

Australian Consumer Law Update No 4, 2011

The Australian Consumer Law Update is designed to keep industry associations and businesses across Australia up-to-date with the introduction of the Australian Consumer Law (ACL).

This issue focuses on **sales practices** and what you need to know about your rights and responsibilities under the ACL.

Australian Consumer Law now applies

On 1 January 2011 the *Trade Practices Act 1974* was renamed the *Competition and Consumer Act 2010*. The Australian Consumer Law comprises Schedule 2 of that Act and also took effect on 1 January.

New ACL resources

A range of resources are available to assist businesses and consumers understand and apply the new law. These include:

- fact sheets
- an audio guide to unfair contract terms
- a free iPhone application - MyShopRights
- compliance and enforcement industry guide
- sales practices industry guide.

You can download these and other ACL resources from www.consumerlaw.gov.au

Sales practices - what you need to know

Businesses need to ensure that they trade fairly and honestly with consumers to promote genuine competition. The new sales practices laws cover unsolicited supplies, unsolicited consumer agreements, pyramid schemes, multiple pricing, lay-by agreements, referral selling, harassment and coercion, and proof of transaction and itemised bills.

Unsolicited supplies

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 required by law:
This is not a bill. You are not required to pay any money. This warning must be the most prominent text in the document.

Unsolicited consumer agreements

Salespeople who engage in direct marketing with consumers, for example, door-to-door selling or telemarketing, in order to sell them goods or services must comply with:

- limited hours for contact with consumers
- disclosure requirements before and when entering into an agreement
- criteria for the sales agreement requirements, including that it must be in writing
- restrictions on supply and requesting payment during the cooling-off period.

Consumers have 10 business days to change their mind and cancel the contract (cool off). They can also cancel the contract within 3 or 6 months if the supplier has not met certain obligations.

The *Corporations Act 2001*(Cth) prohibits unsolicited hawking of securities, certain financial products and managed investment products. More information is available from the Australian Securities and Investments Commission at www.asic.gov.au

Pyramid schemes

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

Pyramid schemes are illegal.

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

Pricing

Multiple pricing - a supplier who displays more than one price for the same goods must either:

- sell the goods for the lowest 'displayed price', or
- withdraw the goods from sale until the price is corrected.

A price published in a catalogue or advertisement is also considered a 'displayed price'. Mistakes in catalogues and advertisements can be fixed by publishing a retraction in a publication with a similar circulation to the original advertisement.

Component pricing - a supplier must not promote or state a price that is only part of the cost of goods or services, unless also prominently advertising the single (total) price.

Lay-by agreements

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

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

A supplier may only cancel a lay-by agreement under certain circumstances.

Referral selling

Promising future commissions or rebates that depend on other events - for example, subsequent sales - is illegal in certain circumstances.

It is unlawful to persuade a consumer to buy goods or services by promising benefits for assisting the supply of goods or services to other customers.

Harassment and coercion

It is unlawful to use physical force, coerce or unduly harass someone about the supply of, or payment for, goods or services.

Proof of transaction and itemised bills

Suppliers must provide proof of transaction to consumers for goods or services valued at \$75 or more. A GST tax invoice, cash register receipt, credit/debit card statement or a receipt number provided for a telephone or internet transaction is sufficient proof of transaction. Consumers may request an itemised bill for services that shows how the price was calculated.

Warranties, refunds, repairs and consumer guarantees

A consumer has rights under the consumer guarantees, regardless of any other warranty.

For more information

For more information on the ACL, visit the links below:

www.consumerlaw.gov.au

www.consumeraffairs.nt.gov.au