

Business snapshot

fair sales practices



Australian
Competition &
Consumer
Commission



It is important that businesses and consumers understand their rights and responsibilities in the marketplace.

Businesses need to ensure that they trade fairly and honestly with consumers to promote genuine competition, leading to lower prices and better quality goods and services. Fair business practices also increase consumer trust and improve relationships between consumers and businesses.

Fair trading practices are not just a part of good business. Under the Australian Consumer Law (ACL), which is contained in a schedule to the *Competition and Consumer Act 2010* (formerly the *Trade Practices Act 1974*), you are required to ensure that consumers are not subject to harsh business practices and that you remain fair and honest. The law provides consumers with a means of redress when they are treated unfairly.

This guide provides an overview of the rules for fair sales practices.

Unsolicited supplies

What are unsolicited supplies?

Unsolicited supplies are goods or services supplied to someone who has not agreed to buy or receive them.

It is unlawful to:

- request payment for unsolicited goods or services
- request payment for unauthorised entries or advertisements
- send unsolicited credit cards or debit cards.

A business or person must not issue an invoice that states an amount to be paid for unsolicited goods or services, unless:

- they reasonably believe they have a right to be paid, or
- the invoice contains the warning statement required by the Regulations: 'This is not a bill. You are not required to pay any money'. This warning must be the most prominent text in the document.

Someone who receives unsolicited goods or services does not have to pay for **those goods or services, or for any loss or damage** due to supply of the service.

For example

A consumer takes her car to a car wash and arranges for the business to wash the outside of her car. When she returns, the inside of her car has also been cleaned and she is charged an extra \$50. Cleaning the inside of her car was unsolicited and she does not have to pay the extra \$50. This would not be the case if the car wash operators had asked her permission before cleaning the inside and she had agreed.

Unsolicited consumer agreements

What is an unsolicited consumer agreement?

An agreement is unsolicited when:

- it results from negotiations by telephone or at a location other than the business or trade premises of the supplier; and
- a supplier, or their salesperson or dealer, approaches or telephones a consumer without invitation from that consumer; and
- the total value is not established when the agreement is made—or, if the total value is established when the agreement is made, it is more than \$100.

Salespeople who initiate unsolicited contact with consumers must comply with:

- rules limiting hours for contact with consumers—for example, the *Do Not Call Register Act 2006* and associated telemarketing standards apply to telephone calls. Other forms of contact, such as door-knocking are regulated by the ACL
- disclosure requirements when making an agreement—including explaining the purpose, producing identification,

informing the consumer that they can request the supplier to leave at any time, informing the consumer about their right to terminate the agreement, and providing the supplier's contact details in the agreement

- criteria for the sales agreement—including that it must be in writing and provide the full terms of the agreement, the total price payable (or how this will be calculated), and any postal or delivery charges.

Consumers have 10 business days to change their mind (cool off). They can cancel the contract within three or six months if the supplier has not met certain obligations.

Unsolicited consumer agreements may result from door-knocking households, telephoning or approaching consumers in a shopping centre.

Pyramid schemes

What is a pyramid scheme?

Pyramid schemes are illegal. A business or person must not participate in, or persuade others to participate in a pyramid scheme.

Pyramid schemes make money by recruiting businesses or people rather than by selling a legitimate product or providing a service.

New participants make a 'participation payment' to join and are promised payments for recruiting other investors. Pyramid schemes inevitably collapse and new members rarely make money; they also usually lose the money they have paid to participate.

There are two payments associated with a pyramid scheme:

- a participation payment to take part
- a promised recruitment payment to be payable when a member recruits others. This may be a financial or non-financial benefit, paid either to the new participant or to someone else.

Marketing scheme or pyramid scheme?

The following factors will be relevant when distinguishing between pyramid schemes and other types of promotions that may be legitimate:

- the value of the participation payments compared with the value of any goods or services that participants are entitled to receive under the scheme
- the emphasis placed on participants' entitlement to receive goods or services under the scheme, compared with the emphasis on their entitlement to receive future recruitment payments
- whether recruitment payments are the only or main reason a new participant becomes involved.

The ACL does not limit the matters a court can consider when working this out.

Multiple pricing

A supplier must not supply goods if:

- the goods have more than one displayed price; and
- the price they are sold for is not the lowest of the displayed prices.

What is not a displayed price?

There are instances where the price shown is not automatically considered to be the displayed price, such as:

- where the price is entirely obscured by another price
- where the price is expressed as a unit of measure and presented as an alternative means of expressing the price
- where the price is expressed in a currency other than Australian currency, or unlikely to be interpreted as Australian currency.

Component pricing

A supplier must not promote or state a price that is only part of the cost unless also specifying, in a prominent way and as a single figure, the single (total) price. The single price must be as prominent as the most prominent component of the price.

For example

A motor vehicle company advertises a specific car for '\$19 999**'. In fine print at the bottom, it states that this price excludes commission and administration fees.

The commission is \$1000 and the administration fee is \$200. These are known costs and part of the total price.

The motor vehicle should have been advertised for either a single (total) price of \$21 199 or with each additional cost listed with the single (total) price. The single price of \$21 199 should also be as prominent as the component price (in this case, \$19 999).

The total price must include:

- any quantifiable charge payable
- the amount of any tax, duty, fee, levy or charge (for example GST).

Lay-by agreements

What is a lay-by agreement?

An agreement is considered a lay-by agreement if it is between a supplier and a consumer, and:

- the consumer does not receive the goods until the total price has been paid; and
- the price is paid in at least three instalments, or in two instalments if the agreement specifies that it is a lay-by.

Lay-by agreements must be in writing, expressed in plain language, legible and presented clearly.

A consumer can cancel a lay-by agreement but may have to pay a termination charge.

Suppliers must not:

- fail to refund all amounts paid by the consumer, except for the termination charge that is payable under the agreement
- charge a termination fee that is higher than the reasonable costs in relation to the agreement
- charge a termination fee when the supplier has breached the lay-by agreement
- terminate the agreement unless:
 - the consumer has breached a term of the agreement, or
 - the supplier is no longer engaged in trade or commerce, or
 - the goods to which the agreement relates are no longer available.

Referral selling

What is referral selling?

Referral selling is when a consumer is induced to buy goods or services by the promise of a future rebate, commission or other benefit for subsequent sales, and the consumer's receipt of the promised benefit is contingent on an event occurring after the contract is made.

For example

A sales assistant offers a consumer 10 free DVDs to go with their new plasma TV on the condition that they give the business the names of five of their friends and that these friends all buy plasma TV's from the business.

Proof of transaction and itemised bills

What is proof of transaction?

A supplier must give proof of transaction, within specified time frames, when a consumer:

- buys goods or services worth \$75 or more (excluding GST)—as soon as possible after the transaction
- asks for proof of transaction for goods and services costing less than \$75—within seven days.

Examples of proof of transaction include:

- GST tax invoice
- cash register receipt
- credit card or debit card statement
- handwritten receipt.

When is an itemised bill required?

If a consumer asks a supplier for an itemised bill, the supplier must give the consumer a legible and clear itemised bill, without charge, within seven days of the request.

What happens if I don't comply?

Failure to comply with any of the unfair practices provisions may attract a civil and/or criminal penalty up to a maximum of \$1.1 million for corporations and \$220 000 for individuals.

Consumers may also choose to take private action seeking redress in the form of an injunction and/or certain other orders.

The ACCC may also take action against a business and seek orders from the court or use its own enforcement powers and issue infringement and/or public warning notices.

Where can I get more information?

Sales practices and the Competition and Consumer Act

For more information on the Competition and Consumer Act, visit the ACCC website www.accc.gov.au or call the **ACCC's Small Business Helpline** on 1300 302 021.

Australian Consumer Law and the Regulations

You can also visit www.consumerlaw.gov.au for an overview of the new consumer law regime operating across Australia. Detailed guidance on sales practices, consumer guarantees, product safety and unfair contract terms is available from this site.

The ACL is supported by the *Competition and Consumer Regulations 2010* (the Regulations). The Regulations contain some specific requirements for businesses to comply with the ACL, in particular the provisions relating to unsolicited supplies and unsolicited consumer agreements.

Some of the Regulations commence on a date later than 1 January 2011. These transitional arrangements allow businesses time to comply with the new law. All businesses must ensure they comply with the ACL and the Regulations by the required date.

Further information on the Regulations can also be obtained from www.consumerlaw.gov.au

Consumer protection agencies

Australian Securities and Investments Commission

1300 300 630
www.asic.gov.au

Australian Capital Territory

Office of Regulatory Services
(02) 6207 3000
www.ors.act.gov.au

Queensland

Office of Fair Trading
13 74 68
www.fairtrading.qld.gov.au

South Australia

Office of Consumer & Business Affairs
(08) 8204 9777
www.ocba.sa.gov.au

Tasmania

Office of Consumer Affairs & Fair Trading
1300 654 499
www.consumer.tas.gov.au

New South Wales

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

Victoria

Consumer Affairs Victoria
1300 55 81 81
www.consumer.vic.gov.au

Northern Territory

Office of Consumer Affairs
1800 019 319
www.consumeraffairs.nt.gov.au

Western Australia

Department of Commerce
1300 30 40 54
www.commerce.wa.gov.au

Other ACCC contacts

Infocentre 1300 302 502

Website www.accc.gov.au

For information in languages other than English, call 131 450 and ask for 1300 302 502

TTY service for people with hearing or speech difficulties: 1300 303 609 www.accc.gov.au

© Commonwealth of Australia 2010

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

ISBN 978 1 921887 14 7

ACCC 03/11_44164_300