

Australian Consumer Law – Ready Reckoner

The Australian Consumer Law (ACL) is a single, national law which aims to protect consumers and ensure fair trading in Australia. Under the ACT, consumers have the same protections and business have the same responsibilities across Australia. The ACL is found in Schedule 2 to the *Competition and Consumer Act 2010*, which is the new name of the *Trade Practices Act 1974*. The Act is supported by the Competition and Consumer Regulations 2010, which contain some specific requirements for businesses to comply with the ACL. In particular, the Regulations contain requirements in relation to unsolicited consumer agreements, warranties against defects and repair notices.

This table reflects the law as at 1 January 2011. Certain provisions and Regulations commence at later dates. This table will be updated accordingly.

Australian Consumer Law – First tranche (powers, remedies, unfair contract terms)

Changes	Applies to	Penalties/Redress	Requirements	Communication
Infringement Notices (ACCC may issue if the matter is appropriate to be resolved quickly by the trader)	May be issued for alleged: <ul style="list-style-type: none"> ▪ unconscionable conduct ▪ false or misleading representations ▪ misleading conduct in relation to employment, the nature of goods or services ▪ referral selling ▪ harassment and 	Infringement notice penalties are applied at a set amount, although that varies according to the conduct of concern. Maximum infringement notice penalties are: <ul style="list-style-type: none"> ▪ \$66,000 for ASX-listed corporations ▪ \$6,600 for other corporations and ▪ \$1,320 for 	<ul style="list-style-type: none"> • ACCC has power to issue an infringement notice where it has reasonable grounds to believe there has been a breach of certain provisions in the ACL • Only one infringement notice may be issued to the same person for the 	Recorded on ACCC website - Infringement Notice Register

Changes				Communication
	coercion <ul style="list-style-type: none"> multiple pricing and component pricing unsolicited credit/debit cards pyramid selling certain provisions relating to lay-by agreements certain requirements relating to unsolicited consumer agreements (eg contact hours) certain requirements for itemised bills and proof of transaction certain product safety requirements (eg mandatory reporting requirements, selling goods that do not comply with mandatory standards, export of unsafe goods) failure to respond, or providing false or 	individuals	same alleged breach <ul style="list-style-type: none"> Notice must be issued within 12mths of alleged breach Notice must be paid within 28 days (may be extended in some circumstances) If paid – no further action Payment of notice not an admission of liability or breach of the ACL If not paid – ACCC may continue investigation and this may result in court action 	

Changes		Penalties/Redress	Requirements	Communication
	misleading information in response to, a substantiation notice			
Substantiation Notices (An ACCC investigation tool. Require a person to give information or produce documents about claims made in promoting goods or services)	<p>May be issued to anyone who has, in trade or commerce, made a claim or representation promoting (or intending to promote):</p> <ul style="list-style-type: none"> ▪ supply/possible supply of goods or services ▪ sale or grant/possible sale or grant of an interest in land ▪ employment/potential employment <p>ACCC may issue substantiation notices when investigating:</p> <ul style="list-style-type: none"> ▪ two-price advertising claims ▪ business opportunity 	<p>Maximum penalties for non compliance with a substantiation notice:</p> <p><i>Infringement notices:</i></p> <ul style="list-style-type: none"> ▪ \$3,300 for body corporate ▪ \$660 for an individual <p><i>Pecuniary penalty (via court order)</i></p> <ul style="list-style-type: none"> ▪ \$16,500 for a body corporate ▪ \$3,300 for an individual <p>Maximum penalties for false or misleading information provided in response to notice:</p> <p><i>Infringement notice</i></p> <ul style="list-style-type: none"> ▪ \$5,500 for a body corporate ▪ \$1,100 for an 	<ul style="list-style-type: none"> • Must be complied with within 21 days • Responses must not include false or misleading information • Individuals not required to provide information or documents that may incriminate them or expose them to penalty 	

Changes			Requirements	Communication
	claims <ul style="list-style-type: none"> ▪ food claims, such as place of origin ▪ environmental claims ▪ product safety claims Substantiation notices must be responded to but responses do not require proof that claim is true or is not misleading	individual <i>Pecuniary penalty (via court order)</i> <ul style="list-style-type: none"> ▪ \$27,500 for a body corporate ▪ \$5,500 for an individual 		
Public warning notice	Can be issued where the ACCC: <ul style="list-style-type: none"> ▪ has reasonable grounds to suspect a person's conduct may breach: <ul style="list-style-type: none"> • general protections (misleading or deceptive conduct or unconscionable conduct or unfair contract terms) 	No penalties apply	ACCC (Commission) decision	Public Warning Notice issued Recorded on ACCC website – Public Warning Notice Register

Changes	Applies to	Penalties/Redress	Requirements	Communication
	<ul style="list-style-type: none"> • specific protections (unfair practices, consumer transactions, safety of consumer goods and product related services) ▪ is satisfied that person(s) have suffered or are likely to suffer detriment as a result of the conduct; and ▪ is satisfied that it is in the public interest 			
Civil pecuniary penalties NB Pecuniary penalties do not apply to s18 of the ACL – misleading or deceptive conduct	Civil pecuniary penalties can be applied to: <ul style="list-style-type: none"> ▪ unconscionable conduct ▪ unfair practices (eg false or misleading representations, bait advertising, 	Maximum civil penalty: <ul style="list-style-type: none"> ▪ \$1.1 million for corporation ▪ \$220,000 for individuals 	Court action by ACCC	Usually notified by news release

Changes		Penalties/Redress	Requirements	Communication
	<p>unsolicited supplies, pyramid schemes, component pricing, harassment and coercion)</p> <ul style="list-style-type: none"> ▪ certain provisions relating to unsolicited consumer agreements ▪ certain provisions relating to lay-by agreements ▪ certain requirements for itemised bills and proof of transaction ▪ failure to respond, or providing false or misleading information in response to, a substantiation notice ▪ certain product safety requirements (eg mandatory reporting, selling goods that do not comply with mandatory standards, export of 			

Changes		Penalties/Redress	Requirements	Communication
	unsafe goods)			
Consumer redress - ACCC can seek legal redress for consumers not party to action taken by ACCC against traders	<p>The ACCC can seek redress for non-party consumers in cases of:</p> <ul style="list-style-type: none"> ▪ misleading or deceptive conduct ▪ unconscionable conduct ▪ unfair practices (eg false or misleading representations, bait advertising, unsolicited supplies, pyramid schemes, multiple & component pricing, harassment and coercion) ▪ unsolicited consumer agreements ▪ lay-by agreements ▪ proof of transaction and itemised bills ▪ in certain circumstances where a court declares a term of a contract unfair 	<p>Orders can be made of a number of different types of redress including:</p> <ul style="list-style-type: none"> ▪ refunds or returning property to a person ▪ voiding or varying a term of contract ▪ refusing to enforce part or all of a contract ▪ payment for loss or damage ▪ repair or provide parts for goods ▪ creating or transferring an interest in land 	Court action by ACCC	Usually notified by news release

Changes	Applies to	Penalties/Redress	Requirements	Communication
Disqualification orders	<p>ACCC may seek a court order for disqualifying a person for managing a corporation for breaches of:</p> <ul style="list-style-type: none"> ▪ unconscionable conduct provisions ▪ unfair practices (eg false or misleading representations, bait advertising, unsolicited supplies, pyramid schemes, multiple & component pricing, harassment and coercion) ▪ certain requirements for itemised bills and proof of transaction ▪ certain product safety requirements (eg mandatory reporting, selling goods that do not comply with a mandatory standard, export of unsafe goods) 	Disqualification of an individual from managing a corporation for a defined period	<p>Court action by ACCC</p> <p>The court must be satisfied that the person has contravened, attempted to contravene or been involved in a contravention of a relevant provision and that disqualification is justified.</p>	Usually notified by news release

Changes	Applies to	Penalties/Redress	Requirements	Communication
	<ul style="list-style-type: none"> certain product information standard provisions offences 			
Unfair contract terms	<p>For standard form consumer contracts entered into or varied from 1 July 2010</p> <p>A contract term is unfair if</p> <ul style="list-style-type: none"> it causes significant imbalance between the parties rights and obligations; and is not necessary to protect the legitimate interest of the party seeking to rely on it; and it would cause detriment (financial or otherwise) if applied or relied upon <p>In determining whether a term is unfair, the court must also consider the</p>	<p>A term in a contract found unfair by a court will be void.</p> <p>No penalties apply at the time a term is declared unfair.</p>	<p>Court action by ACCC. Affected consumers may also take action.</p>	<p>Usually notified by news release</p>

Changes	Applies to	Penalties/Redress	Requirements	Communication
	<p>extent to which the term is transparent and the contract as a whole.</p> <p>For the purposes of the unfair contract terms provisions, a consumer contract is a contract for the supply of goods or services, or the sale or grant of an interest in land, which are being acquired wholly or predominantly for personal, household or domestic use or consumption</p>			

Australian Consumer Law – Second tranche (sales practices, consumer guarantees, product safety)

Changes	New or replaces	Main points	Penalties/Redress	Communication
Sales Practices (Unfair practices)	<p>Comprises existing laws based on the TPA and best practice provisions from the states and territories.</p> <p>Existing laws from the TPA are:</p> <ul style="list-style-type: none"> ▪ unsolicited supply of goods/services ▪ pyramid selling ▪ referral selling ▪ component pricing <p>New laws based on existing state and territory fair trading provisions:</p> <ul style="list-style-type: none"> ▪ unsolicited consumer agreements (replaces laws on door-to-door sales, direct marketing) ▪ proof of transaction ▪ lay-by agreements 	<p>Unsolicited supplies</p> <p>The ACL prohibits</p> <ul style="list-style-type: none"> ▪ demanding payment for unsolicited goods or services, unauthorised entries or advertisements in publications ▪ sending unsolicited debit or credit cards ▪ businesses sending an invoice requesting payment for unsolicited goods or services must contain the warning <i>“This is not a bill. You are not required to pay any money”</i> <p>Unsolicited agreements</p> <p>An “unsolicited” agreement is when:</p> <ul style="list-style-type: none"> ▪ consumer does not invite contact (by phone 	<p>Unsolicited supplies</p> <p>Consumers who receive unsolicited goods:</p> <ul style="list-style-type: none"> ▪ do not have to pay ▪ can keep the goods for free if supplier does not collect them within the recovery period which may be 1 month or 3 months depending on circumstances ▪ have to pay compensation if they wilfully damage goods while waiting for supplier to collect them 	<p>Usually notified by news release</p>

Changes	New or replaces		Penalties/Redress	Communication
	<ul style="list-style-type: none"> multiple pricing 	<p>or in person) from supplier, and</p> <ul style="list-style-type: none"> agreement is reached over phone or at location other than supplier's premises, and total value of agreement is >\$100 (or value was not established at time of agreement). <p>Permitted hours of contact</p> <p>Consumers cannot be approached:</p> <ul style="list-style-type: none"> on Sundays/public holidays before 9am or after 6pm weekdays before 9am or after 5pm on Saturdays <p>Telemarketing calls cannot be made:</p> <ul style="list-style-type: none"> on a Sunday or a public holiday before 9am or after 8pm weekdays 	<p>Consumers who receive unsolicited services:</p> <ul style="list-style-type: none"> do not have to pay are not liable for any loss/damage resulting from the supply <p>Unsolicited agreements</p> <p>The unsolicited agreement document must clearly state:</p> <ul style="list-style-type: none"> the full terms of the agreement the consumers right to cooling off and termination the total price payable or how it is calculated postal/delivery charges the supplier's 	

Changes	New or replaces	Main points		Communication
		<ul style="list-style-type: none"> before 9am or after 5pm on Saturdays 	<p>business and contact details</p> <p>The agreement must be accompanied by a notice the consumer can use to terminate the agreement.</p> <p>Contraventions can attract:</p> <ul style="list-style-type: none"> injunctions damages compensatory orders non-punitive orders adverse publicity orders civil pecuniary penalties 	
Consumer Guarantees	Replaces provisions in the Trade Practices Act and state and territory laws on implied conditions and	A set of rights which all consumers are entitled to when purchasing goods or services	ACCC action ACCC can take action against businesses that misrepresent consumers' rights (eg	ACCC action usually notified by news release

Changes	New or replaces	Main points	Penalties/Redress	Communication
	warranties	<p>Difference with previous law – provides statutory right of action rather than extra conditions and warranties in consumer contracts</p> <p>Twelve guarantees (9 for goods and 3 for services):</p> <p>Goods</p> <ol style="list-style-type: none"> 1. must be of acceptable quality – that a reasonable consumer would expect (are safe, durable and free from defects, acceptable in appearance and finish and do all the things that the goods are ordinarily used for, taking into account the nature and price of the goods, and any statement made about them on packaging or labelling) 2. match any description given 3. match any sample or 	<p>blanket ‘no refund’ policies are prohibited by the ACL. This is because they misrepresent that consumer have no rights to a remedy under any circumstances where that is not the case).</p> <p>Consumer action If a consumer guarantee is not complied with a consumer is entitled to a remedy, generally:</p> <ul style="list-style-type: none"> ▪ replacement ▪ repair ▪ refund ▪ compensation for drop in value ▪ consequential loss <p>The appropriate remedy will depend on whether the failure to comply is</p>	

Changes	New or replaces		Penalties/Redress	Communication
		<p>demonstration shown</p> <ol style="list-style-type: none"> 4. be fit for any disclosed purpose 5. come with clear title 6. be free from undisclosed securities and charges 7. consumers must have undisturbed possession 8. sellers, manufacturers and importers must honour express warranties 9. manufacturers/importers must make spare parts and repair facilities reasonably available for a reasonable time <p>Services</p> <ol style="list-style-type: none"> 10. must be provided with due care and skill 11. must be fit for any disclosed purpose 12. must be provided in a reasonable time where not time is agreed 	<p>major or minor</p> <p>Major failure to comply</p> <ul style="list-style-type: none"> - if a consumer would not have purchased the goods or services had they known the full extent of the failure - goods or services are substantially unfit for a disclosed purpose and this cannot be easily remedied in a reasonable time - goods or services are substantially unfit for their ordinary purpose and this cannot be easily remedied in a reasonable time - services don't 	

Changes	New or replaces	Main points		Communication
		<p>For consumer guarantees, a consumer is anyone who buys:</p> <ul style="list-style-type: none"> ▪ goods or services up to \$40,000 ▪ if > \$40,000 must be for personal, domestic or household purposes ▪ a vehicle or trailer used mainly to transport goods <p>A person or business will not be a consumer if they purchase goods to:</p> <ul style="list-style-type: none"> ▪ on-sell ▪ manufacture/transform into something else for sale 	<p>achieve the result that the customer made known to the supplier and this cannot be easily remedied within a reasonable time</p> <ul style="list-style-type: none"> - goods are not of acceptable quality because they are unsafe - services create an unsafe situation <p>Minor</p> <ul style="list-style-type: none"> - any failure to comply that does not meet the definition of a major failure <p>Remedy for major failure to comply - consumer entitled to choose remedy:</p> <ul style="list-style-type: none"> - refund for goods 	

Changes	New or replaces	Main points		Communication
			<p>or services</p> <ul style="list-style-type: none"> - replacement goods - keep goods or services and seek compensation for drop in value from price paid <p>Remedy for minor failure to comply – supplier can decide how to remedy the problem within a reasonable time:</p> <ul style="list-style-type: none"> - fix/repair problem with good or service - replacing goods - refund 	
National product safety regime	Provides a new national regulatory regime for the supply of safe consumer goods and product related services	<ul style="list-style-type: none"> • Interim and permanent bans • Making and declaring of product safety standards • Recall of consumer goods (mandatory and voluntary) 	<p>Remedies for breach of a product safety provisions include:</p> <ul style="list-style-type: none"> ▪ injunctions ▪ damages 	<p>Published on relevant minister's website</p> <p>Media release may also be issued</p>

Changes	New or replaces	Main points	Penalties/Redress	Communication
	<p>“Product related services” (new term) – supply, installation, maintenance, assembly or delivery of consumer goods</p>	<ul style="list-style-type: none"> • Publishing of safety warning notices by Minister • Mandatory reporting <p><u>Product safety bans</u></p> <ul style="list-style-type: none"> - To protect consumers by prohibiting consumer goods or product related services that: <ul style="list-style-type: none"> ▪ may/will cause injury ▪ their reasonable foreseeable use/misuse may cause injury ▪ there exists an interim jurisdictional ban - Only Commonwealth Minister can impose permanent safety ban - State/Territory Minister can only impose interim safety bans <p><u>Product safety standards</u></p> <ul style="list-style-type: none"> - A set of minimum safety requirements for goods and product related services that must be met before they are 	<ul style="list-style-type: none"> ▪ compensatory orders ▪ non-punitive orders <p><u>Civil pecuniary penalties</u></p> <p>May also apply:</p> <ul style="list-style-type: none"> ▪ maximum penalty of up to \$1.1m (body corp) and \$220,000 (person) ▪ disqualification orders, ▪ redress for non-parties and ▪ public warning notices <p>ACCC has been given stronger powers (based on existing State and Territory powers) to undertake market surveillance and</p>	

Changes	New or replaces	Main points	Penalties/Redress	Communication
		<p>supplied</p> <p><u>Recalls</u></p> <p>Objectives:</p> <ul style="list-style-type: none"> ▪ stop distribution/sale of affected product ▪ remove unsafe product from marketplace ▪ prevent further distribution of unsafe products <p>Recall can be required when:</p> <ul style="list-style-type: none"> ▪ contain a defect or dangerous characteristic ▪ reasonably foreseeable use is considered dangerous which will/may cause injury ▪ is non-compliant with a safety standard ▪ is subject to an interim or permanent ban <p><u>Safety warning notices</u></p> <ul style="list-style-type: none"> ▪ statement by Minister that certain consumer 	<p>enforcement of the new national product safety law.</p>	

Changes	New or replaces		Penalties/Redress	Communication
		<p>goods/product related services are under investigation</p> <ul style="list-style-type: none"> ▪ a warning of the possible risks involved in the use of consumer goods/product related services ▪ published on internet by Minister <p><u>Mandatory reporting</u> - of incidents where good/product related services may have caused death, serious injury or illness</p> <ul style="list-style-type: none"> ▪ supplier/other person is required to report if death/serious injury or illness was/may have been caused by use/foreseeable misuse of consumer goods or product related services ▪ supplier must report to Commonwealth Minister within two 		

Changes	New or replaces		Penalties/Redress	Communication
		<p>days of becoming aware of incident</p> <ul style="list-style-type: none"> ▪ Exemptions: <ul style="list-style-type: none"> - exemptions for existing reporting schemes for therapeutic goods, pesticides and veterinary medicines, motor vehicle accidents on public roads, and foot-borne infectious disease - if it is clear (that is certain) or very unlikely (that is highly unlikely) that the death, serious injury or illness, was not caused by the use or foreseeable misuse of the consumer goods. 		

