Australian Competition & Consumer Commission

UpDate

2009 | issue 27 November

The quiet revolution

inside Australian Consumer Law • Unit Man unveiled • Celebrity scams • Inside the ACCC

Editorial

This year has seen the introduction of a number of important competition and consumer protection reforms.

Two reforms to assist consumers comparing and purchasing products were introduced: component pricing, which requires the display on labelling and advertising of a total price; and unit pricing, which requires supermarket price labels to carry standard measurements.

The growth of national product and service markets requires a national consumer protection framework. The Australian Consumer Law has been developed to bring consumer protection laws across Australia into line and to provide the same level of protection for all consumers, wherever they live. The proposed new law is explained in this edition of *ACCC update*.

For business, a new law enacted in July means that individuals who engage in serious cartel conduct now face the prospect of significant gaol time.

Further reforms have been proposed in the communications industry, with the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy, announcing the government's plans to address competition issues arising from Telstra's vertical and horizontal integration, and to give the Australian Competition and Consumer Commission greater oversight responsibilities.

But the competition and consumer policy reform program is not just about legislative change.

The ACCC has actively been pursuing agreements to open the way for more competition and to increase consumer protection.

In September the ACCC received court enforceable undertakings from lead players in the grocery and telecommunications industries.

Coles and Woolworths agreed not to include restrictive provisions in any new supermarket leases and, in the case of existing supermarket leases, not to enforce restrictive provisions until five years after the start of trading.

This means that the two companies will ultimately completely phase-out the use of restrictive provisions in shopping centre leases. These restrictive provisions inhibit competing supermarket operators from moving into shopping centres.

The agreement paves the way for new supermarket competition to emerge, giving consumers greater shopping choices and lower grocery prices because of an increase in competition.

In telecommunications, Telstra, Optus and Vodafone Hutchison agreed to stop the widespread practice of potentially exaggerated and misleading advertising of mobile phone, internet and international card call services.

These significant undertakings represent an important period of change in Australia's competition and consumer protection framework.

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra
Australian Capital Territory 2601

Cartoons by Pat Campbell

© Commonwealth of Australia 2009

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced without prior written permission from the Commonwealth available through the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601 or by email to publishing.unit@accc.gov.au.

ISSN 1443–0681

ACCC 11/09_29404

Print Post approved PP255003/04404

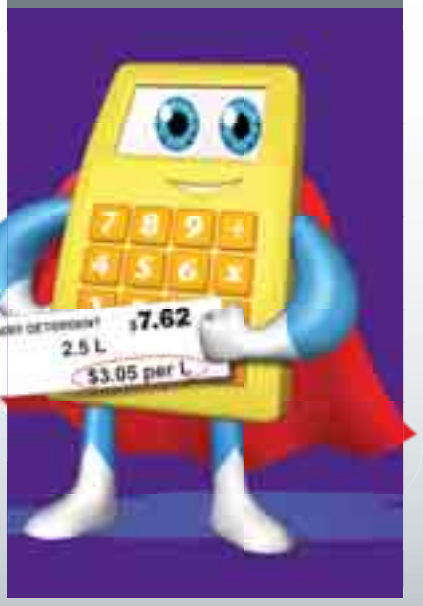
www.accc.gov.au

UpDate 2009 issue 27 november

Cover Story

The quiet revolution—consumer reform

pg 4



Contents

Editorial	2
The quiet revolution—consumer reform	4
The push for reform	5
Unit Man launches easy buying rule	6
Australian Consumer Law—in essence	7
Explaining the Australian Consumer Law	8
Baker's dozen of laws affected	11
Jill Walker, the ACCC's newest commissioner	12
Fans fleeced by celebrity scams	14
National move on mobility scooters	16
Inside the ACCC: product safety	17
Unfair contracts—the proposal explained	18
ACCC recent releases	20
Subscribe to Update	23

The quiet revolution—consumer reform

Australia's quiet revolution is seeing the introduction of a raft of reforms that will benefit consumers and businesses.

A new Australian Consumer Law is set to unify Commonwealth, state and territory laws into a single national law. The proposed law means that all businesses will play under the same rules. The final round of consumer protection reforms will be concluded by 2011.

Consumers benefited from the introduction on 25 May 2009 of 'clarity in pricing' reforms (also called 'component pricing'), which require a single total price to be displayed prominently on an item for sale.

On 1 July unit pricing legislation came into force. Under this new legislation, large supermarkets, online grocery retailers and smaller stores that opt in are required to display the price for a standard measure (e.g. the price per 100 grams or 100 ml). Participating stores have until 1 December 2009 to comply with the new labelling requirements.

On 24 July a law providing for up to 10 years imprisonment for serious cartel conduct came into force.

In September, two major breakthroughs occurred without expensive, exhaustive and complex court actions. In telecommunications, Telstra, Optus and Vodafone Hutchison all agreed to stop the widespread practice of potentially exaggerated and misleading advertising of mobile phone, internet and international card call services.

In another court enforceable agreement, Coles and Woolworths changed leasing arrangements in supermarkets that may have locked out competitors from shopping centre developments. As a result, most of the 755 leases reviewed by the ACCC immediately lost their restrictive provisions, clearing the way for competitors to move in.

Other areas of consumer protection law are also being reviewed.

The Commonwealth Consumer Affairs Advisory Committee is undertaking a public assessment of the law relating to warranties and refunds, and is due to report to the government before the end of the year.

The push for reform

The proposed reforms to Australia's consumer laws collectively represent the most significant developments in consumer legislation since the enactment of the Trade Practices Act in 1974. The major change is the introduction of a national law for consumer protection—the new Australian Consumer Law (ACL).

While the Commonwealth, state and territory laws now covering fair trading and consumer protection matters across Australia share many common features, they vary across jurisdictions—for example, Victoria is the only state that has introduced prohibitions against unfair contract terms.

The consumer protection provisions of the *Trade Practices Act 1974* will form the basis of the ACL, supplemented by best practice provisions in existing state and territory consumer laws.

> *In October 2008 the Council of Australian Governments agreed to move forward with a single national consumer law …*

The Trade Practices Amendment (Australian Consumer Law) Bill—the first stage of the ACL reform package—came before the Australian Parliament in June 2009:

> The ACL is to be based on the TPA, drawing on the recommendations from the Productivity Commission … and best practice in existing state and territory consumer laws, and will specifically include a national unfair contract terms provision, a new national product safety legislative and regulatory framework and new penalties, enforcement powers and consumer redress options.
>
> Explanatory memorandum
> Trade Practices Amendment
> (Australian Consumer Law) Bill 2009, p. 4.

The legislation was then referred to the Senate Economics Legislation Committee, which subsequently recommended that it be passed. The legislation was passed by the House of Representatives in October 2009 and must now be considered by the Senate.

Over the past 30 years, consumer markets have changed considerably and consumers now have very different expectations of what markets should deliver and how they should operate.

In light of this change, the Productivity Commission reviewed Australia's consumer policy framework. In presenting its findings, the PC found there were strong grounds for reform:

> In a number of respects, Australia's consumer policy framework is sound. It provides a broad platform for consumer protection for most products and services. But it has some systemic deficiencies which impair its effectiveness and which limit its capacity to adapt to emerging issues.

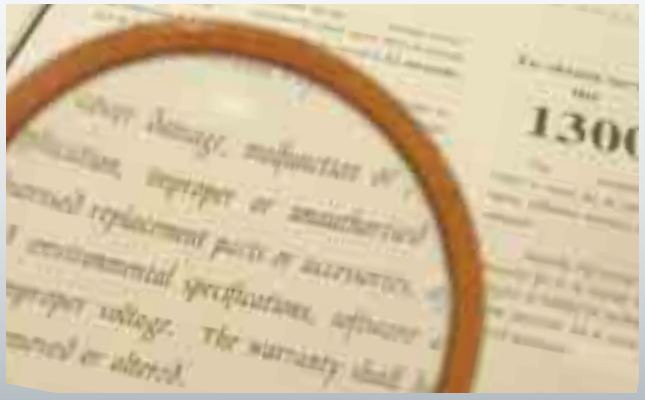
However, the PC noted that there were:

> … inconsistencies, gaps and overlaps in the law, and also in the enforcement of the law, arising from the inappropriate split of responsibilities between national, state and territory government.

According to the PC, its recommended changes to the consumer policy framework would generate an estimated additional benefit to the community of between $1.5 billion and $4.5 billion a year, representing an average benefit of $542 for each Australian household.

In October 2008 the Council of Australian Governments agreed to move forward with a single national consumer law as part of the national partnership agreement to deliver a seamless national economy.

The objective of the new national consumer policy framework is to improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.



Unit Man launches easy buying rule

Unit Man is the marketing face of an important innovation in your supermarket.

He is part of the quiet revolution, which this year has seen the introduction in parliament of legislation dealing with a new national consumer law, component pricing, the criminalisation of cartels and unit pricing.

Unit pricing will become mandatory in large grocery stores on 1 December 2009.

Retailers will be required to provide the unit price of products on shop labels and advertising wherever they display a selling price.

What is unit pricing?

Unit pricing is a new price labelling system that allows shoppers to more easily compare the price of products of different sizes.

Shoppers can then decide which product size is a better buy and more easily compare prices across other brands. This is achieved by introducing standard units of measure, which are required to be placed on labels along with the total sale price. Depending on the type of item, grocers have to display a price using 'per item', 'per 100 grams', 'per litre', or another unit.

For example, with unit pricing, shoppers do not have to make complicated calculations to work out what is better value—a 2.5 litre container of laundry liquid costing $7.62 or a 1.5 litre container of the same liquid costing $5.74:

Price label 1: Laundry detergent (brand 'X')
2.5 litre $7.62 = $3.05 per litre

Price label 2: Laundry detergent (brand 'Y')
1.5 litre $5.74 = $3.83 per litre

Through unit pricing, it is clear that brand 'X' offers the best price per litre, even though the total price is higher.

The benefits of unit pricing information lie in greater transparency for shoppers, by giving them access to comparative price information on similar products. Unit pricing will also assist consumers to compare prices across other brands. The ACCC website has more information about unit pricing for both consumers and industry. You can also call the ACCC unit pricing hotline on 1300 746 245 for more information.

'The benefits of unit pricing information lie in greater transparency for shoppers, by giving them access to comparative price information on similar products.'

Australian Consumer Law —in essence

The Australian Consumer Law will be implemented in three stages.

1 The first stage encompasses new provisions for the *Trade Practices Act 1974* dealing with unfair contract terms and the introduction of a number of new remedies and powers, including:

- civil pecuniary penalties
- disqualification orders
- infringement notices
- substantiation notices
- public warning powers
- redress for non-party consumers.

2 The second stage of the ACL implementation covers best practice reforms; the proposed legislation is expected to be introduced in the first sitting of the Australian Parliament in 2010 and to be passed by June that year.

This legislation will bring together the current consumer protection provisions of the Trade Practices Act and best practice reforms adapted from state and territory fair trading legislation. These best practice reforms will cover things such as door-to-door sales, telemarketing, lay-by sales, pyramid selling and offering gifts and prizes.

Other reforms contained in the proposed legislation include introducing:

- a new national product safety system
- the remaining ACL provisions, which will be drawn from existing consumer protection provisions of the Trade Practices Act.

A Productivity Commission review found a need to improve Australia's fragmented and inconsistent product safety policy framework. In future, permanent bans and mandatory standards will only be made by the federal minister, but state and territory administrations will continue to enforce the regulations and will retain their ability to implement temporary bans of up to 120 days.

It is expected that the ACL will reduce the amount of product safety regulation by around two-thirds, providing a much simpler regulatory framework for business.

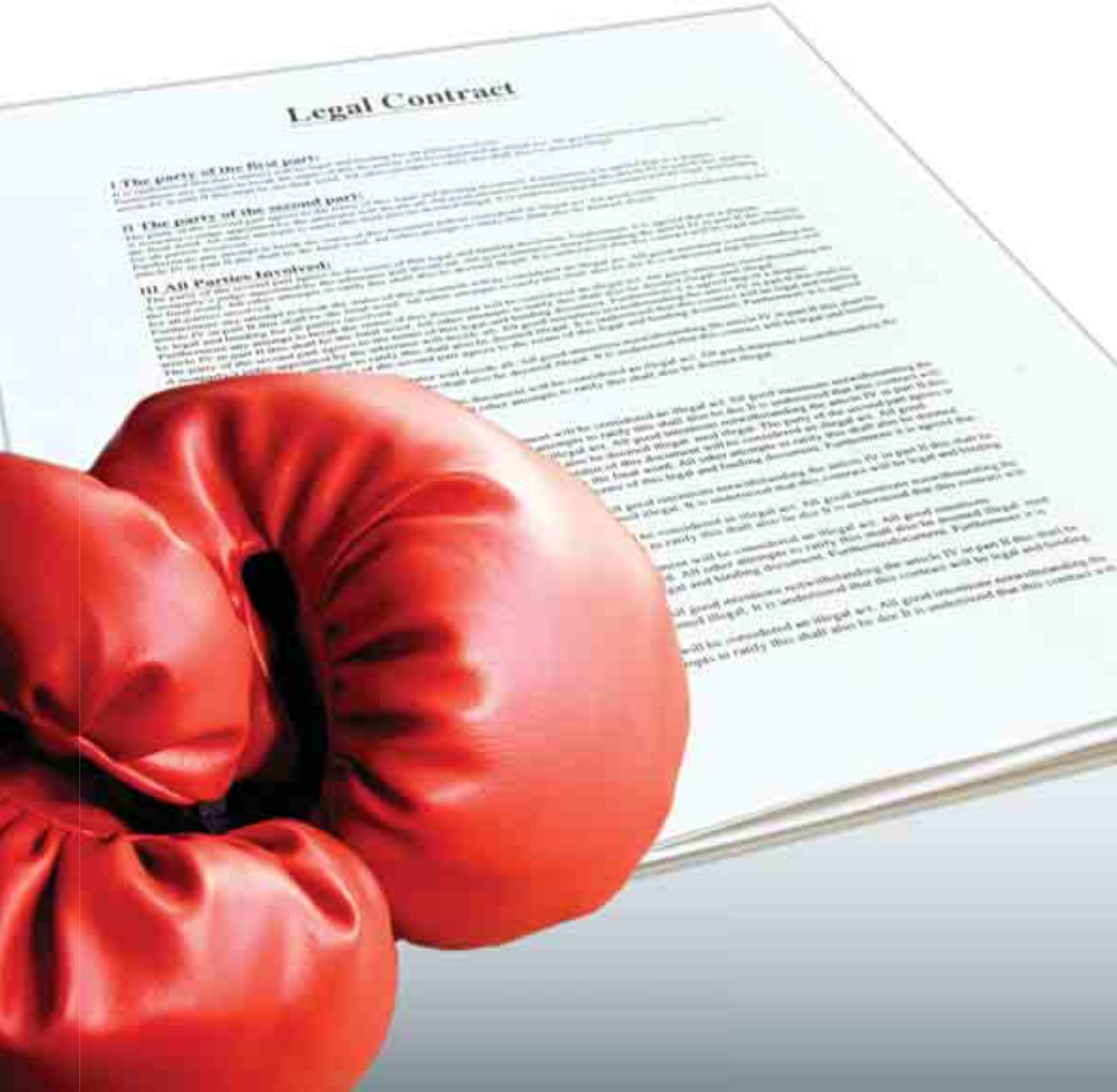
A 'harmonisation' process will identify which existing state and territory standards and bans should become national in future.

Another important legal change will be the introduction of a mandatory reporting requirement. Under the new legislation, suppliers will be required to advise the Australian Competition and Consumer Commission when a product is associated with the serious injury or death of a person.

3 By December 2010 the states and territories will have introduced and passed application laws, and are expected to apply the reforms under the time frame agreed by the Council of Australian Governments. It is anticipated that the Australian Consumer Law will be fully implemented by 1 January 2011.

Explaining the Australian Consumer Law

Stage one of the Australian Consumer Law includes a number of important provisions. The proposed law is before the Australian Parliament. Here is a layman's guide to the proposed law.



Knocking unfairness out of the fine print

Ever wondered what you were signing when buying a mobile phone or hiring a car?

The proposed Australian Consumer Law deals with unfair contract terms in standard form consumer contracts, by defining what 'unfair' means and what a court must consider when determining whether a contract term is unfair. Compliance with these provisions will give consumers greater confidence when signing standard form contracts.

(See page 18 of this publication for a full description of this provision.)

Civil pecuniary penalties

Civil pecuniary penalties are currently not available for contraventions of consumer protection provisions.

When a contravention occurs, the Australian Competition and Consumer Commission can only seek to obtain a fine through criminal proceedings, which are appropriate in only a small number of matters.

However, under this new provision, a court will be able to order a person to pay a civil pecuniary penalty for a contravention, or attempted contravention, of:

- unconscionable conduct
- unfair practices (other than misleading and deceptive conduct)
- pyramid selling
- failure to respond to a substantiation notice
- providing false or misleading information in response to a substantiation notice
- certain product safety and product information provisions.

The maximum penalty under this provision is up to $1.1 million for a company or up to $220 000 for an individual.

Disqualification orders

On application by the ACCC, a court will be able to disqualify a person from managing corporations for a period it considers appropriate.

Disqualification orders are already a well-recognised enforcement tool under the *Corporations Act 2001* (Cwlth). They have been introduced into the *Trade Practices Act 1974* to deal with certain breaches of the anti-competitive conduct provisions.

Disqualification orders may be particularly useful when addressing problems that arise with 'repeat offenders' in breaches of consumer law.

> *On application by the ACCC, a court will be able to disqualify a person from managing corporations for a period it considers appropriate.*

In some circumstances, disqualification orders may be appropriate for directors who fail to take steps to ensure the accuracy of their advertising claims, those who fail to ensure that products they sell or produce comply with mandatory product safety standards, and those who deliberately set out to mislead or deceive consumers.

Infringement notices

Under the new law, an infringement notice could be issued by the ACCC for breaches of consumer protection provisions and to deal more efficiently with smaller matters warranting a regulatory response.

Infringement notices provide an opportunity for a party to pay a penalty and finalise a dispute, or not to pay and to contest the merits of the alleged breach.

If a person does not pay an infringement notice penalty, the ACCC may take action for the underlying alleged contravention of the Trade Practices Act.

Under the proposed law, the ACCC can only issue one infringement notice per person for each alleged contravention of an infringement notice provision, including:

- unconscionable conduct
- certain unfair practices
- pyramid selling
- the ACL, which at this stage comprises prohibited unfair contract terms
- certain product safety and product information provisions
- failure to respond to a substantiation notice, or
- providing false or misleading information in response to a substantiation notice.

An infringement notice must be issued within 12 months after the alleged contravention occurred.

A maximum penalty of $6600 applies to corporations for breaches of parts V and IVA of the Act and product safety provisions.

(Continued on page 10)

Explaining the Australian Consumer Law—continued

Substantiation power to check claims

It is proposed that the Australian Consumer Law will provide the ACCC with a new investigative power—the substantiation notice.

The notices can be used in a variety of circumstances, including:

- **two-part advertising claims**—such as 'Was/Now' pricing and strikethrough advertising (many advertisements carry a previous price and then a current price—sometimes the previous price is bogus)
- **business opportunities**—such as projected earnings
- **food claims**—such as place of origin, composition claims, health claims
- **environmental claims**—such as biodegradability, carbon emission impacts
- **product safety claims**—such as meeting a prescribed standard that requires testing.

Under the proposed law, penalties for failing to respond may be up to $16 500 for a corporation and $3300 for an individual.

Essentially, the notices give people 21 days to 'substantiate' their claims about the:

- supply of goods or services by a corporation
- sale or grant of an interest in land by a corporation, or
- employment offers by a corporation.

Under the proposed law, penalties for failing to respond may be up to $16 500 for corporations and $3300 for individuals. Providing false or misleading information or documents attracts a penalty of up to $27 500 for corporations and $5500 for individuals.

The introduction of the substantiation notice will complement the ACCC's existing investigative powers.

Currently, the ACCC may compulsorily require information where it has reason to believe that a person can furnish information about a matter that constitutes or may constitute a contravention of the Act.

The 'reason to believe' threshold may in some cases prevent the ACCC from obtaining information, particularly during the early stages of an investigation, about public claims made by traders.

For example, in a coordinated investigation by consumer protection agencies regarding two-price advertising ('Was/Now' pricing), some state and territory agencies issued substantiation notices in the early stages of their investigation of claims made by traders.

During this initial stage of the investigation, the ACCC, however, was able to request information only on a voluntary basis because it did not believe that it had a sufficient basis on which to issue a compulsory notice.

Using a substantiation notice may allow the ACCC to undertake an initial review quickly and efficiently.

Public warning powers

Public warning powers are also set to be part of the Australian Consumer Law. At times in consumer market regulation, a rapid warning to the community is the best way of protecting it.

Product safety warnings can be issued under s. 65B of the Trade Practices Act. For example, last year the Minister for Competition Policy and Consumer Affairs issued a warning about the potential risks to small children from personal fitness treadmill machines.

The proposed public warning power will be widened, allowing the ACCC to issue public warnings when, on reasonable grounds, it suspects a contravention of the unconscionable conduct, consumer protection or ACL provisions; where someone is likely to suffer detriment from the conduct; and where it is in the public interest.

Redress for non-party consumers

The ACCC's ability to obtain redress for consumers under the Trade Practices Act has significant limitations.

The Federal Court of Australia's decision in *Cassidy v Medibank Private Ltd* placed constraints on the ACCC's ability to obtain compensation for consumers not named in proceedings.

Under the proposed changes, the ACCC will be empowered to deal more efficiently with matters that affect multiple consumers, by being able to seek orders for redress for those consumers not party to the action.

The proposed changes will bring the commission into line with international legal developments.

For example, consumers in the United States, on whose behalf the US Federal Trade Commission may seek orders—including equitable relief, restitution, recession of contracts and other remedial orders—are not required to be party to the actions taken.

And under New Zealand's Fair Trading Act, a court can make compensatory orders for a person whether or not they are party to the proceedings, or where it finds the person has suffered loss or damage as result of the contravening conduct.

Baker's dozen of laws affected

Under the proposed Australian Consumer Law, 13 laws will be affected:

Federal legislation

Australian Securities and Investments Commission Act 2001

Trade Practices Act 1974

State and territory legislation

Australian Capital Territory—*Fair Trading Act 1987; Fair Trading (Consumer Affairs) Act 1973*

New South Wales—*Fair Trading Act 1987*

Victoria—*Fair Trading Act 1999*

Queensland—*Fair Trading Act 1989*

Western Australia—*Fair Trading Act 1987; Consumer Affairs Act 1971*

South Australia—*Fair Trading Act 1987; Consumer Transactions Act 1972*

Tasmania—*Fair Trading Act 1990*

Northern Territory—*Consumer Affairs and Fair Trading Act 1990*

Jill Walker, the ACCC's newest commissioner

Jill Walker

The Australian Competition and Consumer Commission's newest commissioner, Dr Jill Walker, is already one of the most knowledgeable people in her specialty areas of mergers and anti-competitive conduct.

She easily recalls investigating, as a staffer with the Trade Practices Commission (TPC), the proposed merger of Ampol and Caltex in 1995—and wrestling an agreement from them that contained significant concessions.

'The undertakings we obtained were quite significant,' she recalls. 'It demonstrated the benefits of the "substantial lessening of competition" test, as opposed to the previous "dominance test", which allowed the commission to challenge the proposed merger.

'Under the old test, a merger could only be challenged if the merged firm would be likely to supply the majority of the market.

'The Caltex–Ampol merger involved a reduction from five to four major petrol refiner-retailers, in a market with substantial barriers to entry and import competition.'

The TPC, the predecessor of the ACCC, initially opposed the merger and then in tough negotiations produced a set of legally enforceable undertakings, including the sale of large petrol terminals at six major ports, an offer to sell a billion litres of petrol a year to independents, the sale of 20 distribution depots and 50 retail sites plus other undertakings.

Dr Walker's interest in regulating mergers and anti-competitive conduct dates back to her time (1992–95) at the TPC, where she was a principal analyst and an economic specialist in its economic and general research branch and its mergers branch. Following her employment with the TPC, she became an economic advisor with the ACCC (1995–99).

'Getting the regulation of mergers right is particularly important for ensuring competitive markets, low prices and the efficient delivery of goods and services to consumers,' she told *ACCC update*.

'Mergers affect the structure of the market and the incentives for firms to compete.

'Regulating mergers is about preventing anti-competitive conduct, rather than stopping it afterwards. But mergers can also be an important means of achieving increased efficiency in the delivery of goods and services, and the potential for a takeover keeps management on their toes.

'It is important to prevent those mergers that will substantially reduce competition, but not to block the many more mergers that will do no harm at all.'

Dr Walker said the biggest changes she had seen in the mergers area had been changes to the 'test'.

'When the Trade Practices Act was proclaimed in 1974, the test was the "substantial lessening of competition", but it was soon changed to the "dominance" test, a much higher threshold to prove. In 1993, after a protracted and heated policy debate, the test was changed back to the current "substantial lessening of competition" test.

'At that time, the legal fraternity was up in arms—"It's too uncertain"; "You'll kill off Australian business"; "We won't be able to get big enough to compete internationally".

'It was all doom and gloom, which didn't come to pass, of course. These days the "SLC" test is like an old shoe—

'Regulating mergers is about preventing anti-competitive conduct, rather than stopping it afterwards …'

The Australian Competition and Consumer Commission's newest commissioner, Dr Jill Walker, is already one of the most knowledgeable people in her specialty areas of mergers and anti-competitive conduct.

everyone is very comfortable and nobody seriously suggests it should be changed back to "dominance".'

Other changes she has noticed over the years include the increasing formality and transparency of the commission's processes when deliberating on proposed mergers.

Dr Walker does not see the current economic situation as a reason to 'go soft' on merger regulation.

'Firms may be struggling to make a profit in the current climate, but that is essentially a cyclical problem that affects everyone and which will be replaced by good times in the future,' she says.

'Allowing anti-competitive mergers would leave us with a legacy of poor market structures, which would be likely to deliver higher prices and lower efficiency into the future. To borrow a well-worn phrase, "mergers, like puppies, are not just for Christmas".

'Looking towards the future, the economy will bounce back in much better shape if markets remain competitive. Competition spurs efficiency and innovation and delivers the best prices and products to consumers.'

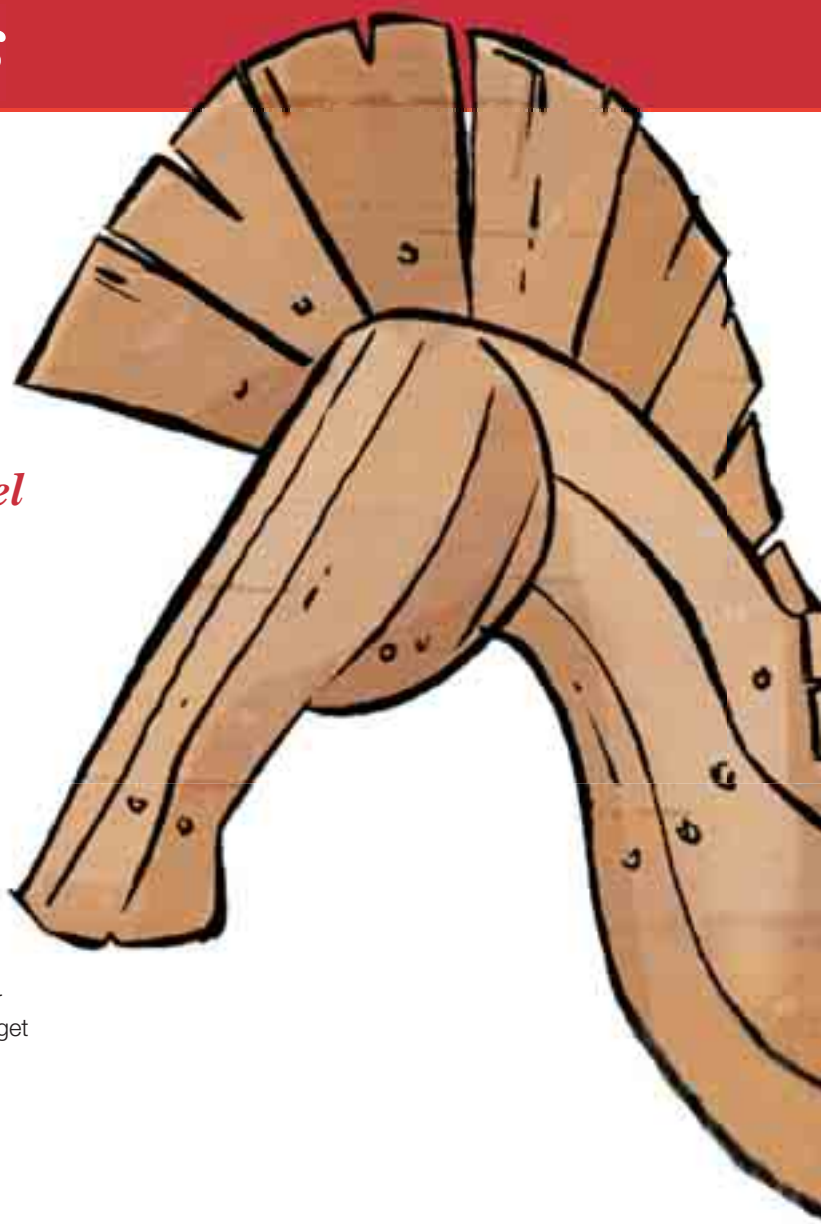
Dr Walker was born in the United Kingdom and after completing a bachelor's degree in economics at Cambridge University went on to study at the University of Massachusetts for a master's degree before returning to Cambridge to complete a doctorate in land economy.

She studied labour economics and then worked as an academic at the Australian National University. She then worked for the Home Care Service of New South Wales before turning her attention to industry and antitrust economics. This took her on a new road, and led to her joining the Prices Surveillance Authority, the TPC and the ACCC as an analyst and adviser, as well as teaching industry economics at the University of Technology in Sydney.

Since 2000, the Canberra-based Dr Walker has been a principal with several economic consulting companies working primarily in the field of trade practices or antitrust economics.

She was appointed a member of the Australian Competition Tribunal in September 2001 and reappointed in 2006. She has relinquished that role to take up her new position with the ACCC in September.

Fans fleeced by celebrity scams



Scammers are blatantly masquerading as celebrities such as Jennifer Hawkins, Pink, Oprah Winfrey, Michael Jackson and, most recently, Patrick Swayze to distribute malware or to fleece money from victims.

This type of activity came to the fore years ago when the Anna Kournikova VBS/SST virus infected thousands of computers.

These scams can also be found in internet auctions of memorabilia for dead celebrities, bogus endorsements for products and fake postings on social networking sites to get personal information or to spread viruses.

Some celebrity scams

Patrick Swayze

A website set up not long after the actor's death to update news on the event was used to trick visitors by triggering a pop-up that said the visitor's computer was infected by a virus. Anyone clicking on the link in the pop-up to get help found that their computer really became infected.

Oprah Winfrey

Oprah Winfrey and a regular guest on her program, Dr Mehmet Oz, sued more than 50 businesses they claimed were illegally using the powerful Oprah endorsement to hawk products over the internet. According to the suit filed in a United States federal court, on more than 500 web sites these companies had linked the pair to a variety of dietary supplements, anti-aging concoctions and colon cleansers.

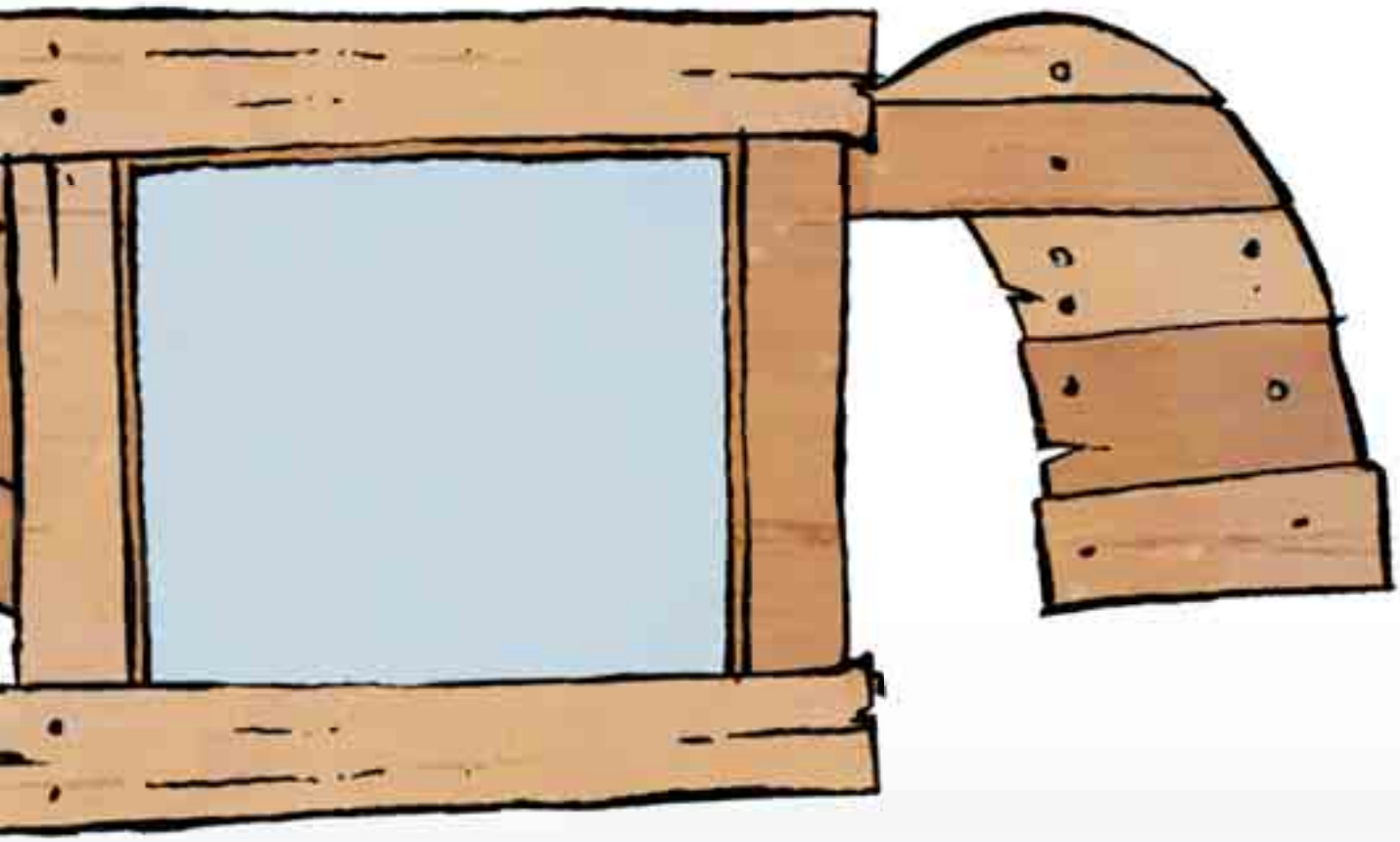
Pink and Jennifer Hawkins

The Australian Competition and Consumer Commission's SCAMwatch website has received reports of scammers using celebrities like Pink and Jennifer Hawkins to camouflage their attempts to steal your money, personal details and, in some cases, your identity. The scammers may even fool you into subscribing to a mobile premium service you don't want or can't afford.

Michael Jackson

Consumers should be on the lookout for spam email that secretly installs viruses and spyware onto your computer and removable drives such as USB sticks. The spyware and viruses are hidden in song, video and picture files of Michael Jackson (disguised as tributes to him) and other celebrities.

Consumers should be on the lookout for spam email that secretly installs viruses and spyware onto your computer and removable drives such as USB sticks.



If you are seeking photos, videos, songs or updates of celebrities, the ACCC advises that you use only websites you know and trust. Use well known and reputable ticketing agents when buying tickets for events or to see your favourite artists.

Remember ...

Never send money and never give your credit card and online bank account details or your mobile phone number to anyone you do not know and trust—and even then be aware that scammers can hack email and social networking accounts to dupe victims into providing information.

And check all offers that involve your time, money or effort with an independent advisor (such as an accountant or solicitor) before providing any personal details or handing over any money.

National move on mobility scooters

A meeting of government agencies, health professionals, researchers and industry representatives has identified a range of measures to reduce the incidence of injury and death associated with mobility scooters.

Convened by the Australian Competition and Consumer Commission, the Reference Group acknowledged the benefits and level of independence offered by motorised mobility scooters to vulnerable members of the community such as the elderly and disabled.

However, participants also noted the significant numbers and causes of avoidable deaths and injuries that occurred while these scooters were being used.

Research conservatively indicates that an average of six mobility scooter-related deaths occur in Australia each year.

Many more people are injured—a one-year snapshot of hospitalisations involving 'pedestrian conveyances' indicated that more than 500 people received hospital treatment.

The factors involved in mobility scooter accidents included lack of safe alternatives to roads, uneven and poorly maintained footpaths, lack of suitable protective equipment for the user, influence of drugs or alcohol, lack of appropriate user assessment and training, and the physical limitations of users.

> *… participants also noted the significant numbers and causes of avoidable deaths and injuries that occurred while these scooters were being used.*

In the shorter term government agencies have agreed to work cooperatively to review available educational material and to develop an education strategy that targets scooter users, suppliers, local governments and the broader community.

The meeting also agreed to a range of measures to improve data collection and road user rules and requirements. Work will also begin on a review of related importation requirements.

The ACCC and other interested parties will collaborate on a paper clarifying major issues with the use of mobility scooters and how to resolve them. Work will also begin on exploring matters that might be dealt with by either a voluntary or a mandatory standard.

Unsafe products another target of reforms

Australia's product safety systems are also being reformed as part of the new Australian Consumer Law now before parliament.

The proposed changes will result in:

- product bans and standards across Australia being harmonised—leading to a much simpler regulatory environment
- a new national Product Safety website—providing a single public reference point, which will go live early next year
- earlier identification of hazards—resulting from the introduction of a systematic 'clearing-house' approach
- improved recall processes—flowing from a major review of the system later this year.

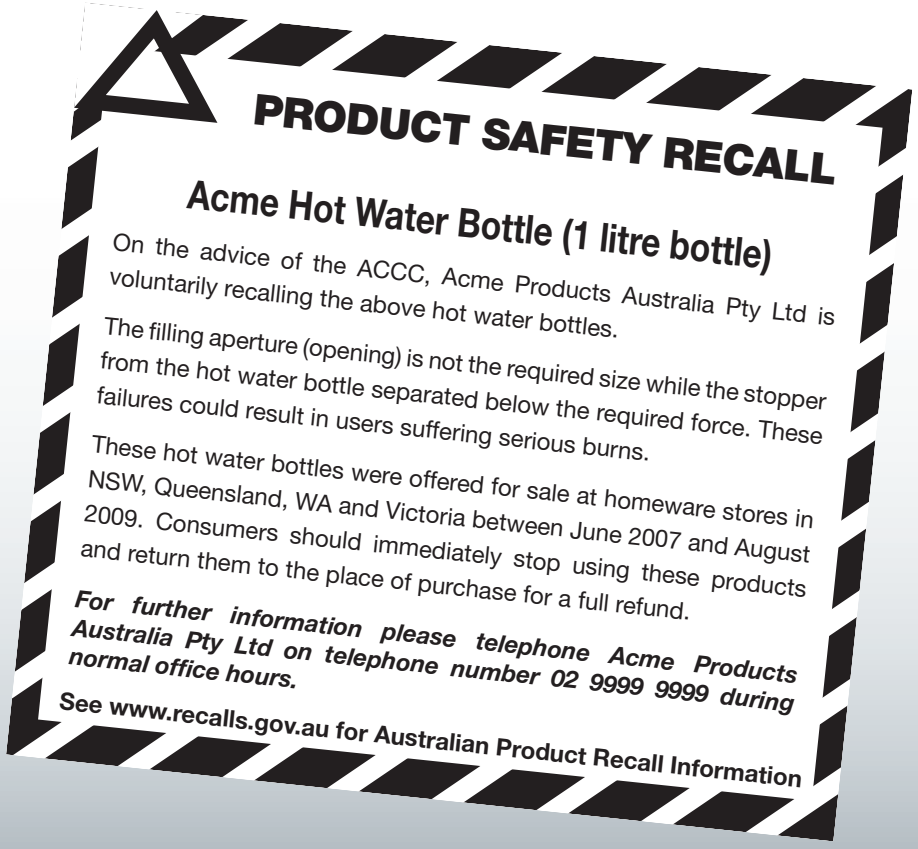
More than 160 regulations have been scrutinised as part of the harmonisation project. A single set of regulations will apply across Australia by the end of 2010, with a reduction of around one-third in the number of regulations that currently exist.

The new national website will present a single entry point for product safety information in Australia, with content for business and consumers on current product hazards and regulatory information. It will also explain the roles of specialist regulatory agencies (such as the Therapeutic Goods Administration) and provide links to relevant websites.

The Emerging Hazards Clearinghouse is on track for implementation early in 2010. It will use a range of information sources to analyse consumer product incidents in Australia, with the aim of identifying emerging safety hazards more rapidly. It will allow regulators to be more responsive to new issues and to share emerging hazard information.

A review of Australia's product recall system this year is likely to result in recommendations for a more effective way of recalling unsafe consumer products from the post-sale environment. A paper of options and recommendations will go to the Ministerial Council for Consumer Affairs by 31 December 2009.

Next year will see the introduction to parliament of the next stage of the Australian Consumer Law reforms. One of these reforms will be the mandatory reporting of unsafe products, with suppliers being required to notify the ACCC if their product has been associated with serious injury or death.



PRODUCT SAFETY RECALL

Acme Hot Water Bottle (1 litre bottle)

On the advice of the ACCC, Acme Products Australia Pty Ltd is voluntarily recalling the above hot water bottles.

The filling aperture (opening) is not the required size while the stopper from the hot water bottle separated below the required force. These failures could result in users suffering serious burns.

These hot water bottles were offered for sale at homeware stores in NSW, Queensland, WA and Victoria between June 2007 and August 2009. Consumers should immediately stop using these products and return them to the place of purchase for a full refund.

For further information please telephone Acme Products Australia Pty Ltd on telephone number 02 9999 9999 during normal office hours.

See www.recalls.gov.au for Australian Product Recall Information

Unfair contracts— the proposal explained

The Australian Consumer Law will deal with unfair contract terms in standard form consumer contracts.

The new law will define what an unfair contract term (UCT) is and what a court must take into account when determining whether a contract term is unfair.

If a court determines that a term in a contract is unfair, it may declare the term void, which means it would no longer be enforceable in that consumer's contract.

Standard form contracts are common and used for many services, including internet services, hire cars, gym memberships and mobile phones. They are often offered on a take-it-or-leave-it basis.

UCT laws already exist in Victoria and in some overseas jurisdictions such as the United Kingdom.

How might it work?

The UCT provision is significant because it focuses on substantive unfairness in consumer markets, complementing the unconscionable conduct provisions in the Trade Practices Act.

The provision will allow the ACCC to address situations where consumers typically cannot bargain or vary the process of sale or contract formation.

For the UCT provision to apply the term must be 'unfair' according to the Australian Consumer Law and the contract must be a standard form consumer contract. Should a supplier allege that the contract at issue is not a standard form contract, the onus will be on them to prove this is the case.

The following factors will be relevant in determining whether a term is unfair:

- whether it causes a significant imbalance in the parties' rights
- whether it is reasonably necessary to protect the legitimate interests of the party
- the extent to which the term would cause, or would be substantially likely to cause, detriment
- the extent to which the term is transparent (although transparency alone cannot overcome underlying unfairness)
- the contract as a whole.

Types of terms that may be unfair

The proposed legislation sets out a range of terms in standard form contracts that may be unfair. These include where only one party:

- is able to avoid or limit performance of the contract
- is able to terminate the contract
- faces penalties for breach or termination of the contract
- is allowed to vary the terms of a contract.

> *If a court determines that a term in a contract is unfair, it may declare the term void …*

Declarations and redress

Only a court can declare a contract term to be unfair.

Declarations and redress will be available where a court finds that a term is unfair. No pecuniary penalties or disqualification orders will apply.

Guidance for business and consumers

The ACCC, the Australian Securities and Investments Commission and state and territory fair trading agencies are developing a national guide on UCTs. This guide will be made available in 2010.

Product safety a life-saving role

A consumer product could have physical shortcomings—its design, the way it was made and the way it works …

The Australian Competition and Consumer Commission is an independent statutory authority formed in 1995 to administer the Trade Practices Act. Our 'Inside the ACCC' series takes you inside the commission. In the first article, we look at the Product Safety Division.

Many people are unaware of the potential for injury or death created by unsafe consumer products.

Sadly, however, babies have strangled after becoming entangled in loose blind-cords or suffocated after being trapped in gaps caused by ill-fitting cot mattresses.

And it is not just young children at risk—people of all ages can be endangered by unsafe consumer products or failing to use products appropriately. For example, each year many Australians suffer serious injuries falling from ladders, and 30 people have died since 2000 after the vehicles they were working under collapsed because of unstable or inappropriately used vehicle jacks.

So what role does the ACCC play in preventing such injuries?

Rather than attempting to regulate every product in the marketplace, the staff of the ACCC's Product Safety Division monitor evidence of any consumer product that could, or has, caused serious injury or death.

A consumer product could have physical shortcomings—its design, the way it was made and the way it works—that makes it unsafe, or the risk might be caused by the way consumers behave when they use it.

When evidence exists that a product is clearly dangerous and should not be made or supplied, we recommend that it be banned.

Examples of banned products include a children's dart-gun set with small suction-tipped darts that are a choking hazard, and toothpaste that contains unacceptable levels of diethylene glycol, an industrial solvent also used in anti-freeze.

An 18-month interim ban is sometimes used during investigations, as in the well known Bindeez case, where bead toys containing 1,4-butanediol caused serious illness when swallowed.

Investigations into unsafe products may include highly technical testing carried out by specialists, the study of coronial and hospital emergency data, and consultations with standards-making bodies, industry representatives, consumer groups and government regulators across Australia and overseas.

Sometimes these investigations result in a mandatory product safety standard that specifies particular safety features and/or warnings required before suppliers can make, import, sell or hire the product in Australia.

Education and media campaigns are run to alert consumers to the possible risk and to inform businesses of their obligations. ACCC staff around Australia conduct regular market surveillance to check that suppliers obey laws, often in collaboration with state and territory agencies.

Businesses that fail to comply with a product safety standard may negotiate a voluntary recall or risk further court action, or the ACCC may seek financial penalties or prosecution.

Because new products are always appearing in the marketplace, it is vital that consumers keep telling the ACCC of any near-misses, injuries or illnesses they suffer when using products. While you may see an incident as a one-off or a mistake, your report could help the ACCC identify a wider community problem that requires investigation.

For more information, visit www.accc.gov.au or call the ACCC Infocentre on 1300 302 502. To find out about product recalls, visit www.recalls.gov.au.

ACCC recent releases

View these publications online at www.accc.gov.au

Publication orders can be placed online or by calling the ACCC Infocentre on 1300 302 502

For business

Authorising and notifying cartel conduct

Recent amendments to the *Trade Practices Act 1974* include provisions prohibiting cartel conduct and establishing both civil and criminal penalties for it.

Under amendments to authorisation and collective bargaining notification provisions, businesses may now seek immunity from the ACCC where such arrangements are in the public interest.

2 pp., 2009, ISBN 978 1 921581 26 7 (electronic only)

Children's portable folding cots—mandatory standards guide

Manufacturers, distributors, importers, wholesalers, retailers and hire companies of children's portable folding costs should read this guide to familiarise themselves with the hazards of, and the mandatory standards for, this product.

21 pp., 2009, ISBN 978 1 921581 19 9

Competing fairly DVD

Competing fairly is an overview of four issues under the Trade Practices Act that affect the day-to-day operations of a small business—advertising and selling, warranties and refunds, supply issues and collective bargaining. The DVD features a number of scenarios in which issues under the Act arise and explains the rights and obligations of small business owners in each situation.

DVD, 22 minutes, 2009

News for business: Component pricing—restaurants, cafés and hotels

Under the Trade Practices Act advertising must correctly represent the good or service being offered for sale, including its price and any other key features or characteristics, to enable consumers to compare similar products and to make informed purchasing decisions. Component pricing is commonly used by cafes, restaurants and hotels, so it is important that owners of these types of businesses restaurant are aware of some recent changes to pricing rules. *Component pricing—restaurants, cafés and hotels* tells you about these changes and how they will affect you.

4 pp., 2009, ISBN 978 1 921581 38 0

Outreach newsletter, July 2009

The *Outreach* newsletter covers the activities of ACCC's regional outreach managers in local and regional communities.

4 pp., 2009, ISSN 1835 3770 (electronic only)

Product safety bulletin, May 2009—Flotation toys and swimming aids

The ACCC is keen to alert suppliers to requirements of two new mandatory product safety standards: flotation and aquatic toys and swimming and flotation aids.

These new mandatory product safety standards replace a standard declared in March 1992 that covered similar categories of toys and equipment, and was based on *Australian Standard 1900–1991, Flotation toys and swimming aids for children*. This Australian standard has been revised and is now known as *AS 1900–2002, Flotation aids for water familiarization and swimming tuition*.

2 pp., 2009, ISBN 978 1 921581 18 2 (electronic only)

Product safety bulletin, August 2009—Lead and certain elements in children's toys and finger-paints

This bulletin outlines acceptable levels of lead and certain elements in children's toys and finger-paints. These levels are informed by a permanent ban issued on 8 April 2009 and a mandatory standard that will come into effect on 1 January 2010.

The bulletin also provides information on hazards relating to lead and certain elements in children's toys and finger-paints, and suppliers' compliance responsibilities under the ban and the new mandatory standard.

2 pp., 2009, ISBN 978 1 921581 31 1 (electronic only)

Unit pricing: a guide for grocery retailers—audio format

This guide explains what grocery retailers need to know about unit pricing.

Audio format, 2009 (MP3 files; downloadable)

For consumers

Fuel facts, fact sheet series

What influences the price of unleaded petrol?

Petrol is traded internationally and around 20 per cent of petrol consumed in Australia is imported—so the price we pay at the pump is influenced by the international benchmark price. The pump price also includes taxes and margins (wholesale and retail) and some other costs.

What influences the price of automotive LPG?

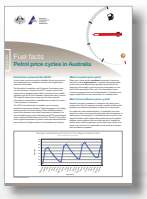
Automotive LPG is an internationally traded commodity—so the price we pay at the pump is influenced by the international benchmark price. The pump price also includes taxes and margins (wholesale and retail) and other costs.

What influences the price of diesel?

Diesel is traded internationally and around 40 per cent of diesel consumed in Australia is imported. This means that the price we pay at the pump is influenced by the international benchmark price. The pump price also includes taxes and margins (wholesale and retail) and some other costs.

Fuel prices in regional Australia

The prices of fuels often differ between the city and the country and even between country towns. Generally, combinations of the level of local competition, the volume of fuel sold at any particular retail site and the additional freight and storage costs associated with different country areas will influence the different prices for fuel products sold around the country.



Petrol price cycles in Australia

Petrol price cycles are the consistent movement of prices up and down over a regular period. In markets where petrol price cycles occur, retail petrol prices generally rise quickly at the beginning of the weekly cycle but are then discounted to a low point for the remainder of the cycle. This fact sheet explains the existence of price cycles in fuel markets in Australia, including what they are, the factors that influence price cycles, where they occur and how consumers can benefit from them.

Fact sheets, 2009.

ACCC reports

ACCC telecommunications reports 2007–08: Telecommunications competitive safeguards; Changes in the prices paid for telecommunications services in Australia

The ACCC issued the telecommunications reports for 2007–08 to the Minister for Broadband, Communications and the Digital Economy on 3 April 2009. The reports were tabled in the Australian Parliament on 16 June 2009.

158 pp., 2009, ISBN 978 1 921581 12 0

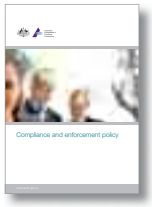
Assessing cross-subsidy in Australia Post 2007–08

Each year the ACCC issues a report on its analysis of Australia Post's regulatory accounts for the preceding year, to determine whether Australia Post has used revenue from its reserved services to cross-subsidise its non-reserved services. (Reserved services are services for which Australia Post has a statutory monopoly; non-reserved services are services it provides in competition with other businesses.)

Assessing cross-subsidy in Australia Post 2007–08 should be read in conjunction with the ACCC's principles for the disclosure of information it receives under the record-keeping rules.

27 pp., 2009, ISBN 978 1 921581 29 8 (electronic only)

About the ACCC



ACCC compliance and enforcement policy

The compliance and enforcement policy sets out the principles adopted by the ACCC to achieve compliance with the law and to outline its enforcement powers, functions, priorities, strategies and regime.

4 pp., 2009 (electronic only)

ACCCount 1 April to 30 June 2009

The publication reports on ACCC activities from 1 April to 30 June 2009. It details the ACCC's activities in the enforcement of the Trade Practices Act, merger reviews, compliance initiatives, adjudication issues, economic regulation, international cooperation and interaction with other Australian competition, consumer protection and regulatory agencies.

Subscribe online at www.accc.gov.au to receive regular issues of this publication.

67 pp., 2009 (electronic only)

ACCC immunity policy for cartel conduct July 2009

The ACCC's revised policy for the application of immunity in relation to cartel conduct aims to provide greater certainty for immunity applicants so that the ACCC is better able to detect and break up hard-core cartels operating in Australia.

4 pp., 2009, ISBN 978 1 921581 30 4 (electronic only)

ACCC immunity policy interpretation guidelines July 2009 (electronic only)

This publication provides guidance on interpreting the ACCC's policy on immunity for cartel conduct.

18 pp., 2009, ISBN 978 1 921581 30 4 (electronic only)

For regulated industries

Water trading rules position paper—September 2009

Water market rules and water charge rules—enforcement guide

Subscription

SUBSCRIBE TO ACCC UPDATE

Subscribe to *ACCC update* for the latest news from the Australian Competition and Consumer Commission.

***ACCC update* is a quarterly magazine.**

To be added to our mailing list, please fill in the details below and return to:

The editor, *ACCC update*

Australian Competition and Consumer Commission

GPO Box 3131, Canberra ACT 2601

Fax (02) 6243 1149

email: publishing.unit@accc.gov.au

Subscribe online: http://www.accc.gov.au/ACCCUpdateSubscription
(Please note: This web address is case sensitive)

FAXBACK FORM

Name:.....

Position:.....

Organisation:.....

Address:.....

Postcode:.....

Telephone:.....

Fax:.....

Email:.....

For more information on *ACCC update*:

visit www.accc.gov.au
email: publishing.unit@accc.gov.au
phone the ACCC Infocentre 1300 302 502.

ACCC contacts

Infocentre: 1300 302 502

Website: www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, www.relayservice.com.au.

Voice-only (speak and listen) users—phone 1300 555 727 and ask for 1300 302 502.

Addresses

National office
23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
Tel: (02) 6243 1111
Fax: (02) 6243 1199

New South Wales
Level 7
Angel Place
123 Pitt Street
Sydney NSW 2000
GPO Box 3648
Sydney NSW 2001
Tel: (02) 9230 9133
Fax: (02) 9223 1092

Victoria
Level 35
The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000
GPO Box 520
Melbourne Vic 3001
Tel: (03) 9290 1800
Fax: (03) 9663 3699

Queensland
Brisbane
Level 3
500 Queen Street
Brisbane Qld 4000
PO Box 10048
Adelaide Street Post Office
Brisbane Qld 4000
Tel: (07) 3835 4666
Fax: (07) 3832 0372

Townsville
Level 6
370 Central Plaza Building
Flinders Mall
Townsville Qld 4810
PO Box 2016
Townsville Qld 4810
Tel: (07) 4729 2666
Fax: (07) 4721 1538

Western Australia
Third floor
East Point Plaza
233 Adelaide Terrace
Perth WA 6000
PO Box 6381
East Perth WA 6892
Tel: (08) 9325 0600
Fax: (08) 9325 5976

South Australia
Level 2
19 Grenfell Street
Adelaide SA 5001
GPO Box 922
Adelaide SA 5001
Tel: (08) 8213 3444
Fax: (08) 8410 4155

Northern Territory
Level 8
National Mutual Centre
9–11 Cavenagh St
Darwin NT 0800
GPO Box 3056
Darwin NT 0801
Tel: (08) 8946 9666
Fax: (08) 8946 9600

Tasmania
Third floor
AMP Building
86 Collins Street
(Cnr Elizabeth and Collins streets)
Hobart Tas 7000
GPO Box 1210
Hobart Tas 7001
Tel: (03) 6215 9333
Fax: (03) 6234 7796