

Fact sheet: Community organisations and the Australian Consumer Law

Overview

This fact sheet will assist community organisations to understand how the Australian Consumer Law (**ACL**) affects them.

The ACL imposes obligations on both individuals and companies or organisations who engage in trade or commerce or supply goods or services to consumers to act fairly and honestly and to ensure that the goods and services they supply are safe. The ACL will apply to all not-for-profit community organisations when they engage in trade or commerce or supply goods and services to consumers.

The term 'trade or commerce' is explained below.

Community organisations are also likely to be a 'consumer' themselves in many transactions, or to deal with other persons that engage in trade and commerce. This means that a community organisation may be entitled to the remedies available in the ACL if a person it deals with breaches their obligations under the ACL.

It is important that your not-for-profit community organisation understands both its responsibilities and rights under the ACL.

Note: The information in this document is a guide only, and is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information is written for people and organisations affected by the laws in Victoria, Australia, and is current at 1 March 2011.

What is the ACL?

The ACL is a single, national law regulating consumer protection and fair trading, which applies in the same way nationally and in each State and Territory of Australia.

The ACL covers five main areas which are explained in more detail below. These are:

- ▶ unfair business practices;
- ▶ unfair sales practices;
- ▶ unfair contract terms;

- ▶ consumer guarantees; and
- ▶ product safety.

The ACL came into force on 1 January 2011 and is contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) which is the new name for the *Trade Practices Act (TPA)*. It replaced existing consumer protection legislation contained in the TPA and in various state and territory Acts.

Tip: The way in which the ACL may affect your community organisation in each of these five areas depends on what your organisation does – its activities and dealings - rather than the type of organisation you are.

Does the ACL apply to your community organisation?

The ACL applies to ‘persons’ (either individuals or companies/organisations) who engage in trade or commerce or supply goods or services to consumers.

‘Trade or commerce’ is defined as ‘any business or professional activity’, whether or not carried on for profit. These provisions are therefore likely to apply to your community organisation when it sells goods or services, regardless of whether your organisation does this for fundraising purposes, for a social good or for a reduced fee.

Nonetheless, even if your particular activities are not covered by the ACL, best practice is always to act honestly and fairly when carrying out any of the organisation’s functions and activities.

What does the ACL cover?

1. Unfair business practices

The ACL prohibits persons, in trade or commerce, from engaging in misleading and deceptive conduct, unconscionable conduct and making false or misleading representations about goods or services or sale of land. These provisions in the ACL are similar to the equivalent provisions that existed in the TPA and state and territory fair trading acts.

Your organisation will need to ensure that any representations made in promotional material or statements about the price, value, quality or social benefit of the goods or services are not false, misleading or deceptive.

Your organisation is also protected by these provisions when it deals with other businesses or organisations. When your community organisation deals with any person (whether an individual or a business) in trade or commerce, it may be entitled to rely on these provisions and make use of the remedies under the ACL if that person acts unfairly and dishonestly in its dealings with your organisation.

Tip: To understand these provisions further, you can read "Avoiding unfair business practices - A guide for businesses and legal practitioners" which is available on the Australian Consumer Law website (see Related Resources at the end of this document).

2. Unfair sales practices

The ACL prohibits unfair sales practices such as demanding payment for unsolicited goods or services, pyramid selling and referral selling. The ACL also regulates sales practices that have the potential to be unfair, such as lay-by agreements and unsolicited consumer agreements.

Many community organisations may use unsolicited selling practices for fundraising purposes. For example, your community organisation may use volunteers or commission workers to door-knock, make unsolicited telephone calls or direct approaches to people in public spaces to either sell goods or services or seek donations in exchange for chocolates, raffle tickets or other items. In such cases, it is likely that your organisation will need to comply with the unsolicited consumer agreement requirements of the ACL.

Tip: If your community organisation uses unsolicited selling practices, the [PilchConnect Fact sheet](#) on this topic and ensure that you comply with all the requirements of the ACL. You can also read "Sales practices - A guide for businesses and legal practitioners" which is available on the Australian Consumer Law website (see Related Resources at the end of this document).

3. Consumer guarantees

The ACL introduces a set of twelve consumer guarantees that apply to all goods and services purchased by consumers from 1 January 2011, including that

- ▶ goods are of an acceptable quality;
- ▶ services are delivered with due care and skill; and
- ▶ goods and services are fit for any disclosed purpose.

The consumer guarantees replace the previous system of implied conditions and warranties that existed in the TPA and the state and territory fair trading laws.

If your community organisation supplies or manufactures goods or services which cost less than \$40,000 (or cost more than \$40,000 but are of a kind normally acquired for domestic or personal use) then it must comply with the consumer guarantees.

If your community organisation falls under the definition of a "consumer", then it will have the protection of the ACL and can demand that the supplier of the goods or services complies with the consumer guarantees.

A "consumer" is someone who acquires goods or services which are not for resale and which cost less than \$40,000 or cost more than \$40,000 but are of a kind normally acquired for domestic or personal use.

The ACL provides a range of remedies that apply if a supplier fails to comply with the consumer guarantees. The particular remedy available depends on whether the breach of the consumer guarantees is a major failure or a more minor problem with the goods or services. Remedies include a replacement, refund, repair, resupply of services, compensation for the drop in value of the goods or services and damages.

Tip: If your community organisation can be considered a consumer or a supplier, then you should read "Consumer guarantees - A guide for businesses and legal practitioners" which is available on the Australian Consumer Law website (see Related Resources at the end of this document) and ensure that you know your rights and responsibilities in relation to consumer guarantees.

4. Unfair contract terms

The ACL creates a national unfair contract terms regime which applies to standard form consumer contracts. It enables a court to find that a term of a contract is unfair, and as a result void, or of no effect.

This law applies to contracts in all forms, whether written or oral, and made by all means, including online, over the phone or face to face.

A contract term is considered to be unfair if:

- ▶ it would cause a significant imbalance in the rights of the parties to the contract; and
- ▶ it is not reasonably necessary to protect the legitimate interests of the party it advantages; and
- ▶ it would cause detriment if applied or relied upon.

The court must take into account how easily understood the term is and how clearly it is presented, as well as the contract as a whole.

The law applies to contracts that are entered into on or after 1 July 2010 and to the terms of existing contracts that are renewed or changed on or after 1 July 2010.

Tip: If your community organisation enters into standard form consumer contracts either as a supplier or consumer, then you should read "A guide to the unfair contract terms law" which is available on the Australian Consumer Law website (see Related Resources at the end of this document) and ensure that you know your rights and responsibilities in relation to unfair contract terms.

5. Product safety

The ACL provides for a single national product safety regime which expands the existing provisions of the TPA and other state and territory based legislation.

The Federal government will have the sole power to make safety standards and permanent safety bans and also issue warning or compulsory recall notices about consumer goods or product-related services.

Commonwealth, state and territory based regulators will jointly be responsible for enforcing safety bans, standards and mandatory recalls.

There will also be a new mandatory reporting requirement which will require suppliers to advise the Minister, through the Australian Competition and Consumer Commission (**ACCC**), within 48 hours

of becoming aware of any incidents associated with consumer products that result in death, serious injury or illness.

It is important to note that even if your organisation provides goods or services for free, then it is obliged to comply with the product safety and information standard obligations. Similarly, if your organisation receives goods or services for free, then it will have the protection of these provisions under the ACL and have access to the corresponding remedies.

Tip: If your community organisation can be considered a consumer or supplier of goods or services that have the potential to be unsafe (even if provided or received for free), then you should read "Product Safety - A guide for businesses and legal practitioners" which is available on the Australian Consumer Law website (see Related Resources at the end of this document) and ensure that you know your rights and responsibilities under the product safety regime.

What happens if your organisation breaches the ACL?

The ACCC as well as state and territory consumer agencies, such as Consumer Affairs Victoria (**CAV**), have the responsibility of enforcing the ACL. These regulators have a range of civil, administrative and criminal enforcement remedies to enforce the law, including:

- ▶ criminal convictions and fines;
- ▶ civil penalties of up to \$1.1 million for organisations or companies and \$220,000 for individuals;
- ▶ orders that a party pay compensation or damages or publish a public warning;
- ▶ notices requiring persons to substantiate the claims they make about their products or services; and
- ▶ orders disqualifying the party from continuing to operate.

The remedy that will be available depends on which provision of the ACL is breached.

The ACL also provides rights for individuals or organisations/companies to bring legal proceedings themselves if they have been hurt or suffered loss because of activity that is covered by the ACL.

Tip: The best way to ensure that your organisation complies with the ACL is to educate your staff and volunteers about your rights and responsibilities under the ACL.

Related Resources

Related PilchConnect Resource

[Fact sheet: Complying with the unsolicited selling provisions in the Australian Consumer Law](#)

Related legislation:

[Competition and Consumer Act 2010 \(Cth\)](#)

[Fair Trading Act 1999 \(Vic\)](#)

Related links:

- ▶ Australian Consumer Law, see www.consumerlaw.gov.au
- ▶ Consumer Affairs Victoria, see www.consumer.vic.gov.au
- ▶ Consumer Action Law Centre, see www.consumeraction.org.au

