mail website.

The Queensland online campaigns resulted in 6,259,096 unique impressions. This means that more than six million people potentially saw an advertisement about the ACL.

- the WA Department of Commerce — Consumer Protection used Shop-A-Dockets, with the ACL logo, messages and weblink printed on the back of receipts given out at stores in Albany, Bunbury, Busselton, Geraldton, Kalgoorlie, and Perth from February through April 2011. Statistics for Shop-a-Dockets show that 83 per cent of people look at the back of the receipt.

Travelling con-men campaign

Australia's consumer agencies are increasingly working together to bring about consumer protection under Australia's consumer protection and fair trading laws, particularly the ACL.

During 2010–2011, for the second consecutive year, CAV partnered with Crime Stoppers Victoria to run a television community announcement on WIN regional Victorian television. Warning consumers about travelling con-men. Additionally in 2010 — 2011, print ads were placed in the Leader Newspapers in outer metropolitan Melbourne.

Also, from September 2010, the NSW Fair Trading launched a travelling con-men television campaign, based on the Victorian campaign, and partnering with Crime Stoppers NSW. This joint approach is beneficial as increased media attention made it more difficult for travelling con-men to just move across the border between our states.

Prior to 2010, travelling con man activity was fairly predictable, picking up in Spring and peaking in Summer. However, there seems to be a reversal in this trend, with most activity in Victoria now happening in the winter months, indicating the campaigns are having an impact.

At the time of the 2010 — 2011 campaign, both Victoria and Queensland were experiencing severe flooding, it is thought that many of these rogue traders moved to those regions to capitalise on the community's misfortune. Acquiring as much media coverage as possible during this time played a very important role in educating and warning consumers.

Face-to-face ACL education

Recognising the importance of face-to-face communication, Australia's consumer agencies engaged with traders and consumers through an extensive program of face-to-face events.

Officers from all consumer agencies have spoken to a range of organisations about the ACL. They have visited both consumer and industry groups Australia-wide to provide information and education. Industry group presentations are ongoing and have included:

- state, territory and local Chambers of Commerce;
- Tourism NT;
- the Retail Traders Association;
- the Tasmanian Law Librarians;
- the Real Estate Institute of South Australia;
- the Australian Industry Group;
- the St George Bank;
- the Sutherland Shire Business Enterprise Centre;
- the Coromandel Valley Rotary Club;
- the Australian Retailers Association;
- Master Builders Australia;
- the Optometrists Association Australia;
- the Monash Centre for Regulatory Studies;
- the Law Council of Australia and law societies;
- the Australian Security Industry Association Limited (ASIAL);
- state and territory utility regulators;
- the Western Australian Council of Social Services;
- the Citizens Advice Bureau;
- the Financial Counsellors' Association of WA; and
- other industry groups for lawyers, accountants, marketing professionals and motor vehicle sellers.

Trader walks

Thousands of businesses have had visits from officers of consumer agencies since late 2010 about the ACL. For example:

- the ACT Office of Regulatory Services walked through all major and medium sized shopping centres in Canberra and visited about 1,500 businesses;
- NT Consumer Affairs visited approximately 450 traders in Alice Springs, Katherine, Darwin and Gove;
- the Queensland OFT has undertaken 4,400 visits to educate traders about the ACL, with 300 of those directly related to its ACL Roadshow;
- Tasmania's Office of Consumer Affairs and Fair Trading visited about 80 businesses in Hobart and surrounding areas; and
- CAV conducted walks in metropolitan and regional shopping centres (see box).

CAV's trader walks on World Consumer Rights Day

On 15 March 2011, CAV officers conducted an educational exercise, seeking to raise businesses awareness of the changes to their refund, lay-by and warranty obligations under the ACL. The exercise focused on Direct Factory Outlets in Moorabbin and Essendon, and regional shopping centres in Broadmeadows, Epping, Doncaster, Blackburn, Wangaratta, Shepparton, Birallee and Cranbourne.

CAV visited a total of 431 businesses, who were given ACL trader information packs. These packs were designed to educate traders about their rights and responsibilities and contained:

- a fair trading brochure called *Is the customer always right?*;
- two point of sale posters about refunds and lay-bys;
- ACL trader fact sheets on *Advertising and promotions*, *Misleading and unconscionable conduct*, *Door-to-door sales* and *Refunds and Consumer Guarantees*;
- the ACL plain English guide for business on consumer guarantees; and
- a card on the MyShopRights smartphone application.

Officers received positive feedback from traders, many of whom were unaware of the legislative changes and the effect on the operation of their businesses. An early indication of the success of this exercise was a telephone call to CAV from the CEO of a national retail chain, who advised that they had amended their refund policy as a result.

Consumer groups

Consumer-targeted organisations form an important part of agency outreach activities. Consumers have been informed of their rights under the ACL through local service clubs like Rotary, money management forums, family fun days, expos, shows and fair trading centres.

Media coverage

All Australian consumer agencies have distributed nationally coordinated and local information about the ACL to local and national media organisations. The ACL received additional coverage in response to a range of launch events held around the country and compliance and enforcement actions.

These activities included:

- nationally coordinated, nationally distributed and locally distributed media releases on ACL related issues;
- editorials in both national and local publications, trade journals and newsletters;
- advice and other columns prepared by consumer agencies for publications; and
- local launch events, such as the Queensland OFT's November 2010 ACL launch.

Media articles

Since 1 January 2011, ACL related articles and editorials have appeared in:

- major metropolitan dailies including *The Australian*, *The Sydney Morning Herald*, *The Daily Telegraph*, *The Age*, *The Herald Sun*, *The Courier Mail*, *The Advertiser*, *The West Australian*;
- local papers including *The Illawarra Mercury*, *The Toowoomba Chronicle*, *The Townsville Sun*, *The Fraser Coast Chronicle* and *The Narromine News*;
- Centrelink's *News for Seniors*;
- newsletters published by professional associations in the health, security and accounting industries;
- legal journals including the *Australian Competition and Consumer Law Journal*; the *Australian Business Law Review* and the *Trade Practices Law Journal*;
- client alerts published by law firms and other professional services firms; and
- business publications including *Company Director*, *Jeweller Magazine* and *Australian Hardware Journal*.

Reaching out to business and consumers: the Queensland ACL Roadshow

Queensland is a large and decentralised State, so to complement the activities coordinated at a national level by EIAC, Queensland OFT developed a communication and education strategy to inform consumers and businesses about the ACL and how it would affect them.

The ACL was launched in Queensland in November 2010 at an event for businesses hosted by the then Queensland Minister for Tourism and Fair Trading, the Hon Peter Lawlor MP.

In 2011 Queensland OFT hosted a seminar series in 16 centres around Queensland, including:

- Brisbane
- Brisbane North
- Brisbane South
- Caboolture
- Cairns
- Gold Coast
- Hervey Bay
- Ipswich
- Longreach
- Mackay
- Mt Isa
- Rockhampton
- Roma
- Sunshine Coast
- Toowoomba
- Townsville

The visits were supported by online content, social media, email alerts, print, radio and web advertising, media releases and editorial, and direct mail. The seminars were attended by 675 people and over 300 traders were visited by Queensland OFT officers in these towns. Feedback received from the attendees was overwhelmingly positive with 95.8 per cent saying they benefited from the seminars. The list of towns visited and some examples of the feedback received is below:

- *‘Very well presented. Good use of practical examples.’* (trader from Cairns);
- *‘Thank you for opportunity to ask questions and answering in plain English. Appreciate your time.’* (trader from Rockhampton);
- *‘Presentation good. Handouts a good source of information.’* (trader from Toowoomba); and
- *‘It was good to receive material to take home. It was useful that the presenter used everyday occurrences as examples.’* (consumer from Sunshine Coast).

Given the positive response to the seminars, Queensland OFT is producing a series of YouTube videos based on the presentations.

Upcoming developments

Consumer agencies will continue to deliver ACL education and information during 2011-2012. Initiatives that have commenced, or will shortly commence include:

- there will be an expansion of the range of translated consumer fact sheets, including new versions of *Your Shopping Rights* in Russian, Maltese, Chin Haka, Karen and Burmese;
- the development of industry specific ACL guides; and
- the continuation of training and seminars for industry groups around Australia.

Co-ordinated response to 2011 natural disasters

During 2010, in preparation for the implementation of the ACL, EIAC developed protocols to ensure a coordinated, focused, and targeted approach to education was taken across States and Territories about the ACL.

These arrangements were put to the test almost immediately when a series of natural disasters unfolded across Australia in January 2011, including serious floods in Queensland, Victoria and New South Wales, bushfires in Western Australia and Cyclone Yasi in north Queensland.

EIAC was well placed to respond quickly and effectively to the communication needs that arose as a result of these disasters.

Generic materials, such as factsheets and website content, were produced by the agency best placed to do so and then standardised through the existing EIAC feedback and approval processes. The materials were then provided as a package to all agencies to make any necessary modifications before distribution. All of this was achieved within a much shorter timeframe than would have been the case before 1 January 2011.

Some of the disaster fact sheets developed included:

- **profiteering and price gouging:** information about price increases in basic consumer goods, and what to do if it appears a business is acting improperly;
- **water damaged vehicles:** what to look out for in the weeks after floods as water damaged motor vehicles are bought and sold;
- **insurance claims:** advice for consumers making insurance claims after natural disasters;
- **door-to-door traders:** warnings about door-to-door traders after natural disasters, and how consumers can protect themselves;
- **charities:** advice to consumers to only donate to registered charities; and
- **sale of water damaged products:** information for businesses about selling products that have been damaged by water.

The materials developed by EIAC remains on hand should they be required for responses to future disasters.

COMPLIANCE AND DISPUTE RESOLUTION

Summary

The initial period of operation of the ACL has seen Australia's consumer agencies working closely together to build an integrated and cohesive compliance and dispute resolution framework.

This framework has created a sustainable and co-operative working relationship established between agencies. Importantly, through the use of strategic planning and information sharing, agencies have developed an approach to compliance and enforcement which minimises the impact on business.

Consumer agencies have already commenced a range of collaborative projects to administer the law, through enhanced information and intelligence sharing, and to enforce it, through joint investigation and enforcement actions.

A NEW NATIONAL APPROACH TO COMPLIANCE AND DISPUTE RESOLUTION

Australia's consumer agencies have developed an ACL compliance and enforcement framework based on the six operational objectives supporting the *National Consumer Policy Objective*.

Consumer agencies used *Australian Standard AS3806:2006, Compliance Programs* in creating this framework, which is based on the following eight agreed principles:

- **Transparency** — agencies will deal with consumers and traders in an open and transparent manner so that they will have a clear understanding of what is expected from them and what they can expect from agencies.
- **Confidentiality** — In general, investigations are conducted confidentially and agencies do not comment on matters they may or may not be investigating.
- **Timeliness** — Complaint handling, investigation process and the resolution of enforcement matters are conducted as efficiently as possible to avoid delays and business uncertainty, to minimise detriment to consumers whilst maximising the effectiveness of the activity.
- **Consistency** — agencies do not make ad hoc decisions; they set their focus clearly to give business certainty about their actions.
- **Proportionality** — Any enforcement action is in proportion to the level of consumer detriment and to the seriousness of the breach.
- **Targeted** — agencies make effective use of limited resources by targeting issues and traders in line with risks, new and emerging issues and enforcement priorities.

- **Accountability** — agencies are accountable to the public for their compliance and enforcement activity.
- **National awareness** — agencies make decisions cognisant of the national implication of actions and of the national interest.

THE COMPLIANCE AND DISPUTE RESOLUTION ADVISORY COMMITTEE

The Compliance and Dispute Resolution Advisory Committee (CDRAC) has been formed by all consumer agencies to co-ordinate dispute resolution and compliance activities. CDRAC meets regularly and reports to SCOCA about emerging compliance issues and targeted compliance operations.

COOPERATIVE DISPUTE RESOLUTION, COMPLIANCE AND ENFORCEMENT

CDRAC has initiated a number of projects designed to integrate the approach taken by consumer agencies to compliance and enforcement and to make business aware of the way in which they work together to administer and enforce the ACL.

ACL Compliance and Enforcement Guide

Consumer agencies have published the Compliance and Enforcement Guide to help businesses understand how agencies have agreed to act together and individually to achieve compliance with the ACL, by:

- explaining the principles and policies that can be used by agencies in conducting compliance and enforcement;
- guiding the expectations of consumers on how agencies will respond to complaints;
- providing practical information to businesses and legal practitioners about how and when agencies make decisions regarding compliance and enforcement; and
- providing information to government and other agencies on how agencies undertake compliance and enforcement.

The *Compliance and Enforcement Guide* is available from www.consumerlaw.gov.au.

Joint training for investigation and enforcement officers

Australia's consumer agencies jointly developed five national ACL training modules for use by all agencies to train their compliance and other staff on the ACL.

Each module was based around each of the six national ACL Guides, which were published in 2010. All consumer agencies were part of a 'train-the-trainer' program on 25, 26 and 27 October 2010 in Sydney. The training modules were then delivered to teams of specialist trainers, lawyers and other support staff in all agencies.

In some cases, agencies shared training opportunities. For example, in December 2010, officers from the Queensland OFT provided training to Tasmanian Consumer Affairs staff in Hobart, and in April 2011, similar training was provided to the ACCC's Brisbane-based staff.

In total, the Queensland OFT has given training on the ACL to over 300 officers since November 2011.

The training modules covered the General Law, Sales Practices, Compliance and Enforcement, Consumer Guarantees, Product Safety and Unfair Contract Terms.

Intelligence sharing through ACLINK

Consumer agencies have set up arrangements for the formal sharing of information about dispute resolution and compliance activities, under the auspices of the ACCC. This information sharing database, known as ACLINK, is designed to improve intelligence gathering about alleged ACL breaches, to share information and to co-ordinate compliance activities.

The ACLINK extranet is hosted on the secure Govdex platform which is managed by the Australian Government Information Management Office on behalf of the Department of Finance and Deregulation and will replace AUZSHARE.

ACLINK is a central workspace where members can hold discussions, develop ideas, post intelligence alerts and agency priorities, create and upload documents, share knowledge and contact lists, receive email notifications and view a shared calendar.

ACL Dispute Resolution and Compliance and Enforcement Protocol

CDRAC has also agreed a *Protocol* for dealing with complaint dispute resolution and undertaking of enforcement action against serious breaches by businesses, in order to achieve compliance with the ACL.

The protocol's objectives are to:

- identify principles for referring consumer complaints (requiring dispute resolution) between agencies and facilitating an effective transfer process;
- ensure that serious marketplace misconduct is addressed;
- employ the most effective means of addressing consumer harm through cooperative and complementary enforcement action;
- avoid unnecessary duplication of effort in the effective administration of the ACL;
- ensure that enforcement action, when and if deemed to be required by agencies, has regard to the agreed *ACL Compliance and Enforcement Guide*; and
- ensure, wherever appropriate, a consistent approach to dispute resolution and enforcement action is employed.

National compliance promotion projects

During 2011-12 consumer agencies have agreed to undertake a series of national compliance projects to promote awareness and compliance with the ACL among businesses nationally. The projects include:

- **consumer guarantees:** activities to ensure awareness of, and compliance with, the consumer guarantee provisions of the ACL by retailers and suppliers within the telecommunications, whitegoods and electronic goods industries;
- **unfair contract terms:** reviewing standard form contracts used by on-line retailers in order to develop guidance and a communications plan for on-line traders and consumers, on the ACL 's unfair contracts provisions;
- **environmental claims:** investigate claims made by promoters of small scale renewable energy schemes or by suppliers of energy saving products targeted at the domestic consumer marketplace;
- **indigenous consumer protection:** education and compliance action to reduce detriment to indigenous consumers, particularly in regional and remote areas; and
- **mortgage early exit fees:** review the level of mortgage early exit fees charged by lenders and assess compliance with ASIC's Regulatory Guidance, the *Australian Securities and Investments Commission Act 2001* and the *National Credit Code*.

Environmental claims project

CDRAC has initiated a national project to address consumer detriment arising from environmental claims in the solar industry.

An objective of the project is to raise consumer and industry awareness of their rights and obligations under the ACL. The project is looking at possible misleading representations and deceptive conduct by traders of small scale renewable energy schemes targeted at domestic consumers.

In May 2011, consumer agencies issued a warning to solar traders of the requirement to substantiate their performance claims and to ensure the accuracy of statements about related financial assistance programs. The joint warning gave notice to the industry that agencies would take swift action against solar power retailers who breach the law through misleading, deceptive or false claims about solar energy products.

Consumers were also advised to be aware of potential misleading claims, and advised where to find information to make informed decisions on solar power.

Communities of interest to share and promote expertise within and between consumer agencies

Recognising that shared development of expertise will deliver better compliance outcomes, consumer agencies have created a series of internal 'communities of interest' to develop in-house expertise amongst investigators and litigators.

The communities of interest that have been set up include:

- operational intelligence;
- unfair contract terms;
- dispute resolution;
- consumer guarantees; and
- education and training.

Initial enforcement of the ACL

Powers and remedies

The ACL provides Australia's consumer agencies with a single set of consistent investigation and enforcement tools to respond to breaches of fair trading and consumer protection laws.

These replace the range of powers which existed under previous national, state and territory legislation.

In certain circumstances an agency may issue infringement notices to corporations and individuals for a breach of the ACL. Since April 2010, the ACCC has issued 54 infringement notices and received payment of infringement notice penalties of over \$300,000 under its powers in the *Competition and Consumer Act 2010*.

- SingTel Optus Pty Ltd received and paid 27 infringement notices totalling \$178,200 after the ACCC raised concerns about representations they made in the promotion of mobile phone plans. The ACCC was concerned that Optus' advertisement for its max-cap plan conveyed that the consumer would only have to pay a maximum of \$49 per month, when in fact \$49 was the minimum the consumer would be required to pay each month.
- Patterson Cheney Pty Ltd paid two infringement notices totalling \$13,200 following an ACCC concern that limitations applied to the warranty which effectively negated the 'lifetime' offer. The warranty offer only operated until either the vehicle had reached 175,000 kilometres or the consumer made \$3,000 worth of claims. The ACCC also accepted a court enforceable undertaking from Patterson Cheney who agreed to provide affected customers with the option of switching to its premium warranty product. It will also implement and maintain a trade practices compliance program and publish corrective notices on its website and in *The Herald Sun* and *The Age*.

The court may also impose significant penalties against corporations and individuals for their involvement in contraventions certain ACL provisions. The ACCC has secured over \$3.6 million in total ACL penalties since April 2010, including the following matters:

- In the first civil penalty handed down for a breach of a product safety standard the Court imposed penalties of \$400,000 against Dimmays Stores for supplying children's dressing gowns which failed to comply with the mandatory consumer product safety standard for children's nightwear.

- **Fantastic Furniture** was penalised \$300,000 for selling bean bags that failed to display a warning about the about the severe danger presented to children if the filling is swallowed or inhaled.
- In a small business scam **Yellow Page Marketing BV** and **Yellow Publishing Limited** were penalised \$2.7 million for sending thousands of Australian business consumers misleading faxes and invoices in an attempt to obtain subscriptions to their online business directories. The ACCC also sought and obtained successful non-party redress by having over 4,000 contracts declared void and preventing the collection of over \$6 million from the scam.
- **MSY Technology** was penalised \$203,500 for supplying computers, electronics and software to retail stores and claimed that it only provided statutory warranties to consumers in limited circumstances and required consumers to pay a fee to obtain a warranty beyond that provided by the manufacturer.
- Two companies: **Newlife Publishing and Marketing Pty Ltd** and **Renew You Centre for Wellbeing and Longevity Pty Ltd**; and two individuals: **Bojan Schianetz** and **Dzung Kieu Price**, were penalised a total of \$185,000 for making false claims and misleading consumers about their ability to test for and treat allergies. Each respondent claimed they could diagnose, treat and/or cure allergies using the 'BioFast allergy elimination program'. The court declared by consent that the companies and individuals engaged in false, misleading and deceptive conduct by representing that:
 - that they could test for, identify and treat a person's allergies or allergic reactions, when they could not
 - that they could cure or eliminate all or virtually all allergies, or allergic reactions, when they could not
 - that they could instruct parents and carers of children to test for, identify, treat and cure or eliminate allergies for a child, when they could not
 - that after receiving treatment it would then be safe or low risk for a person to have contact with the substance or allergen to which they had previously suffered adverse reaction, when none of their treatments could achieve this result.

The ACCC is continuing to seek civil pecuniary penalties, including in the following consumer protection matters currently before the courts:

- **Global One Entertainment Limited** and **6 G Pty Limited** for four television campaigns for mobile premium services promoting a subscription service. The ACCC was concerned that the respondents engaged in false and misleading, and deceptive conduct in their television advertisements for mobile premium services. The advertisements featured subscription services for the video games **Space Invaders** and **Doodle Jump**; the ringtone for **Justin Bieber's One Time**, and the **MobileGold Superquiz**. The Matter was heard by Justice Bennett who expressed a view that a penalty of \$375,000 be imposed. The matter remains before the courts for further orders and may be the subject of an appeal.
- **Singtel Optus Pty Ltd** for the 'supersonic' broadband claims **Optus 'Think Bigger' Internet Broadband Promotion**. The ACCC is concerned that **Optus** engaged in misleading or

deceptive conduct and made false representations in relation to the advertising of certain broadband plans as part of its 'Think Bigger' and 'Supersonic' promotional campaigns. Under these plans, a customer pays a specified monthly sum and receives a specified data allowance for that month divided into peak and off-peak periods. However, once the customer exceeds the peak data allowance, the internet connection is limited to a speed of 64kbps. The ACCC alleges that Optus did not sufficiently or clearly disclose, and in some cases did not disclose at all, these qualifications. The court has determined that penalties are to be paid by Optus in an amount which is to be determined by the court. The matter is currently awaiting judgement.

Widespread action to alert traders about the ACL

Consumer agencies have been actively informing large numbers of traders about specific ACL compliance issues through targeted campaigns. So far, these have included:

- inspections of 600 retailers across Western Sydney by NSW Fair Trading in December 2010 to raise awareness about the ACL; and
- visits by CAV to 111 small retailers in Victoria in November 2010 to test the awareness of frontline staff about specific elements of the ACL, including refunds and lay-bys;
- 73 follow up visits by CAV to retailers in Victorian Direct Factory Outlets; and
- inspections of major national retailers in April 2010 to test the awareness of frontline staff about specific elements of the ACL, including refunds and lay-bys.

Swift action taken against a national online scam

In January 2011 Australia's consumer agencies acted against Columbus Sales Group Pty Ltd and Aqua Conscious Pty Ltd, two companies involved in selling water tanks online.

Following a nation-wide public warning issued on 28 January 2011, the Queensland OFT seized records from the companies' offices in Queensland.

Action taken in the Supreme Court of NSW under section 232 of the ACL has restrained the companies and their officers from engaging in misleading or deceptive conduct in contravention of section 18 of the ACL.

The companies' bank account has been frozen and all consumer agencies are working with the affected consumers to secure redress.

Upcoming developments

Australia's consumer agencies will continue to embed use of the new ACL remedies and powers to address consumer protection concerns, including the ongoing use of civil pecuniary penalties and third party redress.

The national projects remain an important focus for agencies to target identified consumer protection issues. Agencies will also continue to work together in developing strategies at a national level to address systemic or emerging issues including ongoing refinement and use of ACLINK.

PRODUCT SAFETY: A NEW NATIONAL SYSTEM

Summary

Since mid-2010, the ACCC, in close cooperation with the States and Territories, has implemented the new product safety system under the ACL. This new system has a much greater national focus, and places primary product safety responsibility with the Australian Government.

IMPLEMENTING THE PRODUCT SAFETY REFORMS IN THE ACL

Australia's new product safety system, which is being implemented as part of the ACL, was a result of one of the key recommendations from the Productivity Commission report in 2006.

The PC found that Australia's product safety system was overly complex, with a multitude of different laws operating in different jurisdictions and a lack of clarity for both consumers and suppliers about their roles and responsibilities. As of May 2011 the new national product safety system is now fully operational. From 1 January 2011, a single set of nationally consistent mandatory product safety standards and bans has applied, along with a new mandatory reporting requirement for suppliers and improved recall guidelines.

Hazard assessment

The *Product Safety Hazard Assessment Clearinghouse* was set up in April-May 2010. The Clearinghouse allows for early identification of emerging product safety hazards and it enables a range of information to be analysed and used as the basis for a rapid response where a safety issue is identified. Monthly statistics and reports are circulated to all consumer agencies to better inform joint national responses to emerging product safety issues.

As at 30 May 2011, there were 3,462 individual records in the Clearinghouse. Product safety issues identified through the Clearinghouse have resulted in a number of product recalls, including identifying where a product had been recalled by a supplier internationally but not in Australia, as well as identifying possible safety issues warranting a recall.

Recalls

In May 2010, the ACCC released its *Review of the Australian product safety recall system*. The *Review* analysed the effectiveness of the Australian recalls system and recommended some significant changes, particularly around how consumers will learn of recalls. To assist suppliers with this, new *Recalls Guidelines* were developed in consultation with industry and have since been implemented.

The ACCC continues to work with suppliers to ensure that recalls are supported by recall communication plans that target consumers based on demographics and communication

preferences, including making greater use of social media and online forms of communication such as websites and blogs to advertise product recalls.

The ACCC is also working more closely with suppliers throughout the duration of the recall and has increased the focus on identifying the cause of the safety problem, including tracing problems back through the supply chain and rectifying systemic issues.

Mandatory reporting

From 1 January 2011, suppliers were required to notify the Commonwealth minister when they became aware that a consumer good or product-related service they supplied has or may have caused serious injury, illness or death. Notification must occur within two days of the supplier becoming aware.

The ACCC, in conjunction with the state and territory consumer agencies, conducted a number of awareness and education activities to assist suppliers prepare for this new requirement before 1 January 2011. They have continued to raise awareness amongst suppliers of their responsibilities under this requirement, including via media releases and the posting of online content.

In the first quarter of 2011 the ACCC received 443 mandatory reports. These confidential reports are spread across a range of products including food, cosmetics, toys, clothing, footwear, motor vehicles, consumer electronics, general hardware and therapeutic goods.

Mandatory reports, and intelligence from the ACCC product safety data clearinghouse, were associated with 17 of the 84 food and consumer product safety recalls in first quarter 2011. These recalled products were associated with anaphylactic and allergic reactions, burns, electrocution, choking hazards, cuts and lacerations. Almost all reports have been submitted by large business. The ACCC is planning further education activities for suppliers.

Direct contact with businesses

The ACCC, in conjunction with the state and territory agencies, undertook a series of projects to raise business awareness of the new requirements, including:

- writing directly to key industry stakeholders such as industry associations to provide them with information about the new requirements, their obligations from 1 January 2011, and where to get additional information;
- releasing a draft version of the electronic mandatory reporting form in December 2010 so suppliers were able to prepare their internal systems and processes and conduct staff training around the new requirement;
- updating the electronic reporting form in response to feedback since 1 January 2011 to make it easier for suppliers to use; and
- working with groups such as the Australian Food and Grocery Council to streamline mandatory reporting requirements for the food industry.

Online mandatory reporting tool

The Product Safety Australia website: www.productsafety.gov.au, includes a specific information page for mandatory reporting.

This page is used to communicate key information about mandatory reporting to suppliers, including details of events and relevant guidance material such as the *Mandatory Reporting Guidelines*.

ACL product safety trader webinar

On 12 November 2010 the ACCC hosted a product safety webinar, which focussed on changes to the product safety system under the ACL (particularly the introduction of a new mandatory reporting regime).

144 people participated in the webinar, with a further 68 people attending the event in person. The majority of questions asked during the Q&A session were on mandatory reporting and there were so many questions that the event ran overtime. Feedback on the webinar was very positive and a recorded version of the webinar is available at www.productsafety.gov.au/mandatoryreporting.

Outreach and education

A new national 'one stop shop' for product safety information, the Product Safety Australia website (www.productsafety.gov.au) was developed by the ACCC in consultation with state and territory agencies. It was launched in April 2010 and provides consumers and suppliers with a single point of entry into the national product safety system.

The site includes an extensive range of product safety information for both consumers and suppliers, from product safety tips and myths to detailed guidance on complying with mandatory standards and bans. The website has been accessed for accessibility by Vision Australia, who noted that, for a site of its complexity, it was one of the best websites they had seen. The ACCC is working towards Web Content Accessibility Guidelines (WCAG) compliance by the end of 2011.

Product safety communication with suppliers and consumers has also been enhanced via increasing use of social media channels by the ACCC and state and territory agencies. This has included use of Twitter and Facebook, as well as via engagement with stakeholders through industry- and product-specific blogs.

CAV has held 14 stakeholder engagement meetings with suppliers regarding small business product safety support including the ACL and bans and standards.

A second ACCC webinar is planned on 21 June 2011 and will be focussed on product testing to ensure consumer goods meet the requirements of mandatory standards and bans.

Regulation

177 different mandatory standards and bans in place in different jurisdictions have been harmonised into a single set of 59 national standards and bans which commenced on 1 January 2011.

Under the transitional arrangements set out in the *Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010*, the 10 temporary bans in force on 31 December were treated as interim bans from 1 January 2011 and have subsequently been made permanent.

The issue of the introduction of a mandatory information standard for fibre content labelling is the single outstanding item.

Agency cooperation — emerging issues and quick responses

The Product Safety Consultative Committee (PSCC)

The Product Safety Consultative Committee (PSCC) is responsible for providing advice and recommendations to relevant SCOCA advisory committees on product safety specific policy, education and compliance matters; to provide advice to the ACCC on proposed product safety regulations, bans and standards; to resolve technical operational issues; to develop appropriate responses to emerging issues; and to implement relevant SCOCA decisions and strategies.

PSCC is composed of policy officers from the ACCC (chair), NSW Fair Trading, Consumers Affairs Victoria, Queensland OFT, WA Department of Commerce, SA Office of Business and Consumer Affairs, Tasmanian Department of Justice, ACT Office of Regulatory Services, NT Consumer Affairs and the New Zealand Ministry of Consumer Affairs, with the Australian Treasury and ASIC.

The PSCC held its first teleconference in early 2010 and has been a forum for discussion on and coordination of a range of emerging product safety issues in the lead up to the implementation of the ACL and post implementation. This has included:

- development and extensive use of the Product Safety Extranet to share information about current product safety issues, including developing agreed interpretations and coordinating responses to emerging product safety issues. This system will be enhanced on the transition to a specific GovDex platform on product safety issues.
- national coordination on joint initiatives, including:
 - **Trampolines** — regulation now being developed following recommendations from NSW Fair Trading;
 - **Quad Bikes (All Terrain Vehicles (ATVs))** — CAV has completed a research paper and is preparing a report for the Victorian Coroner.
 - **Baby slings** — the ACCC is collaborating with the Queensland OFT and a working party of stakeholders to assess the risk posed by this product; and
 - **Mobility scooters** — where the ACCC and other agencies are working collaboratively with other areas of Government and stakeholders to address broad issues.

This is an ongoing area of discussion and a specific space for will be created in the product safety GovDex platform.

Consumer agencies have been engaged in discussions through the PSCC and the Product Safety Extranet around how to best ensure consistent interpretation of the harmonised product safety laws.

For 2011-12, the PSCC is working on an industry-specific initiative focussed on product safety ACL awareness education campaign (including the newly harmonised mandatory standards and bans).

Compliance and Enforcement

Australia's consumer agencies are engaged in:

- the development and implementation of twice yearly coordinated national product safety surveillance programs. Surveillance of targeted products has been conducted by the ACCC and each state and territory, with national results coordinated by the ACCC and then shared with PSCC members. These surveillance programs are coordinated by the ACCC and effective policy and procedures continue to be developed. For example, many of the mandatory standards have standardised compliance checklists to be used by field officers.
- enforcement of the product safety provisions of the ACL. While these have been limited within the time period under examination, there have been a number of specific enforcement activities, including:
 - the Queensland OFT has, for example, issued an infringement notice, three substantiation notices and published a safety warning notice using its powers under the ACL since 1 January 2011; and
 - CAV has seized 3,267 banned or non-compliant products and initiated a trolley jack recall of 207 units. There are currently two pending trolley jack recalls of potentially thousands of units. CAV has also worked with the ACCC to complete two pedal bicycle recalls, which resulted from CAV's market surveillance activities.
 - the ACCC has obtained penalties of \$400,000 against Dimmeys Stores for supplying children's dressing gowns which failed to comply with the mandatory consumer product safety standard for children's nightwear; and \$300,000 against Fantastic Furniture for selling bean bags that failed to display a warning about the about the severe danger presented to children if the filling is swallowed or inhaled.
 - the ACCC has also assessed and tested over 110 consumer products from over 400 suppliers. Surveillance activities have identified several unsafe consumer goods which have been subject to a national recall including:
 - : pedal bicycles supplied by Potential of Hydrogen Pty Ltd and Avanti Bicycles Pty Ltd;
 - : girls fleece tops which failed children's nightwear standards supplied by Dimmeys Stores Pty Ltd; and
 - : bean bags without child resistant fasteners incorporated in their design supplied by Target Pty Ltd.

Upcoming developments

Australia's consumer agencies have been engaged in discussions through the PSCC and the Product Safety Extranet around how to best ensure consistent interpretation of the harmonised product safety laws.