

Fact Sheet LP07

Consumer Protection



Trade Practises Act 1974 (Commonwealth)

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair-trading and provision for consumer protection.

The act stipulates unfair practises as:

Sec	Sub-Title
52.	Misleading or deceptive conduct
53.	False or misleading representations
53A.	False representations and other misleading or offensive conduct in relation to land
53B.	Misleading conduct in relation to employment
53C.	Cash price to be stated in certain circumstances
54.	Offering gifts and prizes
55.	Misleading conduct to which Industrial Property Convention applies
55A.	Certain misleading conduct in relation to services
56.	Bait advertising
57.	Referral selling
58.	Accepting payment without intending or being able to supply as ordered
59.	Misleading representations about certain business activities
60.	Harassment and coercion
63A	Unsolicited credit and debit cards
64.	Assertion of right to payment for unsolicited goods or services or for making entry in directory
65.	Liability of recipient of unsolicited goods
65A.	Application of provisions of Division to prescribed information providers.

The following information has been extracted from Trade Practises Act 1974 but words, phrases, sentences and punctuation have been simplified.

Section 52 Misleading or deceptive conduct

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Section 53 False or misleading representations

A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services:

- Falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- Falsely represent that services are of a particular standard, quality, value or grade;
- Falsely represent that goods are new;
- Falsely represent that a particular person has agreed to acquire goods or services;
- Represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- Represent that the corporation has a sponsorship, approval or affiliation it does not have;

Examples

(Provided by D.Healey, Sport and the Law, 1996)

Advertising by 'World Series Cricket' which utilised phrases such as 'Super Tests' and 'played under test match conditions' was found to be misleading.

- A company which manufactured cricket helmets was taken to court because the boxes in which the cricket helmets were sold featured pictures of two well-known cricket stars **wearing helmets of another company**. Purchasers of cricket helmets may be fooled into believing they were buying the product that was endorsed by test cricketers.
- Tracey Wickham, a former swimming star, sued a pool company for continuing to trade under the name "Tracey Wickham Pools" after a sponsorship contract between the two parties had lapsed.

Section 53B Misleading conduct in relation to employment

A corporation shall not engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Section 54 Prizes and Gifts

A corporation shall not offer gifts, prizes or other free items with the intention of not providing them, or of not providing them as offered.

Section 55A Certain misleading conduct in relation to services

A corporation shall not engage in conduct that is liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose or the quantity of any services.

Section 56 Bait advertising

A corporation shall not advertise for supply at a specified price, goods or services without reasonable grounds for believing that the supply of such goods or services can be made at the **price offered**, for the **period stated** and in **sufficient quantities** that are reasonable having regard to the nature of the market.

Section 58 Accepting payment without intending or being able to supply as ordered

A corporation shall not accept payment for goods or services where, at the time of the acceptance:

- (a) The corporation intends:
 - (i) not to supply the goods or services; or
 - (ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or
- (b) There are reasonable grounds for believing that the corporation will not be able to supply the goods or services within the period specified.

Section 59 Misleading representations about certain business activities

A corporation shall not make a representation that is false or misleading in respect to the profitability or risk of a business activity that the corporation states can be carried on from a person's place of residence.

Where a corporation invites persons to engage in a business activity requiring the person to work or to invest money, the corporation shall not make misleading statements about the profitability of the business activity.

Section 60 Harassment and coercion

A corporation shall not use physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or **the payment for goods or services by a consumer**.

63A Unsolicited credit and debit cards

A corporation shall not send a prescribed card to a person except:

- (a) In pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or
- (c) In renewal or replacement for a card previously sent in pursuance of a request in writing by the person and used for the purpose intended

Refunds

A consumer is entitled to a refund when:

- The product is faulty or damaged: the article is broken or will not work
- The product is unfit for the purpose: this means the item will not do what it is supposed to do.
- The product does not agree with the description: for example, leather upper and vinyl shoe is not an all leather shoe.
- The product does not comply with the sample you were shown: What you were given was different from the one on display.

A consumer, is NOT entitled to a refund if:

- You changed your mind - After you purchased the item
- You found it cheaper elsewhere - e.g. it was \$10 cheaper at the shop around the corner.
- You decided it was too expensive - You realise it was too expensive for you.
- You knew about that particular fault prior to purchase.
- You were responsible for causing the fault.

Government Departments

Respective government departments that deal with consumer protection are as follows:

FEDERAL GOVERNMENT:

Australian Competition and Consumer Commission (ACCC)

QUEENSLAND GOVERNMENT:

Office of Fair Trading