

What do consumers do for competition?

To mark World Consumer Rights Day the Australian consumer movement and Consumer Affairs Victoria hosted the National Consumer Congress. The congress brought together consumer advocates, regulators, policy makers, government officials, industry and academics.

ACCC Deputy Chair, Louise Sylvan, spoke to the congress on the complementary relationship between consumer protection and competition policy and suggested some key competition questions—questions that focus on the essential role of consumers in making markets work.

It may seem to be a statement of the totally obvious, but markets have two sides. For markets to work effectively, both are important.

First, competition between firms needs to be working—that's the supply side set of issues. And second, consumers need to be able to exercise their market power—that's the demand side set of issues. When circumstances exist that interfere with efficient market functioning on either side, then that market is less competitive than it should be, with consequential detriment.

A well accepted principle in market economies—some describe it as a paradox—is that regulation is often required to make markets work. Competition law involves active intervention by a government to achieve 'free' competitive markets. Ross Gittins at *The Sydney Morning Herald* put the concept quite clearly, in a column in which he challenged the so-called economic rationalists:

Do they stand for free enterprise (that is, businesses should be free to do as they please) or free markets (businesses should not be free to act in ways that restrain competition)?¹

The empirical evidence from eminent scholars such as Michael Porter and others is that vibrantly competitive economies are not those that eschew regulation but those that ensure vigorous domestic rivalry through strict antitrust law towards mergers and collusive behaviour coupled with energetic enforcement of those competition laws. While that empirical evidence has been crucial in framing our thinking about competition, like most economic work in the area, the focus has tended to be on the supply side.²

Industrial economists—the people who really provide the evidence for competition law—have almost exclusively concerned themselves with the behaviour of firms. They commonly assume in their modeling that consumers will change their behaviour or allegiances in response to a price (or equivalent) change. And in many markets, that is the case. But in other markets, it simply doesn't happen. In fact, consumer behaviour can often create significant barriers to entry or other frictions in the way a market operates.

There is nothing new about this concept of market failure. On the demand side, the main failures are information deficiencies of various sorts (e.g. under supply, free riders, loyalty and branding, complex products, one-off products), the 'lemons' problem where consumers cannot judge the quality of goods or services on offer,³ and other market problems, many of which have been well researched.

Newer on the agenda are the behavioural economics issues that are crucial in understanding how consumers behave in markets. These include how consumers frame risk, how they behave when faced with decision-conflict (overwhelming choice), endowment issues (we value much more what we have than what we might acquire), snap decision-making, seeking legitimacy in markets (consumers will often drive to a store quite far away—actually spending more on the petrol than the amount they save—if they think their local supplier is ripping them off), and many more. While none of this is news, there has nevertheless been limited focus on the systemic behaviour of consumers in markets, how frictions and barriers to entry occur as a result of consumer behaviour, and what to do about it.

In fact, in almost all discussions of competition policy, the commentary is about 'what competition does for consumers'. However we also need to ask 'what do consumers do for competition?' That question achieves the proper focus on the effective operation of **both** sides of the market.

The complementarity of competition enhancing consumer protection policy and competition policy is increasingly recognised. John Vickers FBA, an eminent economist and the current chairman of the Office of Fair Trading UK, considered these issues in his British Academy Keynes Lecture in October last year, 'Economics for consumer policy':

...market imperfections do not necessarily call for public policy solutions ... it cannot be taken for granted, however, that product market competition between firms is necessarily competition to serve customers well. That depends, and one of the things it depends on is the stance and effectiveness of consumer policy.⁴

Despite the lack of systematic work on the demand side of the competition equation, some very exciting examples of empirical work on the question of consumers and competition are beginning to be published.

1 Ross Gittins, 'Allan Fels: Economic rationalist hero of the decade', *Sydney Morning Herald*, 15 July, 2003

2 See, for example, most textbooks on industrial organisation where solutions to the Bertrand Paradox almost invariably put only firms in the spotlight.

3 George Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism', *Quarterly Journal of Economics*, Vol 84, May 1970.

4 John Vickers FBA, British Academy Keynes Lecture 'Economic for consumer policy' October 2003.

consumers do not just benefit from competition, they activate it.

Paul Klemperer at Oxford and Michael Waterson at the University of Warwick are two of the most advanced researchers in this area. Klemperer's seminal examination of consumer switching—with a competition lens on—identified no less than six types of switching costs affecting the market:

- » the need for compatibility with existing equipment
- » transaction costs of switching suppliers (both in terms of actual cost and the 'hassle' factor)
- » costs of learning to use new brands
- » uncertainty about the quality of untested brands
- » discount coupons and similar devices (e.g. frequent flyer programs)
- » psychological costs of switching, or brand loyalty.

We can add to this the difficulties that bundled products and 'lock-in' contracts can cause. And complexity fatigue should also feature here. The crucial point is that this research is focused—in terms of an analysis of competition—firmly on market issues for consumers.

Klemperer makes the point that switching costs have significant impact on competition not only in terms of the market power over existing customers, but that 'where products are artificially differentiated by switching costs, the incentives for firms to differentiate their products in any real, functional way, are reduced.'⁵

This suggests a catch-22 situation where a lack of differentiation contributes to further consumer inertia which further reduces competition. Klemperer also notes that some switching costs are the result of deliberate actions by firms and advocates dealing with this through activities such as '... standardisation that enhances comparability and reduces learning costs or switching costs, and quality regulation and information sources that reduce consumer uncertainty about untested brands ...'⁶

Waterson's work focuses on the importance in practice of the role of consumers in competition and the implications for research and for policy. He does this by making demand side market inquiries, much as others have been doing for years on the supply side.



ACCC staff at the congress.



Louise Sylvan, ACCC Deputy Chair

Looking at the UK electricity market, Waterson found:

- » high consumer awareness of the ability to change supplier
- » significant savings possible from switching
- » complex tariff structures—to make a decision consumers must know their usage pattern and need to be able either to create a spreadsheet or carry out similar complex analyses
- » only 18 per cent of consumers are supplied by a company other than their former monopoly supplier.

Waterson discovered that after five years of supplier competition consumers had not activated competition in part because of complexities in the evaluation of the product and the hurdles in the switching process. No amount of supply side remedy is likely to fix this situation.

In his study of financial services Waterson compared the considerable differences UK consumers experience in trying to shop for a bank account as opposed to shopping for car insurance. The differences are striking (Australian figures are not too dissimilar in a relative sense).

Car insurance

- » ease of changing—simply telephone and answer a few questions
- » time cost for consumers 10–15 minutes
- » 53 per cent of consumers have switched

⁵ Paul Klemperer, 'Competition when Consumers have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade', *Review of Economic Studies* (1995) 62, p. 516.

⁶ *Ibid.* p. 536.

the deliberate disempowering of consumers to activate competition is ... a misuse of market power.

Bank accounts

- » complexity of analysis of costs—consumers need to know usage pattern, may need complex calculation, opacity of fees and charges
- » cancelling direct debits are made difficult with the onus on the customer to make it work and follow up
- » opening new account can be cumbersome
- » costs and effort of re-establishing a credit standing
- » 6 per cent of consumers have switched

Once again, it appears that consumers cannot make the market work in terms of bank accounts, but they can and do in terms of car insurance in the UK. Waterson concludes that the difficulties of a new player trying to capture a significant fraction of the banking market will not be easily overcome, even if they are providing different and better performance, without first implementing a 'policy designed to render banking (for domestic and small business customers) more competitive by addressing both the ease of switching and the opacity of their charging structures'.⁷

Waterson also compares the profits of companies in industries where consumers can activate competition and where they cannot. The personal banking business in the UK has 'high/excessive' profitability while motor insurance has 'low/negative' profitability. He argues that 'a proximate explanation of this markedly different performance is the very different consumer behaviour across the markets ...'.⁸ It would need a major study across many markets to know whether the relationship between profitability and consumer switching held in general. If it does, then we may have one pointer for where to focus attention on improving demand side consumer activity.

Where to from here?

The exciting thing about viewing competition through this lens of 'what do consumers do for competition' is that it can be effective in determining whether a competition problem, or part of a problem, is occurring on the demand side of a market, whether an intervention might remedy the problem, and if so, what form that should take. It enables the common realities of information asymmetry, transaction costs and other market failures to properly influence the nature of any regulatory response and provides an evaluative tool for measuring whether the response has been effective. No stakeholder is keen on ineffective regulatory responses.

Reality check

The deliberate disempowering of the ability of consumers to activate competition between firms is in some ways analogous to a misuse of market power—only it is a firm's use of market power directed at individual consumers. Vickers in his Keynes Lecture also elaborated on this point which he calls 'micro-competition policy':

In situations of lock-in the consumer is in effect individually vulnerable to the exploitation of market power *ex post*. The consumer might be compensated in part for this by getting a correspondingly good deal as a result of *ex ante* competition. But the outcome is still inefficient—and worse if there are undue surprises ... So one way to see the consumer policies that address such issues is as policy to combat micro-competition problems in large numbers. On this view, much consumer policy is competition policy.⁹

As governments have become more sophisticated in applying supply side competition laws to firms in the market—limiting the opportunities for anti-competitive mergers or increasing the risks of engaging in collusive and other prohibited conduct—it may be that firms are pursuing other strategies for reducing the intensity of the competitive environment. An aspect of both Klemperer and Waterson's work is their understanding that firms can and do deliberately inhibit rivalry in various ways, for example, using artificial differentiation to avoid real functional differentiation, various 'stickiness' strategies making switching behaviour difficult or costly for consumers in time and/or money, and a variety of tactics creating complications in product or service comparability. These are matters for active consideration by policy makers, researchers, regulators and others concerned with a nation's economic outcomes and with overall consumer welfare.

Many thanks to Catriona Lowe for her research and extensive contributions to this paper and to Ian McAuley for his insightful comments.

A complete copy of this speech can be found at www.accc.gov.au.

7 Michael Waterson, 'The Role of Consumers in Competition and Competition Policy', Warwick Economic Research Papers, July 2001.

8 *Ibid.*

9 John Vickers FBA, British Academy Keynes Lecture 'Economic for consumer policy' October 2003.



In doubt about debt?

Standover tactics, inappropriate demands and harassment have no place in debt collection. Both the ACCC and the Australian Securities and Investments Commission (ASIC) have legislation which protects consumers from inappropriate behaviour by a debt collector.

If a consumer owes money, debt collectors may take reasonable steps to make contact by letter, fax, email, phone or in person. A collector has the right to contact a consumer at work or through family and friends—but only if they have been unable to make contact in any other way. However, a collector should not discuss the debt with others or do or say anything that would let others know about the debt.

A collector does not have the right to mislead or deceive consumers about:

- » who they are and who they represent
- » the amount of money you owe
- » their legal right to collect the debt
- » what will happen if you don't pay the debt.

If you are being harassed who do you turn to?

The answer to this question depends on the type of purchase or transaction the debt recovery agency is chasing you for. A transaction can involve the direct purchase of a **good** or **service**, for example, telephone services, a television or a gym membership. Or, it can involve the purchase of a **financial service** such as taking out a loan, or using a credit card.

First make sure that you **do** owe money and that you are not the victim of a mistake or the target of a scam.

Next, ask this question:

Is the debt the result of taking out a loan or using a credit card? Or is the debt owed to a financial service provider?

If the answer is yes and you believe you are being unduly harassed, contact the ASIC Infoline on 1300 300 630.

If the answer is no and you believe you are being unduly harassed, contact the ACCC Infocentre on 1300 302 502.

If you are physically hurt or threatened, contact the police.

If unsure who to contact, either the ACCC Infocentre or ASIC Infoline will be able to help you identify the appropriate body.

Your credit rating

Unpaid debts that appear on your credit rating can seriously affect your capacity to obtain credit in the future. Sometimes a debt collector may threaten to register a debt against a consumer's name on a credit reporting database. Other times this is done without notice and consumers only find out about an alleged debt after trying to obtain credit and being refused.

It's a good idea for consumers to obtain copies of their credit report regularly to ensure it remains accurate.

A copy of a consumer's credit file and a report of credit status can be obtained from Baycorp Ltd, phone toll free 13 31 24. If you disagree with the information on file, write a letter to Baycorp Ltd. They should investigate and report back to you. If you are dissatisfied with the response or do not receive a response, a complaint may be lodged with the Office of the Federal Privacy Commissioner.



Consumer consultation— the ACCC wants your views

The ACCC is keen to hear the views of consumer advocates and other professionals who have current experience with consumer issues or represent particular consumer groups.

To encourage this dialogue, the ACCC established the Consumer Consultative Committee (CCC) in November 2001. Convened by ACCC Deputy Chair Louise Sylvan, the CCC advises the ACCC on issues affecting consumers that fall within the scope of the ACCC's administration of the Trade Practices Act.

The role of members

CCC members are invited to comment on:

- » issues and processes affecting consumers that fall within the scope of the ACCC administration of the Act
- » emerging issues or market developments that may be of concern to particular groups of consumers
- » information strategies and external networks available to encourage communication with community and consumer groups and consumers
- » issues as requested by the ACCC.

For an example of the work of the CCC see the report on enhancing consumer protection in the electricity market published in this edition of *ACCC Update* (p.17), and also our article on the campaign to protect disadvantaged and vulnerable consumers (p.18).

The current membership

The following representatives constitute the current CCC.

Brian Rope	Australian Federation of Disability Organisations
Peter Opio-Otim	Aboriginal Coordinating Council
Peter Kell	Australian Consumers' Association
Derek Wilding	Communications Law Centre
Chris Field	Consumer Law Centre Victoria
David Tennant	Consumers' Federation of Australia
Myra Pincott	Country Women's Association of Australia
Kath McLean	Tasmanian Council of Social Service

Sally Crossing	Consumers' Health Forum of Australia
Su Mahalingham	Consumer Credit Legal Service

Membership of the CCC is rotated approximately every two years to give organisations and individuals who are not currently members of the CCC the opportunity to contribute. The CCC is presently reviewing its membership.

Member issues— a standing item

At every meeting each representative is asked to present three consumer issues of concern to their organisation. These have included:

- » the impact of deregulation of the telecommunications industry on consumer protection
- » the operation of illegal and illicit traders within indigenous communities
- » the provision of credit cards to people without regard to their capacity to pay
- » the jurisdictions of different regulators.
- » the need to regulate credit reporting agencies
- » market concentration in the retail grocery and petrol markets
- » motor vehicle issues
- » the debate over the changing framework and pricing of electricity in Australia.

CCC meetings

The CCC meets three or four times a year, usually at the ACCC's head office in Canberra. Meetings are sometimes held in other capital cities and generally run for one day.

If you have any queries or would like further information about the CCC, contact the CCC secretariat on (03) 9290 1947.



National community action for electricity regulation

The Consumer Law Centre Victoria is currently undertaking two projects dealing with various aspects of the National Electricity Market (NEM).

Australia's NEM is the world's longest interconnected power system, extending more than 4000 kms from Port Douglas Qld to Port Lincoln SA and will soon also connect Tasmania through Basslink. The NEM consists of a compulsory wholesale financial market for the purchase and sale of electricity (similar in concept to the stock market) and the various rules that govern generation, transportation and trading of electricity. Regulation of the various components is shared between federal and state governments and independent regulators in an ad hoc manner, with intricate rules, agreements and political arrangements underpinning it.

Creating a network of advocates

The first NEM-related project of the Consumer Law Centre Victoria is the creation of a national network of advocates from consumer, welfare and environmental organisations. The purpose of the network is to strengthen the independent and collective capacity of the organisations to participate more effectively in the NEM and its many regulatory debates.

The complex and fragmented nature of the electricity industry has to date isolated community agencies and limited their involvement in NEM issues. The Ministerial Council on Energy (MCE) has recently announced a reform program including a review of economic regulation, transmission, distribution; retail regulation and frameworks; and end-user participation. A coordinated national network that can encourage advocacy and make informed contributions is, therefore, both crucial and timely.

Natasha Leigh is the network project coordinator. Based at the law centre with support funding from the National Electricity Code Administrator Advocacy Panel, Natasha produces *On the Wire*, a quarterly newsletter of information and submissions from the law centre,

other experts and network members. Future projects include coordination and delivery of state and territory based seminars on various NEM-related issues affecting network members. Through these seminars, the network will identify and prioritise issues and target those domestic end-user interests most in need of advocacy.

The second task is advocating proposed principles for a consolidated electricity consumer protection code to operate in the NEM. This project is also funded by the advocacy panel and is being carried out on behalf of the ACCC's Consumer Consultative Committee.

The National Regulators Forum, the Australian and New Zealand Energy and Water Ombudsman Network and the Energy Retailers' Association of Australia have each conducted preliminary inquiries into the various state consumer protection frameworks for electricity. Overall, there appears to be a need for clear understanding of the inconsistencies, deficiencies and competition impediments in the current state-based frameworks.

The MCE also recently announced a review of a proposed national framework for electricity distribution and retail regulation. The law centre will analyse the various state frameworks, propose the principles necessary for best practice consumer protection, and consult about the principles and approach necessary to achieve national consistency in best practice consumer protection in electricity supply.

Community organisations are encouraged to contact Natasha Leigh on natasha@clcv.net.au to register their interest in participating in the network or to provide input into the consumer protection code harmonisation project.

ACCC campaign to protect disadvantaged and vulnerable consumers

Campaign background

On 2 June 2003 the ACCC and its Consumer Consultative Committee launched a campaign focusing on commercial and business practices that target or seek to exploit disadvantaged or vulnerable consumers. Characteristics that may suggest disadvantage include: low income, culturally and linguistically diverse background, disability (whether intellectual, psychiatric, physical or sensory), illiteracy, indigenous origin, homelessness, remoteness, and serious or chronic ill-health.

In broad terms, consumers who experience some form of vulnerability or disadvantage may be especially at risk in the marketplace because they have fewer means to combat unfair behaviour and/or less money to cushion the impact of unlawful behaviour.

It can be argued that:

- » The imbalance of information between disadvantaged and vulnerable consumers and traders may be greater than for other consumers. This imbalance is sometimes referred to as information asymmetry.
- » For disadvantaged and vulnerable consumers the information asymmetry can be exacerbated because it may be more difficult for them to gather and comprehend information—for example, due to a lack of mobility, a lack of education, a language barrier or a hearing disability.
- » Disadvantaged and vulnerable consumers have fewer means to address the problems they may experience. Information is important when asserting one's rights. The same factors that can make it difficult for an 'at risk' consumer to access information can inhibit them from asserting their rights if things go wrong.
- » Poor business conduct has the greatest negative impact on this group of consumers—a financial loss that may be relatively small for a consumer on an average or above average income may be very large for a consumer on a low income.

Some unscrupulous players in the marketplace specifically set out to exploit the disadvantage or vulnerability of others. For example, 'miracle cures' prey on the desire of chronically ill consumers to find a cure for their health problem or disease.

It is important to emphasise that vulnerable or disadvantaged people are not universally at risk in all—or indeed any—marketplace situations. Rather the 'risk' of an unfair marketplace experience is higher for these members of our community and the effect potentially greater.

For example, misleading 'free' or discount offers may entice consumers on a low income to buy a product on the basis that it will not compromise a carefully managed budget. If the claims regarding the offer turn out to be untrue or misleading, the consumer may find they cannot pay for other essential items such as food or rent.

The ACCC message to business is not to avoid dealing with consumers who experience some form of disadvantage or vulnerability. Businesses should feel free to contract with 'at risk' consumers—to do otherwise would be to deny them opportunities and to forgo legitimate business opportunities. And, if consumers possess the characteristics defined in anti-discrimination legislation (such as the Anti Discrimination Act and the Disability Discrimination Act), refusal to contract with that consumer could be unlawful.

The message to business is three-fold:

- » make every effort to ensure that representations and contracts are clear and simple and can be understood by *all* consumers
- » if a consumer has a characteristic or characteristics which may limit their capacity to understand a contract, advise them to seek assistance and to determine whether it's in their best interests
- » if things go wrong, be open to resolving complaints and setting aside contracts in appropriate cases.

Referral guide

Protecting disadvantaged and vulnerable consumers has always been a priority for the ACCC, yet it is our experience that they rarely complain to an agency like the national regulator. Disadvantaged and vulnerable consumers are much more likely to complain to a shopfront or community based organisation, if they complain at all.

To gain access to this important consumer information, the ACCC and CCC have produced a *Referral guide* to help CCC members and other consumer organisations refer complaints to the ACCC taskforce.

Campaign taskforce

The ACCC has created a special internal taskforce to assess and fast-track complaints received through the ACCC Infocentre or referred by CCC members and other organisations that involve disadvantaged or vulnerable consumers.

The taskforce has considered 152 matters between 4 June 2003 and 31 January 2004. This includes 80 complaints referred from a range of external agencies. The remainder were complaints made to the ACCC Infocentre.

Of these complaints:

- » 35—no further action taken as the complaint did not involve trade practices issues
- » 8—referred to another agency
- » 32—being monitored
- » 2—resolved through negotiation

Currently, there are four investigations underway as a result of the remaining 75 complaints received.

While it is relatively early days, referrals to the taskforce have given the ACCC valuable insights into issues affecting disadvantaged and vulnerable consumers. Two spikes emerging from the data are:

- » complaints from consumers about debt collection
- » complaints involving telecommunications issues, particularly selling conduct, billing, contracts and collection activity.

As a result of this information the ACCC has commenced a number of investigations into potentially unlawful conduct.

If the evidence confirms a likely breach of the Act, the subsequent action by the ACCC will be an important component in ensuring the marketplace is fair for all consumers.



Mouse mat giveaway offer

Score your very own anti-scaming mouse mat, pictured here, by being one of the first 50 people to contact the ACCC Publishing Unit. Launched on World Consumer Rights Day at the National Consumer Congress (Melbourne), the mats are more popular than pies at the footy. Be quick—the offer's good, it's true and it's free for *ACCC Update* readers. Email us at publishing.unit@accc.gov.au



Food for thought

For hundreds of years most people ate food made with little or no processing from animals such as cows, hens and crops that existed within a ten kilometre radius of their home. In Australia today the ingredients for one meal could be sourced from three or more far flung countries and treated in innumerable ways before reaching your plate.

Food is the largest manufacturing industry sector in Australia. Food purchases account for \$75 billion annually, representing 45 per cent of total Australian retail consumer spending.

Food regulation is complex and, in Australia, is the joint responsibility of the states and territories health administrations, and the Australian and New Zealand governments.

Food sold, prepared or imported for sale in Australia and New Zealand must comply with the Australia New Zealand Food Standards Code. Food Standards Australia New Zealand is the authority responsible for developing, implementing and reviewing food standards.

The ACCC's role

The ACCC role in protecting consumers extends to claims made on food labels and advertising of food products. The Trade Practices Act covers the following sorts of representations currently used in the market to promote and sell food products:

- » naming and representations of foods in relation to: the blended composition of the food (such as pine-orange juice or cabernet sauvignon wine), the proportion of ingredients, the nature of ingredients, the characterising ingredients (such as strawberries in strawberry yoghurt), the reference to flavourings and the imitation of ingredients
- » ingredient source—place and region—and country of origin representations
- » pictorial representations
- » naming and identifying the physical form of the food
- » nutritional content and other claims.

Whether the label information is required by law or whether the information is voluntarily provided (and therefore a commercial decision by a food manufacturer) the claims must accurately reflect the contents of the product because consumers depend on this information if they cannot see the contents. This means pine-orange juice, for example, should contain pineapple and orange juice.

Consumers attempting to choose from the 100 000 plus products available need an awareness of some of the potential pitfalls regarding claims made on food packaging.

Endorsement schemes can be misleading

Many consumers find that food packaging contains too much information for them to sort through. Endorsement schemes, using logos or specialised trade marks, can be a highly effective marketing tool and a handy way for consumers to quickly identify products that have characteristics catering to their needs.

One such endorsement scheme that consumers have grown to know and trust is the National Heart Foundation Heart Tick Program, the symbolic red circle encapsulating the large red tick. However, product endorsements schemes can also be a source of confusion. A 'tick' logo similar to that used by the National Heart Foundation was recently withdrawn from use by egg producer GO Drew after the ACCC received complaints. The ACCC was concerned that the logo may have misled consumers to believe these egg products had Foundation approval.



In 1998 a Kellogg ad campaign featured the National Heart Foundation 'tick' of approval for its new product and a cross against two similar products, Weet-Bix and Vita Brits. The ACCC acted because of concerns that some consumers would have thought Weet-Bix and Vita Brits either failed, or would fail, to obtain the National Heart Foundation's 'tick' of approval when in fact both products fell within the nutritional guidelines for breakfast cereals set by the Foundation.

Unfortunately product endorsements are no substitute for finding out information about the nutritional value of each food and its impact on each consumer. For instance diabetics or overweight people are unlikely to benefit uniformly from foods branded with the heart tick.

Other claims

Products which claim to have nutritional benefits must include nutritional information in their labelling so consumers can make informed comparisons between products.

Negative claims such as 'no genetically modified ingredients' or 'no added sugar' are made voluntarily by manufacturers. Consumers have contacted the ACCC to complain that sometimes 'no fat' claims made on the front of product packages are contradicted by information on the nutrition panel which states it contains 1gram of fat.

While product labelling claims should be literally truthful, before acting the ACCC also considers the scale of consumer detriment flowing from any marketing claims. For example, the presence of 1 per cent fat in a 'no fat' product has been deemed by food scientists and regulators around the world to be nutritionally insignificant. However, the undeclared presence of allergens such as crustacea and their products, egg and egg products, milk and milk products, fish and fish products, peanuts and soy beans and their products, tree nuts and sesame seeds and their products and added sulphites [$+10\text{ mg/kg}$] will be strictly enforced because of their potentially life threatening consequences to some people. Additionally, labels must alert consumers to other ingredients, providing extra information about how much should be consumed or when caution should be taken if consumed—for example, when breast feeding.

Let's have a closer look at some of the current marketing claims and what they might mean for your nutritional requirements.

X per cent fat

The percentage of fat on the front of the product label is usually fat as a per cent of the total weight of the product and not fat as a per cent of the total calories of the product. As most products naturally contain significant amounts of water (oven fries are about 60 per cent water) a small percentage of fat by total weight can end up being a much larger portion of the calories.

Fat free

Fat free products loaded with sugar may not be the ideal product for people watching their weight as sugars not used as energy are converted to fat by the body for storage.

Salt free

As the term 'salt' refers to sodium chloride, 'salt free' products using sodium but not sodium chloride are labelling their food correctly. Yet people with high blood pressure probably need to limit their intake of sodium, not just salt.

Limits of mandatory labelling

Even the mandatory ingredient information has its limitations. Where a food manufacturer has not intended that genetically modified food be used or be present in a food—demonstrated through a well documented paper trail—the food standard [Standard 1.5.2] allows for the unintentional presence of GM food of not more than 10g/kg (1per cent) per ingredient without acknowledgment on the labelling that GM ingredients are present.

Finally, food packaging with 'raspberry flavoured' and '30 per cent fruit juice' on the packaging does not need to contain any raspberry whatsoever, just raspberry flavouring. Your pet food may indeed be 'veal and cheese flavoured' but are you going to check if there is real veal and real cheese? And does your dog agree with you?

Complaints about misleading labelling can be reported to the ACCC Infocentre on 1300 302 502.

Warranties and refunds

A big day out for some retail therapy is bound to leave consumers confused about their warranty rights. How many 'No Refund' signs and notices did you see on your last shopping spree? Contrary to these disclaimers all consumer transactions are automatically given warranty protection by the law.

The Trade Practices Act implies certain promises into all consumer contracts. These statutory warranties and statutory conditions are referred to as implied warranties or statutory rights. They include the right to refund if goods are defective.

When a consumer buys goods or services a statutory warranty is implied regardless of cost, country of origin or manufacturer. Statutory warranties cannot be overwritten or signed away. They give the consumer basic rights:

- » that the goods are fit to be sold
- » that the item is fit for the purpose it is intended for
- » that the item matches the description or sample given
- » that services are carried out with due skill and care.

If a consumer has a problem with an item, quite often a retailer will blame the manufacturer and vice versa. Consumers should not be put into the situation of sorting out any dispute between retailer and manufacturer. Consumers are entitled to certain remedies and it is up to the businesses involved to negotiate who is responsible for absorbing the cost. However, if consumers simply change their minds, or decide they no longer like the product, or find the items cheaper elsewhere, they are not entitled to a refund under law.

Do retailers have to give refunds?

Yes, if:

- » goods are faulty or they become faulty soon after buying them
- » goods are unfit for their purpose—which means they won't do what the consumer reasonably expected them to
- » goods don't match the retailer's description or sample
- » retailers have offered any voluntary, or extra, warranties or promises about refunds.

No, if:

- » customers simply change their minds after buying the goods
- » customers have discovered they can buy the goods more cheaply or on better terms somewhere else
- » the customer knew about a particular fault before buying the goods
- » the customer damaged the goods.

Retailers are not allowed to:

- » refuse to refund the full price of defective goods
- » make a false or misleading representation about a consumer's right to a refund
- » refuse to provide a refund for goods just because consumers don't have a receipt, provided they have other satisfactory proof of purchase
- » limit the time in which a consumer can make a claim, within reason.

To claim a refund, consumers should:

- » return the goods within a reasonable time
- » not dispose of, lose or destroy the goods
- » not damage the goods
- » provide proof of purchase, such as the store's receipt or credit card receipt
- » provide details of how the goods are defective.

The rights outlined above are implied into all consumer contracts and therefore also apply when the manufacturer has sold goods directly to a consumer.

More information on warranties can be found in the easy-to-read ACCC publication *Warranties and refunds* available online at www.accc.gov.au or phone the ACCC Infocentre on 1300 302 502.

Wallet Card





Product safety—it's your decision, make it easy, take control

The ACCC is responsible for enforcing some 26 mandatory product safety and information standards under the product safety provisions of the Trade Practices Act.

Mandatory standards are declared when products are likely to be especially hazardous or where consumers may be harmed if they don't have access to certain information about the goods.

The retail environment may be cluttered with advertising to help you make the best choice. However, consumers must ask themselves, is this the safest choice?

Consumers can read a number of mandatory product safety and information labels to ascertain the safety of a product.

Mandatory information standards require prescribed information to be given to consumers when they buy certain goods. Three mandatory information standards cover the following types of goods:

- » Clothing and textile products must carry care labelling instructions so that consumers know what type of washing, ironing and/or dry cleaning is most suitable for those products.
- » Cosmetics and toiletry products are required to be labelled with a list of ingredients so that consumers can avoid any ingredients that they may be allergic to.
- » Tobacco products must have health warnings on packages to inform consumers of the health risks involved with smoking.

Some mandatory safety standards also have labelling requirements as well as mandatory rules on the performance, content, design, construction, finish and packaging of products. Some examples of labelling requirements of these standards are:

- » Bean bags, cushions or similar items filled with polystyrene beads must carry a label to warn customers of the choking hazard of lightweight beads.
- » Children's nightwear and some limited daywear must carry fire hazard information on a label that must be clearly visible at the point of retail sale.

- » Fire extinguishers must feature labels such as pictorials used to clearly describe what types of fires the extinguisher can be used to put out and how to use it.
- » Baby walkers must be labelled with warning statements to alert consumers to the dangers of leaving a child unattended in a baby walker or near stairs that do not have a safety gate.
- » Vehicle and trolley jacks must be labelled with permanent markings about the maximum weight they can lift for safe working loads, warnings about how to use the product safely and adequate operating instructions.

Working with suppliers

All suppliers including manufacturers, wholesalers, distributors, importers and retailers are responsible for ensuring the products they sell comply with the relevant mandatory product safety and information standards.

If products do not meet the mandatory standards, suppliers may risk breaching the Act and can be fined up to \$1.1 million for corporations and \$220 000 for individuals.

Because injury prevention is so important, the ACCC takes its role very seriously in promoting compliance with mandatory standards. It conducts random surveys of retail outlets throughout Australia to detect products that don't comply with a standard. It also investigates complaints about non-complying goods and checks goods sold by direct marketing and on the internet.

If non-complying goods are found, the ACCC works with business to ensure that they are immediately withdrawn from sale and that future stocks meet product safety requirements. Suppliers may also be required to recall unsafe products by publishing recall notices in newspapers and/or on websites and offering refunds.





ACCC publications of interest to consumers

Publications can be obtained from the ACCC Infocentre on 1300 302 502 and are also available from the ACCC website at www.accc.gov.au/fs-pubs.htm.

- » ACCC consumer express—a free monthly newsletter about recent ACCC activities
- » Fair call guide for consumers: advertising guide for businesses providing telecommunications services. May 2004
- » If it sounds too good to be true ... it probably is—spam and scam brochure. March 2004
- » Summary of the *Trade Practices Act 1974*. May 2003
- » Store charter brochure: a service charter for stores serving remote and Indigenous communities. April 2002
- » Fair and square: a guide to the Trade Practices Act for the real estate industry. September 2002
- » Real estate agents and the Trade Practices Act. August 2002
- » Advertising and selling. November 2001
- » Warranties & refunds—a brochure of rights and obligations for consumers and businesses. June 2004
- » Warranties & refunds checklist. May 2004
- » Fair.com: advertising and internet access promotions. January 2001
- » Internet auctions: what you should know before you bid or sell. August 2000
- » Debt collection and the Trade Practices Act. June 1999 (photocopy only)
- » ACCC update—
 - No. 14—Product safety. November 2003
 - No. 13—All about the ACCC. June 2003
 - No. 10—The small business issue. February 2002
 - No. 9—Consumers and market reform. August 2001
- » Unconscionable conduct brochures. March 2001
 - » Are you happy with your retail tenancy lease?
 - » Guaranteed a loan for someone? Lost your house?
 - » Do you supply goods or services to major retail chains?
 - » Bought a franchise without enough information?

Links to other websites

Commonwealth, state and territory consumer affairs/fair trading agencies

Australian Competition and Consumer Commission
1300 302 502 www.accc.gov.au

ACT Office of Fair Trading
(02) 6207 0400 www.fairtrading.act.gov.au

Northern Territory Consumer Affairs
1800 019 319, www.nt.gov.au/justice/graphpages/cba/index.shtml

NSW Office of Fair Trading
13 32 20, www.fairtrading.nsw.gov.au

Queensland Office of Fair Trading
1300 658 030, www.fairtrading.qld.gov.au

South Australian Office of Consumer and Business Affairs
13 18 82 or (08) 8204 9777, www.ocba.sa.gov.au

Tasmania Consumer Affairs and Fair Trading
1300 654 499, www.consumer.tas.gov.au

Consumer Affairs Victoria
1300 558 181, www.consumer.vic.gov.au

Western Australia Department of Consumer and Employment Protection
1300 304 054, www.docep.wa.gov.au

Competition and Consumer Policy Division of the Treasury
www.treasury.gov.au/content/consumer_affairs.asp

Overseas consumer affairs/fair trading agencies

Office of Fair Trading (UK)
www.oft.gov.uk

US Consumer Product Safety Commission
www.cpsc.gov

Ministry of Consumer Affairs (NZ)
www.consumeraffairs.govt.nz

Commerce Commission (NZ)
www.comcom.govt.nz

Other government regulators of interest

Australian Securities and Investments Commission
www.asic.gov.au

Australian Communications Authority
www.aca.gov.au

Australian Broadcasting Authority
www.aba.gov.au

Food Standards Australia New Zealand (FSANZ)
www.foodstandards.gov.au

Therapeutic Goods Administration
www.health.gov.au/tga

Other related sites of interest

Product safety recalls
www.recalls.gov.au

National Consumer Website
www.consumer.gov.au

Standards Australia
www.standards.com.au