



Consumer vulnerability

A business guide to the Australian Consumer Law

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Australian Competition and Consumer Commission
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About this guide

This guide will help you understand how to engage with consumers experiencing vulnerability and your key business responsibilities under the Australian Consumer Law (ACL). It is not however a comprehensive guide to your business obligations to consumers.

If you fail to comply with your obligations under the ACL, you are breaking the law. The ACCC enforces the ACL and prioritises conduct that disproportionately impacts consumers experiencing vulnerability. This is an enduring priority in the ACCC's compliance and enforcement policy. Relevant court decisions have been included to illustrate your responsibilities when dealing with consumers experiencing vulnerability.

► **TIP – At the end of this publication there is a tool to help you assess your business's approach to vulnerability.**

Key points

Ensure your business considers vulnerability, and remember these key points:

- Vulnerability is situational. Anyone can experience vulnerability especially if your products and services are complex and information is not transparent and accessible.
- Always provide consumers with clear, upfront and accessible information including in marketing materials and contracts.
- Give consumers time to consider information and compare offers. If a consumer seems unsure, suggest they take their time and discuss it with others.
- Never pressure a consumer to agree to anything. Actions that may seem reasonable for most consumers may distress or intimidate consumers experiencing vulnerability.
- Have policies that enable consumers who wish to have third parties, such as family, support people, financial counsellors or lawyers, to act on their behalf.
- Know when and how to refer consumers to relevant third parties, such as financial counsellors, community advocates, the National Relay Service or interpreter services.
- Train your staff to treat all consumers fairly and to recognise and engage with consumers experiencing vulnerability sensitively.
- Review consumer complaints and consider how your business practices could exacerbate or cause vulnerability. Regularly seek and use feedback to improve your business processes and meet the needs of your customers.
- Ensure your business is easy to contact, with multiple channels available to consumers.
- Have clear and easy to access policies in place to assist consumers when they encounter hardship (hardship policies) or have a dispute.

Understanding vulnerability

It is important to think about vulnerability in terms of both the experience and circumstances of consumers as well as business practices.

All consumers may be vulnerable at one time or another. But there are socio-demographic characteristics and personal situations which can increase the likelihood of vulnerability in some circumstances. Where possible, your staff should have sufficient training and awareness to recognise and respond sensitively when a consumer might be experiencing vulnerability.

Vulnerability is situational, a consumer can experience vulnerability in one situation but not in others, and some consumers may be more vulnerable than others depending on the situation. The situations which lead to vulnerability may be temporary or enduring.

Some of the **life events or challenges** that increase the likelihood of consumer vulnerability include:

- family or domestic violence
- accident or illness
- mental health problem
- experiencing a natural disaster or crisis event
- low income, financial stress, job loss or homelessness
- people re-entering the community
- recent bereavement
- change in family circumstances or relationships
- caring for someone experiencing any of these circumstances.

Some of the **personal, cultural or social characteristics** that may lead to a higher likelihood of consumer vulnerability include:

- intellectual, mental, physical, sensory, neurological or learning disability
- age (very young or old)
- living in a remote area
- having a first language other than English
- poor reading, writing or numerical skills
- poor digital literacy
- diverse cultural backgrounds, assumptions or attitudes.

When consumer vulnerability does occur as a result of socio-demographic characteristics, personal situations, business practices or market conditions, it leads to:

- a higher risk of negative outcomes in a market
- less ability to maximise wellbeing
- difficulty obtaining or assimilating information
- difficulty buying, choosing or accessing suitable products or services, or
- increased susceptibility to particular marketing practices.¹

¹ European Commission, 'Understanding consumer vulnerability in the EU's key markets' (February 2016).

How vulnerable are Australians?

The following statistics, from a report prepared for the Australian Energy Regulator by the Consumer Policy Research Centre, [Exploring regulatory approaches to consumer vulnerability: A report for the AER](#), illustrate the prevalence of vulnerability experienced across the Australian community in 2020:

- 1 in 5 have a disability
- 1 in 5 speak a language other than English at home
- 2 in 3 experience some form of financial stress at some point in their life
- 1 in 6 women have experienced violence by a current or previous partner
- 44% have literacy levels below what is considered enough to get by in everyday life.

Business practices and complex products can enhance vulnerability

Anyone can experience vulnerability when faced with complex marketing or difficult choices. Businesses may exacerbate or cause vulnerability through their business practices and how they engage with the market and consumers. Examples of this include:

- complex or confusing marketing and pricing that makes comparisons difficult
- complex information that is difficult to understand or not easily accessible
- sales and marketing pressure tactics
- making material changes to contracts without informing the consumer ahead of time
- overly complex and unfair contracts which create or exacerbate power imbalances
- contracts that automatically rollover or increase in price without informing the consumer
- conflicted remuneration policy such as commission based selling
- denying or misleading consumers about their rights under the law.

Overly complex, market conditions can also cause consumers to experience vulnerability. If a market is complex a consumer may be unsure how to navigate the purchasing process or contracts, may not understand what they are purchasing or who they are purchasing it from.

When thinking about vulnerability consider your business practices first. Most businesses do not set out to deliberately exploit or treat consumers unfairly. However, business practices can worsen power and information imbalances which, in the worst cases, may lead to breaches of the law. You know your products and services better than your customers which makes you well placed to reduce vulnerability that may be experienced in your business or markets.

You should review your business practices including how you engage with markets and consumers and whether your products and services meet the needs of your customers.

You can do this by:

- making it easier for consumers to understand and compare products and services
- providing clear and easily accessible information to reduce power and information imbalances

and avoiding:

- the use of complex or confusing pricing
- conflicted remuneration policies such as commission based selling
- overly complex and unfair contracts which create or worsen power imbalances.

If you do this it is less likely that you will take advantage of consumers or enhance consumer vulnerability.

The impact of vulnerability

Vulnerability impacts people in different ways. It can reduce a consumer's ability to engage with your business, access products and services, make informed decisions, consider choices and evaluate the information you provide.

Consumers experiencing vulnerability may be disproportionately affected by unfair business practices, including those that breach the law. This is particularly the case in markets for essential goods or services. They might not be in a position to absorb any losses caused by poor business conduct. Going without specific goods or services may leave a consumer experiencing vulnerability significantly worse off than a consumer who is not.

If a consumer appears to have reduced capacity to make voluntary or informed decisions about purchases or contracts, then you need to take extra care in your interactions with them to ensure you do not take unfair advantage of their situation. If you treat consumers poorly, particularly those experiencing vulnerability, you may be at greater risk of breaching certain provisions of the ACL.

Benefits of treating consumers fairly

Your business will benefit from a good reputation when you act fairly, in good conscience and accommodate the needs and circumstances of your customers. Satisfied consumers are likely to remain loyal and generate more business for you through word of mouth, or good reviews and engage positively with your business.

As a business, you should consider the needs of consumers experiencing vulnerability as part of your regular business processes and systems. By making your systems accessible and fit for all consumers, whether in a vulnerable position or not, your business and consumers will benefit.

What does the Australian Consumer Law say?

The ACL provides protections for consumers and obligations on businesses when selling goods and services. Among other things, it protects consumers from several types of unfair business practices, gives consumers rights when they receive faulty goods and poor quality services, and places certain obligations on sales practices.

False, misleading or deceptive conduct

The ACL prohibits false, misleading or deceptive conduct in any communication with consumers, whether in person, written down, in advertising or through social media. Misleading or deceiving a consumer can include:

- leading someone to a wrong conclusion
- creating a false impression
- omitting or remaining silent on important information
- making false claims about products or services.

Your business must not make false claims about the quality, value, price or benefits of goods or services, or any associated guarantee or warranty. Using false testimonials or impersonating another business is also illegal. These provisions apply to all interactions with the public – from the overall impression you create in your advertising to one-on-one sales situations. They also apply even if you did not intend to mislead or deceive anyone.

► **CASE STUDY:** [ACCC v Oticon Australia Pty Ltd \(Oticon\) and Sonic Innovations Pty Ltd \(Sonic\) \(2018\)](#)

Oticon and Sonic published advertisements for hearing aids in newspapers around Australia under the AudioClinic and HearingLife brands, available to pensioners under the Australian Government Hearing Services Program.

The advertisements claimed that in order to obtain a free hearing aid pensioners had to book a free hearing test at an AudioClinic or HearingLife hearing clinic before the deadline in the advertisement, when in fact there was no deadline to obtain a fully-subsidised hearing aid under the Hearing Program. They also claimed that the hearing aids included specific wireless technology, when in fact this was only available separately at an extra cost. The advertisements also claimed that any user of the hearing aid would no longer miss any conversations, when in fact this may depend on a person's individual circumstances and the nature of their hearing impairment.

It was determined that both companies had targeted and misled consumers who were vulnerable. Both companies were ordered to pay penalties of \$2.5 million and publish corrective notices.

Australian Competition and Consumer Commission v Oticon Australia Pty Limited [2018] FCA 1826

Consumer guarantees

Consumer guarantees are a set of rules that apply to goods and services purchased by consumers under the ACL. These rules set out the circumstances under which a business is required to provide a consumer with a remedy.

The consumer guarantees automatically apply regardless of any voluntary or extended warranty given by a seller or manufacturer of goods and services, or if such a warranty has expired.

If a business fails to meet one or more of the consumer guarantees, the consumer is entitled to a remedy – a repair, replacement or refund, a further service to rectify the problem, cancelling a service and compensation for any consequential loss. The ACL prohibits making a false or misleading representation about the existence, exclusion or effect of consumers' rights under the consumer guarantees.

You can find more information about your responsibilities under the consumer guarantees on the ACCC website: www.accc.gov.au/business/treating-customers-fairly.

► **CASE STUDY:** [Live Life Alarms infringement notices \(2020\)](#)

In September 2020, Flight Plan Digital Pty Ltd (trading as Live Life Alarms) paid penalties totalling \$25,200 after the ACCC issued it with 2 infringement notices for alleged false or misleading representations made on its website. Live Life Alarms sold emergency 'SOS' alarms which are typically used by the elderly and people with disabilities to contact friends, family or emergency services if they require urgent assistance.

On its website, Live Life Alarms stated its system came with a '14 day money back guarantee' which entitled consumers to a full refund if they were not satisfied with the product. This was in addition to consumers' rights under the ACL. The ACCC alleged that when consumers exercised their rights under that guarantee, almost 20% of the original purchase price was deducted from the amount refunded. The ACCC also alleged that Live Life Alarms published a false testimonial on its website.

Unfair contract terms

The ACL protects consumers from unfair terms in standard form contracts. A standard form contract is one that has been prepared by one party to the contract and where the other party has little or no opportunity to negotiate the terms – that is, it is offered on a ‘take it or leave it’ basis.

A term may be unfair if it causes a significant imbalance between the rights and obligations of each party, is not reasonably necessary to protect the interests of the business and causes any detriment to the consumer or small business. Only a court or tribunal can decide whether a term is unfair. If a term is found to be unfair, the term will be void – this means it is not binding on the parties.

You can find more information about unfair contract terms on the ACCC website: www.accc.gov.au/business/unfair-business.

► CASE STUDY: [ACCC v Chrisco Hampers Australia Ltd \(2016\)](#)

Chrisco Hampers Australia Limited (Chrisco) promotes and supplies goods, including Christmas Hampers, to consumers in most areas of Australia including regional areas and remote Indigenous communities. Consumers are able to purchase the Christmas hampers through a layby agreement, allowing them to pay it off over time.

In proceedings brought by the ACCC, the Court ordered Chrisco to pay a pecuniary penalty of \$200,000 for making a false or misleading representation that customers could not cancel their lay-by agreements after making their final payment.

The Court also found Chrisco’s 2014 lay-by agreement contained an unfair contract term. The term allowed Chrisco to continue to take payments by direct debit after the consumer had fully paid for their lay-by order. Consumers were required to ‘opt out’ in order to avoid having further payments automatically deducted by Chrisco after their lay-by had been fully paid.

In 2020, Chrisco provided a [court-enforceable undertaking](#) to the ACCC in which it acknowledged that a term in its lay-by agreements for Christmas hampers and other items, known as a ‘HeadStart Plan’, may be an unfair contract term.

Australian Competition and Consumer Commission v Chrisco Hampers Australia Limited (No 2) [2016] FCA 144

Harassment and coercion

All businesses have the right to market their goods or services and reasonably pursue debts owed to them. However, the ACL prohibits the use of undue harassment or coercion in connection with the supply or payment for goods or services. This is especially important when dealing with consumers experiencing vulnerability.

Coercion involves actual or threatened force or pressure that restricts a person’s choice or freedom to act. Physical force must never be used when selling and is prohibited. You should also be aware that actions that may be thought of as reasonable for most consumers may distress or intimidate consumers experiencing vulnerability.

Undue harassment means unnecessary or excessive contact or communication calculated to intimidate or demoralise, tire out or exhaust a person. Undue harassment may occur when repeated approaches are made or pressure is applied to a person, going beyond what is acceptable or reasonable. When a consumer is vulnerable, the threshold for what is unreasonable may be lower.

► **CASE STUDY:** [ACCC v ACM Group Ltd \(ACM\) \(2018\)](#)

ACM Group Ltd, a debt collection firm, continually harassed and intimidated a resident in a care facility who had difficulty speaking after suffering multiple strokes. ACM also gave false information and made empty threats of court action towards a single parent with limited income for unpaid mobile services debt when that was not being considered.

The actions by ACM against these 2 vulnerable consumers led to penalties of \$750 000 and considerable negative publicity.

Australian Competition and Consumer Commission v ACM Group Limited (No 3) [2018] FCA 2059

Unconscionable conduct

Unconscionable conduct includes actions which are so harsh that they are against good conscience, as judged against the norms of society. Whether conduct is unconscionable is judged against all the circumstances of the issue in question.

The ACL sets out factors the courts may consider in deciding whether conduct is unconscionable, including but not limited to:

- the relative bargaining strength of the parties
- whether any unreasonable (including unnecessary) conditions were imposed on the consumer
- whether the consumer was able to understand the documentation provided
- the use of any undue influence or pressure tactics
- the price or other terms on which the consumer could have bought the same or equivalent goods or services from another business
- whether the business was prepared to negotiate
- whether the business acted in good faith.

The courts may also consider any other factors that are relevant to the circumstances that led to consumer harm.

► CASE STUDY: Training providers and VET-FEE HELP (2017-2021)

The ACCC has taken legal action against a number of online course and training providers for conduct engaged in when enrolling consumers under the VET-FEE HELP loan program. These providers used unfair sales tactics against vulnerable consumers by enrolling them in courses through the use of false information and pressure sales tactics and incentives. The providers failed to properly explain to consumers the debt that they would incur if they enrolled in a course, resulting in consumers accruing thousands of dollars in VET-FEE HELP debt.

These providers targeted consumers with poor English, literacy or numeracy skills, those in low income areas and others who could not use a computer or did not have access to the internet. Some providers paid substantial commissions to third party agents and recruiters to enrol consumers in courses, and used recruiters who were not adequately trained.

These providers acted unconscionably by targeting people in vulnerable positions while also breaching the unsolicited consumer agreements provisions of the ACL. Many of these providers were ordered to pay millions of dollars in penalties and have since ceased operating.

One of the training providers, Unique International College Pty Ltd, was ordered to pay \$4.165 million in penalties for engaging in unconscionable conduct against 5 consumers, making false or misleading representations to 4 of these consumers, and breaching the unsolicited consumer agreements provisions in relation to 6 consumers.

Australian Competition and Consumer Commission v Productivity Partners Pty Ltd (trading as Captain Cook College) (No 5) [2021] FCA 919

Australian Competition and Consumer Commission v Unique International College (No 7) [2017] FCA 1289

Australian Competition and Consumer Commission v Australian Institute of Professional Education Pty Ltd (in liq) (No 3) [2019] FCA 1982

Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 5) [2019] FCA 1544

Unsolicited selling

Approaching consumers at unexpected times or locations, such as their home, may increase vulnerability. Consumers are more likely to feel pressured to make a decision quickly, put-on-the-spot or be unprepared to make a decision. If a consumer relies on a support person who is not available at the time, they may be unable to make an informed decision.

As such, when selling goods or services door-to-door, through telemarketing or other forms of direct selling, there are specific obligations in the ACL you must comply with. These include specific contact hours, providing cooling off periods to allow consumers to reconsider their decisions and providing documents to help them understand what they are agreeing to.

You can find more information on your obligations when engaging in unsolicited selling on our website: www.accc.gov.au/sellingdoortodoor.

► **CASE STUDY:** [ACCC v Superfone \(2021\)](#)

In March 2021, telecommunications provider Superfone was ordered to pay \$300,000 in penalties for making false and misleading representations and breaching laws designed to protect consumers from unsolicited telemarketing sales.

Between June 2017 and December 2018, Superfone cold-called more than 1,400 consumers, including many elderly consumers, to sell telecommunication services.

During these calls Superfone made false or misleading representations to consumers and failed to inform them of their cooling off rights as required under the ACL.

The Federal Court found that Superfone's customer base tended to show that Superfone targeted vulnerable consumers, or at least was only successful in securing unsolicited agreements with vulnerable consumers who were less capable of protecting their consumer rights.

Australian Competition and Consumer Commission v Superfone Pty Ltd [2021] FCA 278

Penalties for non-compliance

If a business breaches the ACL they may face legal action and penalties. The court may order financial penalties, corrective advertising and for the business to put in place certain measures to ensure they do not behave in the same manner again. Directors of businesses can also open themselves up to penalties including fines or orders preventing them from running a business.

If a business takes advantage of a consumer experiencing vulnerability in the course of contravening the ACL, a court is likely to take that into account when determining the appropriate penalty.

The maximum penalties per breach of relevant provisions of the ACL for individuals is \$500 000 and for corporations, will be the greater of:

- \$10,000,000
- 3 times the value of the benefit received, or
- 10% of annual turnover in the preceding 12 months, if the court cannot determine benefit obtained from the offence.

For more information on penalties see: www.accc.gov.au/penalties.

► **CASE STUDY:** [ACCC v Telstra \(2021\)](#)

Telstra admitted that between January 2016 and August 2018, it breached the Australian Consumer Law and acted unconscionably when sales staff at 5 licensed Telstra-branded stores signed up 108 Indigenous consumers to multiple post-paid mobile contracts which they did not understand and could not afford.

Sales staff in these stores misrepresented products as being free, manipulated credit assessments in order to sell products the consumer could not afford and did not adequately explain the cost of the contracts to consumers.

The court determined that Telstra had acted unconscionably. It did this by exploiting the social, language, literacy and cultural vulnerabilities of their Indigenous customers. The court also commented that the unconscionable conduct was exacerbated by inadequate systems, such as improper sales incentives, and lack of supervision.

Telstra agreed to pay a fine of \$50 million, provide remediation to affected consumers, improve its existing compliance program, review and expand its Indigenous telephone hotline, and enhance its digital literacy program for consumers in certain remote areas.

Australian Competition and Consumer Commission v Telstra Corporation Limited [2021] FCA 502

Dispute resolution

The way a business handles complaints and disputes can exacerbate vulnerability or assist consumers experiencing vulnerability to resolve issues when things go wrong. You should have a clear and easy to access complaints handling and dispute resolution policy.

You should make sure:

- the business is easy to contact, ideally with multiple contact methods available to consumers to accommodate different accessibility needs
- it is easy for consumers to access your complaint process
- there are proper systems in place to handle and escalate consumer complaints
- your staff are aware of all applicable legal requirements for complaints handling and dispute resolution
- your processes are able to identify and correct any business practices which will lead to negative outcomes for consumers.

You can also join an external dispute resolution scheme, such as a relevant ombudsman, if there is one available. They will be able to help provide impartial dispute resolution, should it become necessary. If a dispute is referred to a third party, such as a state based consumer agency or ombudsman, you should engage actively with the dispute resolution process and attempt to resolve the dispute.

Mistakes can happen, but if you handle consumer complaints early and proactively, you can improve consumer outcomes and trust in your business.

Accessibility support

National Relay Service

If you are engaging with consumers who are deaf or find it hard hearing or speaking with people on the phone, you should consider referring them to the National Relay Service (NRS). The NRS has specially trained staff who help to change voice to text or text to voice and AUSLAN to English or English to AUSLAN. Consumers will need to register with the NRS to access its services and can contact the NRS through the following numbers:

Voice Relay number 1300 555 727 (TTY 133 677) and SMS relay number 0423 677 767.

Translating and Interpreting Service

The Translating and Interpreting Service (TIS) is available to help you communicate with your customers from culturally and linguistically diverse backgrounds. TIS offers 160 different languages and are available for immediate and pre-booked phone or on-site conversations.

You can contact TIS on 131 450.

Where can I get more information?

This guide is not a comprehensive guide to all of your obligations under the Competition and Consumer Act, the ACL and other regulations. You should ensure you fully understand your responsibilities to consumers.

For more information on the Competition and Consumer Act and the ACL, visit the ACCC website www.accc.gov.au/business.

You can receive regular updates by signing up to the Small Business Information Network at www.accc.gov.au/media/subscriptions/small-business-information-network.

For more information on your responsibilities when selling goods and services to consumers with a disability you can find ACCC resources at www.accc.gov.au/disabilityresources.

For more information on the National Disability Insurance Scheme (NDIS) and your responsibilities to consumers, visit the NDIS Quality and Safeguards Commission website www.ndiscommission.gov.au and the National Disability Insurance Agency (NDIA) website www.ndis.gov.au.

For information about protecting your customers from scams go to www.scamwatch.gov.au.

For other business information go to www.business.gov.au.

The Australian Human Rights Commission

In some cases, discriminating against consumers who experience vulnerability may break the law. This could include refusing to deal with a consumer or treating them less favourably than other consumers.

The Human Rights Commission can help you with any questions in relation to anti-discrimination laws. You can contact the Human rights Commission by calling 1300 369 711 (TTY 1800 620 241) or visit www.humanrights.gov.au.

Rate your business's approach to vulnerability

You can use the list below to assess your business's approach to vulnerability and identify areas for improvement. For the areas that 'need attention' there will be a higher likelihood of consumer vulnerability.

Before transaction	Needs attention	Satisfactory	Good
Business practices, such as staff incentives and selling practices, accommodate the needs of consumers.	☐	☐	☐
Systems or policies for identifying when a consumer may be experiencing vulnerability are in place and effectively implemented.	☐	☐	☐
Consumer information is easy to understand, upfront, accessible, uses plain language and is easy to compare.	☐	☐	☐
Information is available to help consumers, including in many languages.	☐	☐	☐
Marketing and pricing information is transparent, accurate and easy to understand.	☐	☐	☐
Digital content is accessible in many formats (such as compatibility with screen readers and magnification functions).	☐	☐	☐
Staff are trained regularly and understand their obligations under the Australian Consumer Law, anti-discrimination and other relevant laws.	☐	☐	☐
Staff are trained to engage sensitively with consumers experiencing vulnerability.	☐	☐	☐
Policies are in place to assist consumers who wish to have third parties act on their behalf.	☐	☐	☐
After transaction			
Hardship, debt collection or other policies are in place to assist consumers whose financial situation changes.	☐	☐	☐
Debt collection and other policies provide clear information about consequence for late payments and how to access hardship programs.	☐	☐	☐
Clear refund or returns policy consistent with the Australian Consumer Law	☐	☐	☐
A variety of contact channels and details for consumers (such as phone, in person, online chat and email) are available and accessible.	☐	☐	☐
Dispute resolution policies set out clear processes for consumers, escalation points, and access to external dispute resolution.	☐	☐	☐
Dispute resolution is accessible and timely.	☐	☐	☐
Seek feedback regularly to help improve your business practices, products and services.	☐	☐	☐



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