

A newsletter for consumers and the consumer movement

Want to make a complaint? Contact the ACCC Infocentre on **1300 302 502** Want to forward suggestions for future articles?

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What's news

Review of negligence proposals wind back consumer protections

After the ministerial meeting on public liability insurance on 30 May 2002, the Commonwealth in consultation with the states and territories agreed to jointly appoint an expert panel to examine the law of negligence, including its interactions with the *Trade Practices Act 1974* (the Act).

The Review Panel of the Principles Based Review of Negligence (the panel) released its first report on issues relating to professional negligence, the reform of the Act, limitation periods and reforms to assist not-for-profit organisations on 2 September 2002.

The panel's second report will develop options for limiting liability and quantum of awards for damages as well as evaluating proposals to allow self-assumption of risk to override the common law.

In its first and second submissions to the review, the ACCC noted that the proposals to either amend the Act by the Recreational Services Bill, or to limit other consumer protection provisions of the Act, will mean that consumers will inappropriately bear the risks of recreational and other activities.

The ACCC believes that reform of the law should be driven by policy that focuses on reducing the number of accidents and the costs of the resulting injuries.

The ACCC is concerned that there is a lack of hard evidence to suggest that personal injury awards made under the Act have contributed to or caused the current insurance problems.

The first report by the panel recommended that new legislation should be enacted to apply to any claim for personal injury or death resulting from negligence, regardless of whether the claim is brought in tort, contract, equity or under statute (such as the Trade Practices Act) or other course of action.

The ACCC believes that the proposed legislation will unacceptably reduce the legal protection available to consumers. This proposal will:

- limit the ability of individuals to bring actions (or the ACCC to bring representative actions) for damages for personal injury or death under Part V, Division 1 (the misleading and deceptive, or false and misleading prohibitions)
- means that a person cannot be held liable for failing to warn of 'obvious' risks

- limit recovery under the unconscionable conduct and product safety provisions of the Act.

Recommendations envisage limiting quantum of damages (caps) and other restrictions.

The ACCC believes that the panel's rationale for the removal of such important consumer protection measures appear to be based on a fear of what may happen in the future rather than any existing problems with the way the protection operates.

More information:

<http://revofneg.treasury.gov.au/content/home.asp>

RBA credit card reforms

Over a three-year period the Reserve Bank of Australia (RBA) has been reviewing credit card schemes in Australia. On 27 August the final reforms were announced by the Payments System Board of the RBA.

In October 2000 a joint study published by the ACCC and the RBA found that issuing credit cards to consumers and providing merchants with the capacity to accept credit card payments generates revenues that are well above the average cost to the banks of providing the services. The joint study also found that interchange fees should be well below current levels.

Interchange fees are recovered from the merchant's bank by a card holders bank. These fees apply when a customer pays for products using a credit card issued by one institution when the merchant uses another institution to process its card payments.

The reform measures provide for new entrants to issue credit cards or provide merchant services, establish a cost-based benchmark for determining interchange fees, and end the restrictions imposed by the schemes that prevent merchants from recovering from card holders the costs of accepting transactions paid with credit cards.

Businesses previously had no choice but to recover the cost of credit card payments by charging all consumers higher prices. In effect consumers who do not use credit cards are subsidising those who do.

More information:

http://203.6.251.7/acc.gov.au/digest/view_media.cfm?RecordID=782

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Unclaimed money

Many consumers receive notices from entities claiming to have located amounts of unclaimed money. The notices offer to forward the unclaimed funds after the consumers has forwarded personal identification, and authorised the deduction of an often considerable fee.

Consumers can quickly conduct free searches for unclaimed funds administered by the Australian Securities and Investments Commission (ASIC). These funds are collected from banks, credit unions, building societies, companies (shares), life insurance companies, friendly societies, for companies that have been deregistered, or for unclaimed shares and acquisitions under the Corporation Law. Contact ASIC on **1300 301 198** or at

<http://www.fido.asic.gov.au/fido/fido.nsf>

Consumers can check if they have unclaimed superannuation money through the Lost Members Register administered by the Australian Taxation Office on **131 020** or at

<http://www.ato.gov.au/content.asp?doc=/content/Professionals/super/16442.htm>

Each state or territory maintains its own Registrar of Unclaimed Moneys, which is administered by the State Department of Treasury and Finance or equivalent. Businesses are required to advertise all amounts over \$100 in a gazette administered by the department. Businesses are allowed to deduct gazette related advertising expenses from the remitted moneys. Consumers and business may access the Register of Unclaimed Moneys or more detailed advice by contacting their State Department of Treasury and Finance.

Considering the availability of this information, it may be prudent to conduct your own inquiries and claim the money yourself. Providing your ID to a third party may enable them to claim money on your behalf, or use your ID in a manner you have not authorised.

In the consumers' interest

Insurance customer initiative

The ACCC was pleased to note the release of AAMI's Compulsory Third Party Claimant Charter. It sets out a policy for dealing with claims by consumers who are involved in an accident with an AAMI policy holder.

The ACCC encourages businesses to set out their customer aims, benchmarks and strategies in a plain and visible way to ensure compliance.

The ACCC looks forward to other insurance companies developing similar programs.

More information:

http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=763

Product safety alert

Konjac jelly cups banned

The Parliamentary Secretary to the Treasurer, Senator Ian Campbell, announced an eighteen-month temporary ban on mini-cup jelly confectionary containing konjac after a substantial number of deaths and near deaths in Australia and overseas.

The mouth-sized mini-cup jellies can pose a serious choking hazard, particularly to young children and the elderly.

Konjac, also known as glucomannan, konjonac, konnyaku, yam flour and taro powder, is used to bind the product. Unlike gelatine-based jellies, konjac-based jellies do not readily dissolve. If these jellies lodge in the throat they are not easily dislodged, even by the Heimlich manoeuvre.

Introducing a national ban under the Act ensures that all states and territories are covered. Penalties under the Act apply to suppliers, importers and retailers of the products. Penalties imposed by the court may be up to \$1.1 million for corporations and \$220 000 for individuals.

The ban will be enforced nationally by the ACCC.

More information:

http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=780

Recent investigations

Reality TV show exploits job seekers

The Federal Court in Sydney found that a television production company, Crackerjack Productions Pty Ltd (Crackerjack) have misled job seekers about the availability of work offered by it while making a reality television program for Network Ten.

Crackerjack had advertised casual jobs in the NSW regional city of Dubbo and in Melbourne for five days' work. In the consent orders, the court found that Crackerjack's purpose in advertising and offering the work was to obtain candid film footage of job seekers. The court also found that Network Ten, by commissioning the production of the program by Crackerjack, was knowingly concerned in Crackerjack's breaches of the Act.

The advertisements and vacancies lodged with job agencies were placed to lure job seekers to an interview. Two job seekers were then offered the advertised work. The work was not genuine and the tasks they performed were part of an elaborate hoax.

Producers of reality TV shows must be careful not to engage in misleading conduct that breaches the Act. People looking for work are generally in a vulnerable position and businesses must not unfairly take advantage of this.

More information:

http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=785

Ministerial Council on Consumer Affairs

The Ministerial Council on Consumer Affairs (MCCA) held its 11th annual meeting in Adelaide on 2 August. MCCA comprises Commonwealth, state and territory and New Zealand ministers responsible for fair trading, consumer protection, trade measurement and credit laws.

At the meeting, the ministers determined that the new mandatory requirements for comparison rates relating to fixed term credit will begin nationally on 1 July 2003. This resolution, which amends the Uniform Consumer Credit Code, will enable consumers to access a schedule of comparison rates from loan providers to help them shop around for the best deal when considering a loan.

The ministers also agreed to bring forward a new standard for babywalkers including requirements for stability, a mechanism to prevent babies falling down steps or stairs and safe use warning labels. The ministers agreed that the new babywalker regulation would commence on 1 November this year.

It was also agreed to include Indigenous consumer issues in remote and rural Australia in the MCCA strategic agenda.

More Information: <http://www.consumer.gov.au>

Recent developments

Internet auctions

Risk of fraud

The ACCC has acknowledged for some years that online auctions carry a degree of fraud risk. In its August 2000 publication *Internet auctions: what you should know before you bid or sell*, the ACCC quoted figures from the National Consumer League in the USA, revealing that 87 per cent of Internet fraud reported by consumers in 1999 came from online auctions. The average annual loss per consumer when reporting fraudulent behaviour on Internet auction sales was A\$489.

Online auction facilities also acknowledge the risk of fraud despite their complex monitoring and detection efforts. They provide information about the risks, and advice about ways to reduce the risk on their sites and in terms and conditions of contracts entered into by bidders and sellers when they register to use the service.

There remains a high demand for these services.

What will happen to your complaint?

Taking payment without intending to supply is prohibited under s. 58 of the Act. The conduct could be addressed by the ACCC, by your local Office of Fair Trading or you have the right to private action. It also amounts to fraud and if so, may be addressed by police.

When deciding what action is appropriate, the ACCC focuses its resources on matters of national significance, involving international or multi-state conduct, with a high level of detriment to consumers. The ACCC is not likely to

pursue an online auction fraud on behalf of an individual consumer.

It is more likely that your complaint will contribute to a database of similar complaints, so that regulators can look for patterns that might reveal repeat offenders, and sufficient evidence to pursue them. When the offender is overseas, there are cooperative arrangements in place between regulators in 30 countries to facilitate assistance in investigation and prosecution where possible.

Your best defences

Protect yourself by being informed of the risks, and reduce them by:

- paying cash on delivery
- using an escrow service
- using insurance offered by the auction facility (or other provider)
- paying by credit card where possible (so that chargeback can be used)
- asking for and confirming the seller's street address (not PO Box)
- keeping records of all bids, item description, emails to and from the seller, and transaction records/receipts.

Liability

The liability of the auction house can be limited by the terms of the contract formed with bidders and sellers. Careful scrutiny of these terms may clarify that the consumer does not wish to register to bid at all. The online auction facility is not covered by different laws to a 'regular' offline auction. However, the locality of the trader may be difficult to determine, and jurisdictional issues may hamper legal action. Generally the facility must disclose the terms to both bidder and seller in advance of the auction, and is covered by the competition and consumer protection provisions in the relevant jurisdiction.

Other issues

Auction sites have arrangements in place to assist law enforcement agencies on request. They have feedback mechanisms to discredit and remove fraudulent sellers, and tracking and cross-recognition procedures to prevent fraudulent sellers from re-registering with falsified details.

The ACCC is educating Internet users about the risks of fraud when buying goods over the Internet, especially through online auctions. Many people continue to bid, even after they are aware of the risks, and this is entirely their choice.

The ACCC has also taken action against various online auction sellers. In some cases, this has led to settlement of the ACCC's concerns. In others, the ACCC has traced the seller to a country where no cooperation agreements exist, or there is no consumer protection authority, and the investigation has halted. In all matters the ACCC must continue to use its resources efficiently to produce the best outcomes for Australian consumers.

US—misleading statements about electronic pest control devices

Lentek International, a company that manufactures and sells pest control devices, has been accused by the FTC of false advertising after Lentek claimed that its electronic mosquito repellent device protected against the West Nile Virus.

The complaint also includes allegations of misrepresentations about various pest control devices and air cleaning products.

Lentek's advertising for MosquitoContro claimed that the product emitted sounds similar to those of male mosquitos and dragonflies, thereby repelling the female biting mosquito. Citing advice from the Center for Disease Control, the FTC alleges that these ultrasonic products are not effective in repelling mosquitos.

PestContro, the other major product included in the FTC complaint, is marketed as a product which emits ultrasound waves that drive pests from the home.

The FTC alleges that Lentek's claims that the PestContro's ultrasonic waves repel pests have no reasonable basis, and that claims that the PestContro altered the electromagnetic field in a home's wiring are without basis.

The FTC recommends that consumers should not abandon tried and tested preventative measures against infection such as immunisation, chemical repellants, choice of clothing, mosquito netting and avoidance measures such as staying indoors at dawn and dusk.

More information:

<http://www.ftc.gov/opa/2002/08/lentek.htm>

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- 30 August 2002** [No ACCC Intervention in AFL Finals Row](#)
- 30 August 2002** [ACCC Declares Line Sharing](#)
- 30 August 2002** [Court Finds TV Production Company Misled Job Seekers, Aided by TV Network](#)
- 29 August 2002** [ACCC Issues Draft Report on Disclosure of Telecommunications Information](#)
- 28 August 2002** [Federal Court Confirms ACCC Decision to Allow Victorian Chicken Meat Growers Collective Negotiation](#)
- 27 August 2002** [ACCC Welcomes Reserve Bank Credit Card Reforms](#)
- 27 August 2002** [ACCC not to Oppose Merger Between Consolidated Meat Group and Teys Bros](#)
- 23 August 2002** [Dangerous Confectionery Banned](#)
- 22 August 2002** [Negligence Review Risks Creating Significant 'Losers': ACCC](#)
- 22 August 2002** [Ausbulk National Grower Register Immunity to Stand](#)
- 21 August 2002** [Federal Court Declares Woolworths Beef Advertisements False and Misleading](#)
- 20 August 2002** [ACCC Welcomes Tribunal's Decision to Allow Dairy Farmers to Collectively Negotiate](#)
- 20 August 2002** [ACCC Proposing to Approve Revenue Increase for Gasnet](#)
- 20 August 2002** [Court Finds Westfil Misled about Filters' Country of Origin](#)
- 20 August 2002** [ACCC Proposes to Accept Key Access Revisions by Vencorp](#)
- 16 August 2002** [ACCC to Oppose Proposed Acquisition to Protect Competition in Flour Milling](#)
- 16 August 2002** [ACCC not to Oppose Graincorp/Cargill's Proposed Acquisition of Milling Australia](#)
- 16 August 2002** [Real Estate Agent Refunds GST on Commission](#)
- 16 August 2002** [ACCC and Rural Press](#)
- 15 August 2002** [ACCC Issues Final Decision on Transmission Ring Fencing Guidelines](#)
- 13 August 2002** [ACCC Monitoring Initiative for Telstra's Wholesale Customers](#)
- 12 August 2002** [Woolworths Beef Advertising Misleading](#)
- 8 August 2002** [Ford Credit to Provide Over \\$430,000 in GST Refunds on Car Leases](#)
- 6 August 2002** [Compulsory Third Party Claimant Charter Launched](#)
- 5 August 2002** [ACCC Seeks to Intervene in South Sydney Case in High Court](#)
- 1 August 2002** [Info4PC.com Pty Ltd and James Rae in Contempt](#)
- 1 August 2002** [ACCC Issues Final Approval on Moomba to Adelaide Pipeline Access Arrangement](#)