



Consumer protection and the Trade Practices Act

Want to know about your consumer rights?

Need more information about how businesses should act when selling you goods and services?

The *Trade Practices Act 1974* (the Act) sets out the ground rules for trading between businesses and consumers. Under the Act, consumers have a right to accurate and truthful information about their purchases from businesses. This fact sheet contains information that will help you recognise unlawful selling practices.

Businesses must not mislead or deceive consumers

If a business makes false statements in their promotions or conversations about the price, value or the quality of the good or service, then the conduct is likely to breach the Act (s. 52).

Examples of misleading or deceptive conduct include:

- false statements about why the business is having a sale such as 'Closing Down Sale', 'Stocktake Sale' or 'Liquidation Sale'
- failing to include in advertisements that sale stock is limited in number or available only for a limited time
- using two price advertising with discount prices being compared with 'former' 'usual' or 'RRP' prices and with no real savings to customers (see right).

It makes no difference whether or not the business meant to mislead or deceive you, as it is how you perceived the conduct that matters.

It is also unlawful to make particular types of false or misleading representations, such as claims about a product's value, price, quality, place of origin or effect on the environment (s. 53).

Bait advertising

It is unlawful for businesses to advertise goods at a special price if the business is aware or should be aware that they are unable to supply reasonable quantities for a reasonable time (s. 56 of the Act). This practice is known as bait advertising.

Bait advertising involves a business using 'special prices' in advertisements to attract consumers into a store. When the consumer tries to buy the specially priced item they are told it is sold out and are instead offered a regular priced one.

If a business cannot demonstrate that they made the special offer with reasonable means of meeting the expected demand, it may be that the special offer is bait advertising.

What is unconscionable conduct?

Whenever you strike a deal for the sale of goods or services it is unlawful for a business to use its superior bargaining power in a way that is unconscionable.

For example, if there is a difference between a business's and a consumer's ability to make a deal as a result of the consumer not being provided with adequate information to understand the deal, or an inherent characteristic of the consumer (i.e. the consumer may have a disability) a business cannot use this power in a way that is harsh or oppressive. If they do so, the conduct may be considered to go beyond mere hard bargaining and be unconscionable.

Comparative advertising – two price advertising

Many consumers are attracted to products that compare discounted prices such as 'WAS \$7 – NOW \$6' or 'SAVE 50% OFF RRP'. This type of advertising is called comparative advertising or two price advertising.

Comparative advertising is lawful provided the business makes sure that the information is accurate, the basis for calculating the discount is clear, the prices used for comparison are real and the goods are available for a reasonable time in reasonable quantities. If any of this information is incorrect it is likely that the business engaged in misleading or deceptive conduct.

Dealings that risk being unconscionable

Examples of dealings between a business and a consumer that may raise concerns under the unconscionable conduct provisions of the Act include:

- a business failing to disclose key contractual terms
- a business taking advantage of a low income consumer by making false statements about the real cost of a low price loan
- a business not properly explaining the conditions of a contract to a consumer they know does not speak English or has a learning disability.

What can be done?

By the ACCC

The ACCC can take action in court against corporations and individuals involved in breaches of the Act and can apply to the court for an injunction and other orders. In enforcing consumer protection laws, the ACCC generally acts only against conduct that is industry-wide or that affects many consumers. This ensures it uses its resources effectively.

If you observe misleading conduct, bait advertising or unconscionable conduct let the ACCC know as such information is invaluable in preventing such conduct.

Private action

If you have suffered a loss you may be able to bring a private action under the Act. If the court considers the conduct to be unlawful it can order damages, injunctions and other orders against the business.

If you have lost money as a result of the conduct you may need to seek legal advice about taking court action. Alternatively, you may be able to lodge a claim in your local small claims tribunal.

Further information

Further information on consumer protection may be obtained by contacting the ACCC or the office of fair trading in your state. In some circumstances, the office of fair trading can help consumers to resolve issues with businesses or provide information about lodging claims in the Small Claims Tribunal.

ACCC contacts

ACCC Infocentre
1300 302 502

ACCC website
www.accc.gov.au

Publications to help consumers understand their rights under the Trade Practices Act

The ACCC has several consumer publications available, including:

Know how to complain: stand up for your consumer rights

ACCC update (magazine)

Your online rights

Publications can be ordered through the ACCC Infocentre or you can download electronic copies for free from the ACCC website.

Important notice

The information in this fact sheet is for general guidance only. It reflects the ACCC's views on what is required to comply with certain provisions of the Act. It does not constitute legal advice and should not be relied on as a statement of the law relating to the Act. You should obtain legal advice if there is doubt about whether any conduct may breach the Act.

Other federal or state-based laws may impose additional requirements or responsibilities on your businesses when dealing with other businesses or consumers, beyond the requirements of the *Trade Practices Act 1974*.