



The Australian Consumer Law Competition & Consumer Act 2010 (Schedule 2)

Points of Interest to CCAWA members



This is a review of the Australian Consumer Law of Schedule 2 the Competition & Consumer Act of 2010. This document presents aspects of relevant points of the Act of consumer law that may affect how we trade with consumers in our industry.

The CCAWA does not interrupt the Act or define certain laws that might differ from what is written. Rather, this document highlights sections of the Act that relate to items 3, 5 and 8 of the CCAWA ethics as it says to....

- 3. Act and always operate your businesses in an honest and ethical manner.***
- 5. Comply with all local, state, and federal government legislations***
- 8. Observe and comply with all occupational health and safety, environmental protection, trade practice and industry employment award requirements.***

Though the association can assist with published legislative documentation, members are encouraged to seek legal representation when seeking advice concerning consumer law.

Chapters within the Act that may affect how we trade.

Chapter 1. Definitions.
Chapter 4. Misleading representations with respect to future matters.
Chapter 10. Asserting a right to payment.
Chapter 13. Loss or damage to include injury.
Chapter 18. Misleading or deceptive conduct.
Chapter 20. Unconscionable conduct.
Chapter 22. Unconscionable conduct in business transactions.
Chapter 29. False or Misleading representation of goods or services.
Chapter 34. Misleading conduct as to the nature est.. of services.
Chapter 35. Bait and switch advertising.
Chapter 49. Referral selling.
Chapter 50. Harassment and coercion.
Chapter 60. Guarantee as to due care and skill
Chapter 61. Guarantees as to fitness for a particular purpose etc .
Chapter 101. Consumer may request an itemised bill.
Chapter 107. Supplying etc. product related services that do not comply with safety standards .
Chapter 135. Declaring information standards for goods and services .
Chapter 137. Supplying etc. services that do not comply with information standards .
Chapter 151. False or misleading representations about goods or services .

How certain sections of the Act relates to CCAWA documentation.

One of the great benefits of being a member of the CCAWA is the fact that the association has done a great deal of groundwork preparing the membership to secure and enforcing the readiness of safety requirements of what we all do! An example of this as for the associations Health, Safety and Environmental Management System (*the HSE*).

What the membership may not realise is that our constitutional requirements of adhering to the *HSE* is in fact complying with some of the laws mention in the Consumer Act. Without it, as some unregistered carpet cleaners have found to their detriment, severe penalties can be imposed where breaches of the Act have occurred.

Also ones public liability insurance policy can be challenged if a consumer law may have been breached.

An example of a CCAWA requirement that crosses a consumer law;

Section 11.3 of the HSE. Electrical Safety Section.

1. General

All electrical equipment and leads must be in good condition and inspected, tested and tagged as specified in AS/NZS 3760:2010.

Leads that pass-through doorway or across traffic areas shall be protected.

Double adaptors and piggyback leads shall not be used – use approved sub boards only.

All electrical outlets where portable electrical equipment may be connected shall be protected by Residual Current Devices (RCD's) or Earth Leakage Circuit Breakers (ELCB's) either on the switchboard, at the socket supply or by using a portable device.

Section 107 of the Act; Supplying etc.

Product related services that do not comply with safety standards.

- (1) *A person must not, in trade or commerce, supply product related services of particular kind if:*
- (a) *a safety standard for services of that kind is in force; and*
 - (a) *those services do not comply with the standard.*

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

Note: Definition of 'Product Related Services' means a service for or relation to the maintenance, repair or cleaning of consumer goods of a particular kind.

So, as you can see with this example, the importance of complying with the CCAWA's *HSE* will safeguard against a possible breach of the Consumer Act . It can also prevent physical or financial detriment as a result of your business activity.

Chapter 1. Definitions in the Act that relate to our industry.

ABN - has the meaning given by section 41 of the A New Tax System (Australian Business Number) Act 1999.

Applicable Industry Code- has the meaning given by section 51ACA(1) of the Competition and Consumer Act.

ASIC- means the Australian Securities and Investments Commission.

Authority, in relation to a State or a Territory (including an external Territory), means:

- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or
- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

Express Warranty, in relation to goods, means an undertaking, assertion or representation:

- (a) that relates to:
- (ii) the provision of services that are or may at any time be required for the goods;

Product related service

- (b) the maintenance, repair or cleaning of consumer goods of a particular kind.

Safety standard

(104.1) The Commonwealth Minister may, by written notice published on the internet, make a safety standard for one or both of the following:

- (b) product related services of a particular kind.

(105.1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument:

- (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
- (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

Unsolicited Services- means services supplied to a person without any request made by the person or on his or her behalf.

Chapter 4. Misleading representations with respect to future matters.

- (1) If:
 - (a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and
 - (b) the person does not have reasonable grounds for making the representation; the representation is taken, for the purposes of this Schedule, to be misleading.

(2) of Chapter 4 has more 'definitions' as to the meaning of representation as it says;

the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.

Note: Definitions of 'Representation'.

1. *The action of speaking or acting on behalf of someone or the state of being so represented.*
2. *The description or portrayal of someone or something in a particular way.*

(3) To avoid doubt, subsection (2) does not:

- (a) have the effect that, merely because such evidence to the contrary is adduced, the person who made the representation is taken to have had reasonable grounds for making the representation; or (b) have the effect of placing on any person an onus of proving that the person who made the representation had reasonable grounds for making the representation.

Chapter 4. Misleading representations with respect to future matters. Cont..

4. Subsection (1) does not limit by implication the meaning of a reference in this Schedule to:

- (a) a misleading representation; or
- (b) a representation that is misleading in a material particular; or
- (c) conduct that is misleading or is likely or liable to mislead; and, in particular, does not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

Note: This chapter is included in this review to ascertain the law in regards to a possible accusation of misleading statement/s of a member towards a consumer in regards to services he/she might have performed. The consumer might have adduced that a member offered as example, reason, or proof in discussion or analysis and given evidence in support of a theory which to the consumer might be deemed misleading. But subsection 4 latter of (c) does include that not imply that a representation that a person makes with respect to any future matter is not misleading merely because the person has reasonable grounds for making the representation.

In any case, legal representation might be required for advise before addressing such an issue.

Chapter 10. Asserting a right to payment.

- (1) A person is taken to assert a right to payment from another person if the person:
 - (a) makes a demand for the payment or asserts a present or prospective right to the payment; or
 - (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
 - (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
 - (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
 - (e) sends any invoice or other document that: (i) states the amount of the payment;

and does not contain a statement, to the effect that the document is not an assertion of a right to a payment, that complies with any requirements prescribed by the regulations.

Note: Meaning of Asserts; State a fact or belief confidently and forcefully. Etc

Chapter 13. Loss or damage to include injury.

- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

Chapter 18. Misleading or deceptive conduct.

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Chapter 20. Unconscionable conduct.

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

Chapter 20. Unconscionable conduct. Cont.....

(21.2) Without in any way limiting the matters to which the court may have regard for the purpose of determining whether a person (the supplier) has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (the consumer), the court may have regard to:

- (a) the relative strengths of the bargaining positions of the supplier and the consumer; and
 - (b) whether, as a result of conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services.
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Chapter 22. Unconscionable conduct in business transactions

- (j) if there is a contract between the supplier and the business consumer for the supply of the goods or services:
 - (k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the business consumer for the supply of the goods or services;
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Chapter 29. False or Misleading representation of goods or services.

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
 - (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.
 - (i) make a false or misleading representation with respect to the price of goods or services;
 - (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (*including a guarantee under Division 1 of Part 3-2*)
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Chapter 34. Misleading conduct as to the nature est.. of services.

A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Note: A pecuniary penalty may be imposed for a contravention of this section.

Chapter 35. Bait and switch advertising.

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
 - (a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
 - (i) the nature of the market in which the person carries on business; and

Chapter 35. Bait and switch advertising. Cont...

- (ii) the nature of the advertisement; and
 - (b) the person is aware or ought reasonably to be aware of those grounds. Note: A pecuniary penalty may be imposed for a contravention of this subsection.
- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:
- (a) the nature of the market in which the person carries on business; and
 - (b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

Chapter 49. Referral selling.

A person must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for:

- (a) giving the person the names of prospective customers; or
- (b) otherwise assisting the person to supply goods or services to other consumers; if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Note: A pecuniary penalty may be imposed for a contravention of this section.

Chapter 50. Harassment and coercion.

- (1) A person must not use physical force, or undue harassment or coercion, in connection with:
- (a) the supply or possible supply of goods or services; or
 - (b) the payment for goods or services;
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Chapter 60. Guarantee as to due care and skill.

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

Chapter 61. Guarantees as to fitness for a particular purpose etc .

- (1) If:
- (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and
 - (b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer; there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.
- (2) If: (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and (b) the consumer makes known, expressly or by implication, to: (i) the supplier; or (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made.

Chapter 61. Guarantees as to fitness for a particular purpose etc . Cont...

the result that the consumer wishes the services to achieve; there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

- (3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.
- (4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

Chapter 101. Consumer may request an itemised bill.

- (1) If a person (the supplier), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that:
 - (a) specifies how the price of the services was calculated; and
 - (b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
 - (c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.
- (2) The request under subsection (1) must be made within 30 days after:
 - (a) the services are supplied; or
 - (b) the consumer receives a bill or account from the supplier for the supply of the services; whichever occurs later.
- (3) The supplier must give the consumer the itemised bill within 7 days after the request is made.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (4) The supplier must not charge the consumer for the itemised bill.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (5) The supplier must ensure that the itemised bill is transparent.

Chapter 107. Supplying etc. product related services that do not comply with safety standards .

- (1) A person must not, in trade or commerce, supply product related services of particular kind if:
 - (a) a safety standard for services of that kind is in force; and
 - (b) those services do not comply with the standard.
- (2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).
- (3) If:
 - (a) a person supplies product related services in contravention of this section; and
 - (b) another person suffers loss or damage:
 - (i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
 - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or
 - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and
- (c) the other person would not have suffered the loss or damage if the services had complied with the safety standard; and the other person is taken, for the purposes of this Schedule, to have suffered the loss or damage because of that supply.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

Chapter 135. Declaring information standards for goods and services.

- (1) The Commonwealth Minister may, by written notice published on the internet, declare that the following is an information standard for goods or services of a kind specified in the instrument.
 - a) a particular standard, or a particular part of a standard, prepared or approved by Standards Australia International Limited or by an association prescribed by the regulations;
 - b) such a standard, or such a part of a standard, with additions or variations specified in the notice.
 - (2) The Commonwealth Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for:
 - (a) goods of a particular kind; or
 - (b) services of a particular kind; if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).
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Chapter 137. Supplying etc. services that do not comply with information standards.

- (1) A person must not, in trade or commerce, supply services of a particular kind if:
 - (a) an information standard for services of that kind is in force; and
 - (b) the person has not complied with that standard.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person must not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (3) If:
 - (a) a person (the supplier) supplies services in contravention of subsection (1) or (2) and
 - (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the services; and
 - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard; the other person is taken, for the purposes of this schedule, to have suffered the loss or damage because of that supply
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Chapter 151. False or misleading representations about goods or services .

- (1) A person commits an offence if the person, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:
 - (b) makes a false or misleading representation that services are of a particular standard, quality, value or grade; or
 - (l) makes a false or misleading representation concerning the need for any goods or services; or
 - (m) makes a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); or
 - (n) makes a false or misleading representation concerning a requirement to pay for a contractual right that:
 - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
 - (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000.