

FACT SHEET

Consumer protection in Australia

1. Background

1.1 At its meeting held on 25 October 2010, the Panel on Economic Development requested the Research Division to provide information on selected places where consumers are protected by cooling-off arrangements and consumer protection laws in addition to sector-specific regulatory measures. As such, the purpose of this fact sheet is to discuss the consumer protection regime in Australia, which has long been governed by generic consumer protection laws supplemented by regulations specific to a particular market or industry. Australia's consumer protection legislation also contains provisions setting out the cooling-off arrangements for some consumer agreements.

2. Development of consumer protection legislation

2.1 In 1974, Australia enacted the *Trade Practices Act* (TPA) as the first Commonwealth legislation specifically designed to provide a national framework for consumer protection. Before that, the primary means of protecting consumers had been through common law and State legislation. From the beginning, Australia designated TPA as a generic consumer protection law built around broad duties and general market conduct prohibitions. This approach was different from the regulatory regimes adopted in many developed countries which featured prominently the reliance on sector- and/or product-specific regulations to define acceptable market behaviour and/or product characteristics in particular industries.

2.2 As a generic consumer protection law, TPA dealt with almost all aspects of the marketplace such as anti-competitive conduct, misleading or deceptive conduct and unfair practices, industry codes, mergers and acquisitions of companies, product safety, product labelling, price monitoring, and the regulation of industries such as telecommunications, gas, electricity and airports. Nevertheless, financial services were expressly exempted from the consumer protection provisions of TPA¹. The regulation of the safeguard of consumption of such services fell within the ambit of another generic consumer law – the *Australian Securities and Investments Commission Act 2001* (ASIC Act) – which largely mirrors the consumer protection provisions of TPA.

2.3 In 2010, the Australian Parliament passed the Trade Practices Amendment Bill 2009 to rename TPA as the *Competition and Consumer Act 2010* and establish a new *Australian Consumer Law* as Schedule 2 to the new Act. The Bill also amended the ASIC Act to include corresponding consumer protection provisions of the *Australian Consumer Law* so that financial products and services would be treated in the same way as other goods and services.

2.4 The *Australian Consumer Law*, which came into effect on 1 January 2011, introduces important changes to make unfair terms in consumer contracts void, and institutes new penalties and consumer redress options. Such changes include the imposition of civil penalties of a maximum fine of AUS\$1.1 million (HK\$8.4 million) for companies and AUS\$220,000 (HK\$1.7 million) for individuals in the cases of unfair practices, pyramid selling, providing false or misleading information, or other contraventions of the Australian Consumer Law. Previously, an order for financial penalties for consumer protection was possible only by bringing criminal proceedings. In addition, the *Australian Consumer Law* empowers the regulator(s) to apply to a court for orders to give redress to persons not named in the proceedings for a breach of the *Law*.

¹ The exemption was introduced in response to the Wallis inquiry that recommended the creation of a separate industry-specific regulator (the Australian Securities and Investments Commission) for financial services. In 1996, Stan Wallis was commissioned by the Australian Department of the Treasury to conduct an inquiry into the development of Australia's financial system since its deregulation in the early 1990s.

2.5 In addition, the *Australian Consumer Law* is applied as a Commonwealth law. Each State and Territory has to make the provisions of the *Australian Consumer Law* a law of the respective jurisdiction so that the same consumer protection law applies across Australia. In contrast, they enacted their own *Fair Trading Act* with consumer protection provisions broadly equivalent to those in TPA previously². The prior practice inevitably resulted in variations in different consumer protection laws across Australia, creating additional costs for businesses and increasing uncertainty for consumers.

3. Regulatory framework for consumer protection

3.1 The Commonwealth, State and Territory governments share the responsibility for consumer protection policies in Australia. At the Commonwealth level, the responsibility for consumer policies rests with the Consumer Affairs Division of the Australian Department of the Treasury³. Meanwhile, the State and Territory governments enact and enforce their own consumer protection legislation same as the provisions of the *Australian Consumer Law*.

² The coverage of TPA was subject to the limitations imposed by the Australian Constitution which restricted the application of TPA only to corporations and enterprises trading across state or international borders. Recognizing this, in 1983, the Commonwealth, State and Territory governments agreed to ensure consistency of consumer protection across the jurisdictions. Subsequently, between 1987 and 1992, the State and Territory governments enacted and enforced their own consumer protection provisions through the *Fair Trading Act*.

³ The main functions of the Consumer Affairs Division include (a) consumer protection law reform, (b) consumer education and information, (c) electronic commerce policy and consumer protection, (d) industry self-regulation, (e) product safety and product information standards, (f) consumer representation, and (g) co-ordination of Australia's consumer policy position on international issues.

3.2 Consumer protection law enforcement in Australia is also shared between national regulators and the consumer agencies of the State and Territory governments. At the Commonwealth level, the *Competition and Consumer Act 2010* is administered by the Australian Competition and Consumer Commission. The Commission was established in 1995 as a statutory authority to promote competition and fair trade in market place and regulate national infrastructure industries. Meanwhile, another Commonwealth consumer law – the ASIC Act – is administered by the Australian Securities and Investments Commission. The Commission commenced operation in 1989 as a statutory authority to enforce the investor protection provision of the ASIC Act and regulate Australian companies, financial markets, financial services organizations and professionals. At the State and Territory level, consumer affairs and fair trading authorities enforce consumer protection laws with provisions equivalent to those set out in the Commonwealth consumer protection legislation, together with some jurisdictional industry-specific regulatory regimes.

4. Legislative framework for consumer protection

4.1 In Australia, the *Australian Consumer Law* and the ASIC Act serve as the primary consumer protection legislation and the generic provisions of which are supplemented by regulations specific to a particular market or industry. These specific regulations tend to define acceptable market behaviour or product characteristics and are more prescriptive than the generic consumer protection laws.

4.2 At the Commonwealth level, sectors covered by specific regulations with regard to consumer protection include:

- (a) financial services, administered by the Australian Securities and Investments Commission;
- (b) telecommunications, administered by the Australian Communications and Media Authority and the Australian Competition and Consumer Commission;
- (c) food safety, administered by the Foods Standards Australia New Zealand; and

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- (d) therapeutic goods, administered by the Therapeutic Goods Administration, a unit of the Department of Health and Ageing.

Australian Consumer Law

4.3 The *Australian Consumer Law* generally applies protection to any person or corporation as a consumer of goods and services. In particular, Chapter 2 of the *Law* contains provisions regulating a range of unfair trade practices including:

- (a) a general ban on misleading and deceptive conduct;
- (b) a general ban on unconscionable conduct⁴; and
- (c) a provision that makes unfair contract terms in consumer contracts void.

4.4 In addition, Chapter 3 of the *Australian Consumer Law* creates specific protections for consumers against unfair business practices. Unlike the general protection set out in Chapter 2 of the *Law*, Chapter 3 targets at specific kinds of activities that can be particularly detrimental, such as false or misleading representations in relation to goods, services or land transactions⁵, bait advertising, harassment or coercion, pyramid selling, the supply of unsolicited goods or services, referral selling and falsely offering prizes.

⁴ Unconscionable conduct is unfair or unreasonable conduct in business transactions that goes against good conscience. The exact meaning of "unconscionable conduct" is not defined in the *Australian Consumer Law*. Instead, the *Law* lists several factors that the courts should consider when deciding if a party has acted unconscionably. Such factors are: (a) respective bargaining strengths of the parties, (b) whether undue influence or unfair tactics were used against the consumers, and (c) whether the consumer was required to comply with conditions reasonably necessary for the protection of the other party.

⁵ In connection with the sale or grant of an interest in land, Section 30 of the *Australian Consumer Law* contains provisions preventing making a false or misleading representation with respect to any of the following: the nature of the interest in land, price, location, characteristics or use that can be made of the land, and availability of facilities.

5. Cooling-off arrangements

5.1 According to the Australian Competition and Consumer Commission, the laws in relation to cooling-off arrangements vary among States and Territories. At the Commonwealth level, the *Australian Consumer Law* provides for a national framework governing the application of cooling-off period to some goods and services in various Australian States and Territories. Section 86 of the *Law* provides that a supplier who has entered into an unsolicited consumer agreement must not supply goods or services, or accept or require any payment for those goods or services, for 10 business days. Unsolicited sales practices include door-to-door selling, telephone sales and other forms of direct selling that do not take place in a retail context. During the 10-day cooling-off period, a consumer can cancel the unsolicited agreement without penalty.

5.2 A consumer may terminate an unsolicited consumer agreement even up to three months after it was made if a supplier (a) visited outside permitted selling hours, (b) did not disclose the purpose of the visit, (c) did not produce identification, or (d) did not leave the premises upon request. The termination period is further extended to six months if the supplier (a) did not provide information about cooling-off rights, (b) breached requirements for unsolicited consumer agreements (such as failing to provide a written copy or not including required information), or (c) supplied goods during the cooling-off period.

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