



CONSUMER LAW UPDATE THE AUSTRALIAN CONSUMER LAW (PART 2)

The Australian Consumer Law (ACL) reforms represent the most far-reaching consumer law reforms since the introduction of the Trade Practices Act 1974 (Cth) (the TPA) in 1974. The second part of the reforms commenced on 1 January 2011. This legislation makes important changes to the fair trading and consumer protection provisions of the TPA.

FEDERAL CHANGES

General Protections

The ACL contains a number of general protections against misleading or deceptive conduct, unconscionable conduct and unfair contracts. With the exception of the unfair contracts provisions, the new provisions by and large mirror their former TPA equivalents. The unfair contracts provisions were discussed in our August 2010 Consumer Law Update.

Specific Protections

The ACL also contains a number of specific protections in respect of:

- unfair trade practices;
- unsolicited consumer agreements; and
- lay-by agreements;

and reforms the existing regimes of:

- implied consumer warranties in respect of the supply of goods and services (the consumer guarantee provisions); and
- product safety and manufacturer's liability.

Unfair Trade Practices

The unfair trade practices covered by the reforms include: false or misleading representations, unsolicited supplies (such as unsolicited credit cards), pyramid schemes, certain pricing practices, referral selling and harassment and coercion. These provisions by and large mirror the pre-existing TPA and Fair Trading Act provisions but there are some important differences.

Consumer Guarantee Provisions

The consumer guarantee provisions replace and reform the existing TPA implied warranty provisions dealing with fitness for purpose, merchantable quality and the exercise of due care and skill in the provision of services. These provisions by and large mirror the existing TPA provisions but there are some important differences.

Unsolicited Consumer Agreements

The unsolicited consumer agreement provisions are aimed at regulating telephone and door-to-door sales. The reforms contain restrictions on the permitted hours for negotiating contracts and also require certain disclosures to be made to consumers and regulate the content of consumer contracts. The provisions by and large mirror the existing State/Territory provisions but there are some important differences.

Offences, Enforcement and Remedies

A number of new offences are created for non-compliance with the ACL provisions and a new scheme of enforcement and remedies introduced. The new enforcement and compliance regime was outlined in our August 2010 Consumer Law Update.

Renaming of TPA

From 1 January 2011 the Trade Practices Act 1974 (Cth) will also be renamed the Competition and Consumer Act 2010 (Cth).

LOCAL CHANGES

As part of the intergovernmental agreement to give State/Territory effect to the ACL reforms, the product safety and unfair practice provisions in the Fair Trading Act 1992 (ACT)

(now re-named the Fair Trading (Australian Consumer Law) Act 1992) and a full repeal of the Fair Trading (Consumer Affairs) Act 1973, Lay-by Sales Agreement Act 1963 and the Door-to-Door Trading Act 1991. Minor amendments have also been made to many other pieces of local legislation to reflect the harmonisation of national laws. All reforms took effect on 1 January 2011.

GUIDANCE MATERIAL

Guidance materials on the ACL reforms are available from www.consumerlaw.gov.au. The ACT Office of Regulatory Services is also in the process of developing a number of resources which may be obtained by visiting www.ors.act.gov.au.

TRANSITIONAL

The second raft of ACL reforms will generally only apply to conduct engaged in after 1 January 2011 meaning that the pre-existing TPA and Fair Trading Act provisions will continue to apply to any conduct engaged in prior to 1 January 2011 and will not impact upon any existing rights of action or legal proceedings.

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