



Australian Government

australian consumer law 

Implementation of the Australian Consumer Law

A report on progress II (2011-12)

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Manager
Communications
The Treasury
Langton Crescent Parkes ACT 2600
Email: medialiaison@treasury.gov.au

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LETTER TO THE CHAIR OF CAF, THE HON ANTHONY ROBERTS MP

The Hon Anthony Roberts MP
Chair, COAG Legislative and Governance Forum on Consumer Affairs
c/- CAF Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

7 December 2012

Dear Minister

The Australian Consumer Law (ACL) was introduced on 1 January 2011 and this second report on progress provides an update of ongoing implementation activities. It includes highlights from coordinated enforcement and education initiatives that have occurred during the period between 1 July 2011 and 30 June 2012.

In 2011-12, a key focus for agencies has been to build on existing networks that support the multi-regulator model of the ACL. The collaborative leadership model for the ACL has been further strengthened and consolidated through Consumer Affairs Australia and New Zealand (CAANZ) and its advisory committees. Commonwealth, state and territory officials have worked collaboratively on a range of initiatives which have benefited from an enhanced level of engagement between Australia's consumer policy and enforcement agencies. This work includes:

- closer policy development, including through national research projects and coordinated consideration of amendments to the ACL and its regulations;
- promoting and ensuring compliance with Australia's product safety system;
- a national communication and media strategy incorporating consumer as well as business education and information activities; and
- coordinated and timely support for consumers including national action on compliance, dispute resolution and enforcement issues.

The ACL is approaching its second year of implementation and has offered significant benefits to the Australian community. These include through strengthened enforcement and consumer redress provisions as well as through an integrated and harmonised approach to consumer protection. This report outlines work that has contributed towards these benefits.



Rod Stowe
Chair, Consumer Affairs Australia and New Zealand

Consumer Affairs Australia and New Zealand (CAANZ)

CAANZ is made up of the senior officers responsible for consumer policy and enforcement in the Australian Treasury, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, NSW Fair Trading, Consumer Affairs Victoria, the Queensland Office of Fair Trading, Western Australia Department of Commerce, SA Consumer and Business Services, Tasmanian Office of Consumer Affairs and Fair Trading, the ACT Office of Regulatory Services, NT Consumer Affairs and the New Zealand Ministry of Business, Innovation and Employment. In 2011, CAANZ transitioned from the Standing Council of Officials on Consumer Affairs (SCOCA).

GLOSSARY OF TERMS

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CAF	COAG Governance and Legislative Forum on Consumer Affairs
CAV	Consumer Affairs Victoria
CBS	Consumer and Business Services, South Australia
CCA	<i>Competition and Consumer Act 2010</i>
CDRAC	Compliance and Dispute Resolution Advisory Committee
COAG	Council of Australian Governments
CPWA	Consumer Protection Western Australia
EIAC	Education and Information Advisory Committee
FTOG	Fair Trading Operations Group (part of CDRAC)
IGA	<i>Intergovernmental Agreement for the Australian Consumer Law, signed by members of the Council of Australian Governments on 2 July 2009</i>
OFT	Office of Fair Trading
PC	Productivity Commission
PRAC	Policy and Research Advisory Committee
PSCC	Product Safety Consultative Committee
CAANZ	Consumer Affairs Australia and New Zealand
TPA	<i>Trade Practices Act 1974 (now the CCA)</i>

EXECUTIVE SUMMARY

IMPLEMENTATION OF THE AUSTRALIAN CONSUMER LAW

Following the introduction of the Australian Consumer Law (ACL) on 1 January 2011, consumer agencies have used formal agreements and administrative arrangements established during the policy development phase of the ACL to focus closely on implementing, strengthening and improving the ACL.

During the first year of implementation, the focus for agencies was to ensure that stakeholders understood their rights and obligations. This focus saw the collaborative development of a wide range of education materials to meet both consumer and business needs. These were distributed nationally to establish consistent and clear messages. This streamlined approach to the development of ACL education materials has avoided duplication and reduced production and distribution costs.

A STRENGTHENED CONSUMER PROTECTION FRAMEWORK

Consumer agencies have continued to implement and demonstrate the strength of Australia's consumer protection framework through collaborative partnerships established to deliver on strategic goals. This work included using the Australian Consumer Survey to identify business and consumer awareness of consumer laws, the facilitation of minor amendments to the ACL, and consideration of specific emerging consumer protection matters to support affected Australians.

FOCUSSED EDUCATION AND INFORMATION

Consumer agencies have also continued to improve consumer understanding of the ACL, including by supporting and promoting the compliance activities of consumer agencies and by improving consumers' understanding of their rights. Key communications strategies were delivered, including in relation to consumer guarantees, product safety, travelling conmen and unfair trading practices in regional and remote Indigenous communities.

TARGETED COMPLIANCE AND DISPUTE RESOLUTION

In addition, consumer agencies provided coordinated action on a range of consumer protection matters, including by providing timely support for consumers and ensuring compliance with the ACL. A range of compliance projects and targeted campaigns were delivered nationally, including in relation to unfair contract terms, consumer guarantees, environmental claims, and trader compliance in regional and remote Indigenous communities.

A NATIONAL PRODUCT SAFETY APPROACH

Consumer agencies continued to promote, maintain and achieve compliance with Australia's product safety system. Key work included educating traders and consumers on the safe supply, purchase and use of regulated products. Compliance activities included targeted campaigns, such as the 2011 Christmas toy survey to complement ongoing monitoring and assessment of emerging hazards.

INTRODUCTION

The Australian Consumer Law (ACL) commenced on 1 January 2011. The ACL harmonised the consumer protection provisions of the *Trade Practices Act 1974* (TPA) and previous state and territory fair trading laws. The full text of the ACL is set out in Schedule 2 of the *Competition and Consumer Act 2010* (the new name of the TPA), which is the principal consumer protection law in Australia. The ACL includes:

- core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms;
- specific prohibitions or regulation of unfair practices based on best practice in state and territory consumer protection laws, including pyramid selling, unsolicited supplies of goods and services, component pricing and the provision of bills and receipts;
- an integrated and harmonised legal framework for unsolicited selling, including door-to-door trading and telephone sales;
- a national law for consumer product safety;
- a system of statutory consumer guarantees; and
- strengthened enforcement and consumer redress provisions.

The ACL is a single, integrated and harmonised consumer law, which replaces approximately 900 substantive provisions of at least 20 national, state and territory Acts. It means that all consumers in Australia have the same rights and all businesses have the same obligations, irrespective of the state or territory in which they engage in transactions. Further information about the ACL is available at www.consumerlaw.gov.au.

PURPOSE OF THIS REPORT

This report provides an update on the work of the Commonwealth and the states and territories in implementing, strengthening and improving the ACL. This report highlights the enhanced coordination between consumer agencies and consistent approaches to consumer issues, in accordance with the National Consumer Policy Objective:

[t]o improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.¹

Further information on the National Consumer Policy Objective, the Intergovernmental Agreement for the Australian Consumer Law (IGA) and Australia's consumer agencies can be found at Appendix item 1.

1 Ministerial Council on Consumer Affairs (2009). *A new approach to consumer policy: Strategy 2010-2012*, p 4.

This report draws on the work engaged in by each jurisdiction through the collaborative leadership model for the ACL as outlined in Figure 1. In 2011-12, this model has been further strengthened and consolidated through regular meetings between Commonwealth, state and territory policy officials including through Consumer Affairs Australia and New Zealand (CAANZ) and its advisory committees.

This report will begin by outlining the cooperative decision-making approach before providing an update of progress on consumer policy and research, education and information, compliance and dispute resolution, and product safety. To demonstrate the collaborative leadership model, the report will provide selected case studies to highlight the achievements of key work that has been completed in 2011-12.

A COOPERATIVE DECISION-MAKING APPROACH²

The COAG Legislative and Governance Forum on Consumer Affairs (CAF) has been established to administer Commonwealth, state and territory Consumer Affairs Ministers' collective responsibilities under the IGA.

CAANZ is the principal national forum for day-to-day policy and enforcement cooperation and coordination between agencies. CAANZ is supported by four advisory and consultative committees.

- The **Policy and Research Advisory Committee (PRAC)** focuses on the development of common policy approaches to national consumer issues, particularly as they relate to the ACL, and on coordinating the development of any amendments to the ACL. PRAC also conducts national consumer policy research.
- The **Education and Information Advisory Committee (EIAC)** focuses on national cooperation and coordination for education and information activities relating to the ACL and consumer issues more generally.
- The **Compliance and Dispute Resolution Advisory Committee (CDRAC)** focuses on national cooperation and coordination for compliance, dispute resolution and enforcement activities relating to the ACL. CDRAC is supported by a Fair Trading Operations Group (FTOG), which deals with day-to-day liaison on enforcement issues.
- The **Product Safety Consultative Committee (PSCC)** provides a forum for regular engagement with state and territory consumer agencies on product safety policy, enforcement and awareness issues, and engages with the other committees as required.

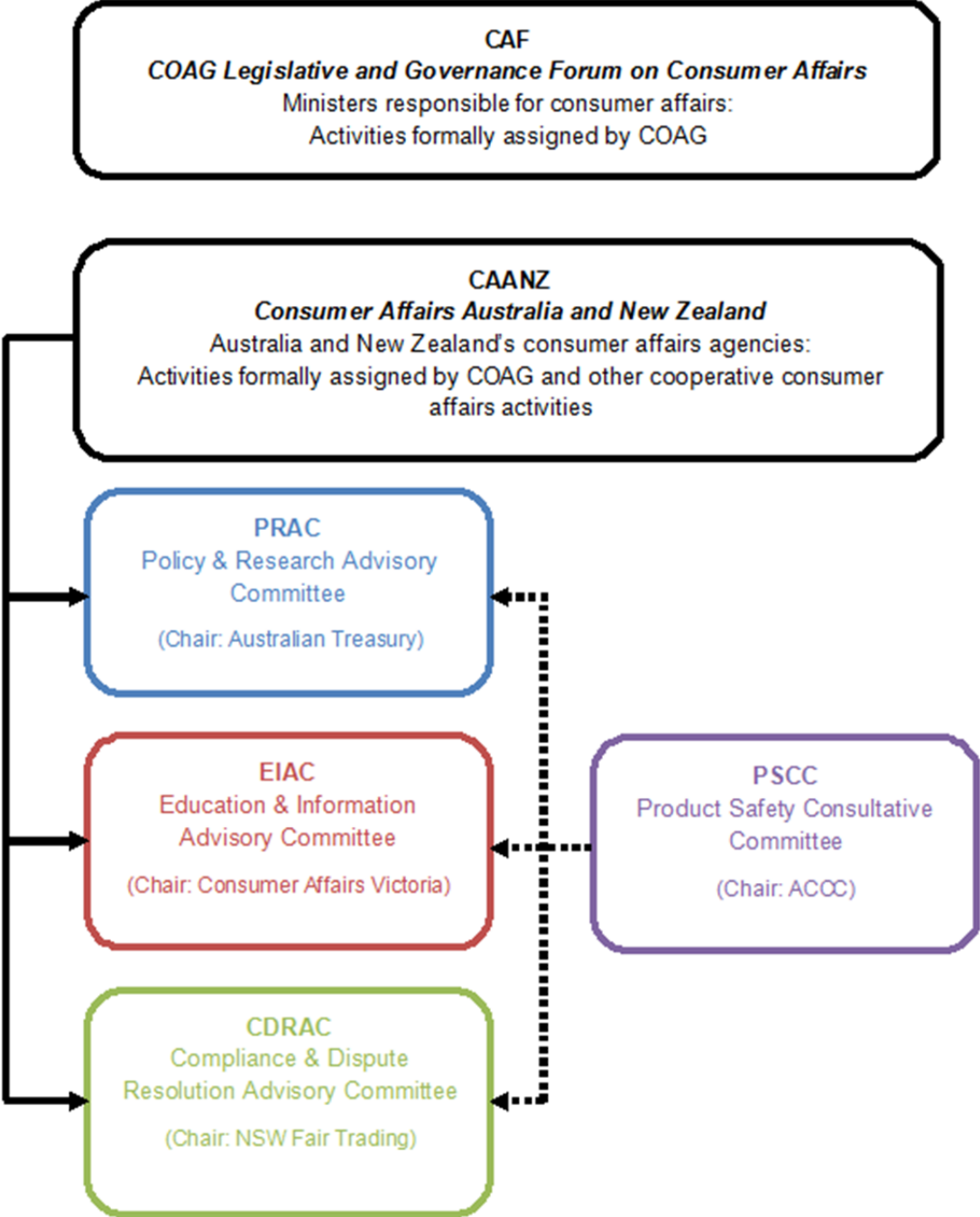
Governance papers outline the roles and governance arrangements for CAF, CAANZ and its advisory and consultative committees. This includes the terms of reference, decision-making responsibilities, accountabilities and reporting frameworks for the committees as well as the strategic agenda, goals and priorities for CAF and CAANZ. The governance papers are available at www.consumerlaw.gov.au.

The governance arrangements are regularly reviewed and updated to ensure a consistent and integrated approach to consumer issues. This assists to ensure the objectives and

2 This approach is outlined at Figure 1.

priorities of CAANZ and thereby CAF can be achieved in the most efficient and effective way. Figure 2 at Appendix 1 demonstrates the alignment of the operational objectives for 2011-12.

Figure 1: CAF governance arrangements



CONSUMER POLICY AND RESEARCH

Summary

In 2011-12, consumer agencies have continued work to implement and transition to the ACL, strengthen and improve Australia's consumer protection framework and through collaborative partnerships, to deliver on strategic goals. Key work included using the Australian Consumer Survey to identify business and consumer awareness of consumer laws, the facilitation of minor amendments to the ACL, and consideration of a range of consumer policy issues.

OVERVIEW

Following the ACL's commencement on 1 January 2011, PRAC has worked to build on the consumer policy evidence base to facilitate red tape reduction. To assist in reducing business compliance costs by removing unnecessary, outdated or inconsistent regulation, PRAC has progressed work on a range of projects including regulation relating to debt collection, travel intermediaries, fundraising and domestic building contracts.

To better coordinate the work of Commonwealth, state and territory policy officials, PRAC has engaged on a number of national projects to better coordinate policy and research activities and to support CAANZ in carrying out its roles and functions.

Implementing and transitioning to the ACL

The Australian Consumer Survey (the Survey) was particularly useful in identifying gaps in consumer and business understanding of consumer laws in Australia as well as broader community concerns. The Survey demonstrated that Australian consumers have a high level of awareness of the existence of consumer laws but that there are opportunities to increase their knowledge of their rights and obligations. With the support of PRAC, consumer agencies have sought to address the issues raised including through addressing the knowledge gap among consumers and promoting consumer and business awareness of the ACL.

Strengthening and improving Australia's consumer protection framework

In its monitoring and maintenance role, PRAC facilitated amendments to the ACL to allow immediate supply of goods with a price of up to \$500 under an unsolicited consumer agreement. PRAC also facilitated a change to the voluntary termination notice for an unsolicited consumer agreement to ensure that consumers are made aware of the supplier's obligation to collect any goods when cooling-off rights are exercised. The new requirements commenced on 1 January 2012, when transitional provisions for section 86 of the ACL expired.

PRAC led policy development efforts for the unconscionable conduct provisions of the ACL (see Case study 1). The amendments introduced interpretative principles into the unconscionable conduct provisions that will assist the Courts, consumers and businesses to understand the scope of the prohibition on unconscionable conduct. The principles clarify, rather than alter, the effect of the statutory prohibition on unconscionable conduct.

Case study 1 — Unconscionable conduct amendments

The *Competition and Consumer Legislation Amendment Bill 2011* (the Bill) was introduced into the Commonwealth Parliament on 15 June 2011 to amend the unconscionable conduct provisions in the ACL. The Bill was passed by the Commonwealth Parliament on 25 November 2011 and received royal assent on 6 December 2011. The Bill amended the unconscionable conduct provisions in the ACL to:

- insert a statement of interpretative principles to assist the courts to interpret and apply the provisions and to improve stakeholder understanding of the meaning and scope of the provisions; and
- provide that the statutory concept of unconscionable conduct is consistently applied to both consumers and business by unifying the consumer-related and business-related rules.

The unconscionable conduct amendments arose from the findings of a 2010 expert panel report, entitled *Strengthening statutory unconscionable conduct and the Franchising Code of Conduct*. The expert panel report was informed by a 2008 Senate Committee inquiry report into the unconscionable conduct provisions in the former *Trade Practices Act 1974 (Cth)*.

The unconscionable conduct amendments in the ACL were developed with input and oversight from PRAC, and supported by the development of guidance materials for business by the EIAC and CDRAC including the guidance *Business Snapshot – Unconscionable Conduct* available at www.accc.gov.au.

The *Competition and Consumer (Tobacco) Information Standard 2011*, which was implemented on 22 December 2011, was reviewed by PRAC to assist in the policy approval process. From 1 December 2012, all tobacco products supplied in Australia must carry the updated and enlarged warnings in the Information Standard. The Information Standard updated the current graphic health warnings for tobacco products, expanded their size and extended them to apply to all tobacco retail packaging in Australia, including cigars and loose tobacco.

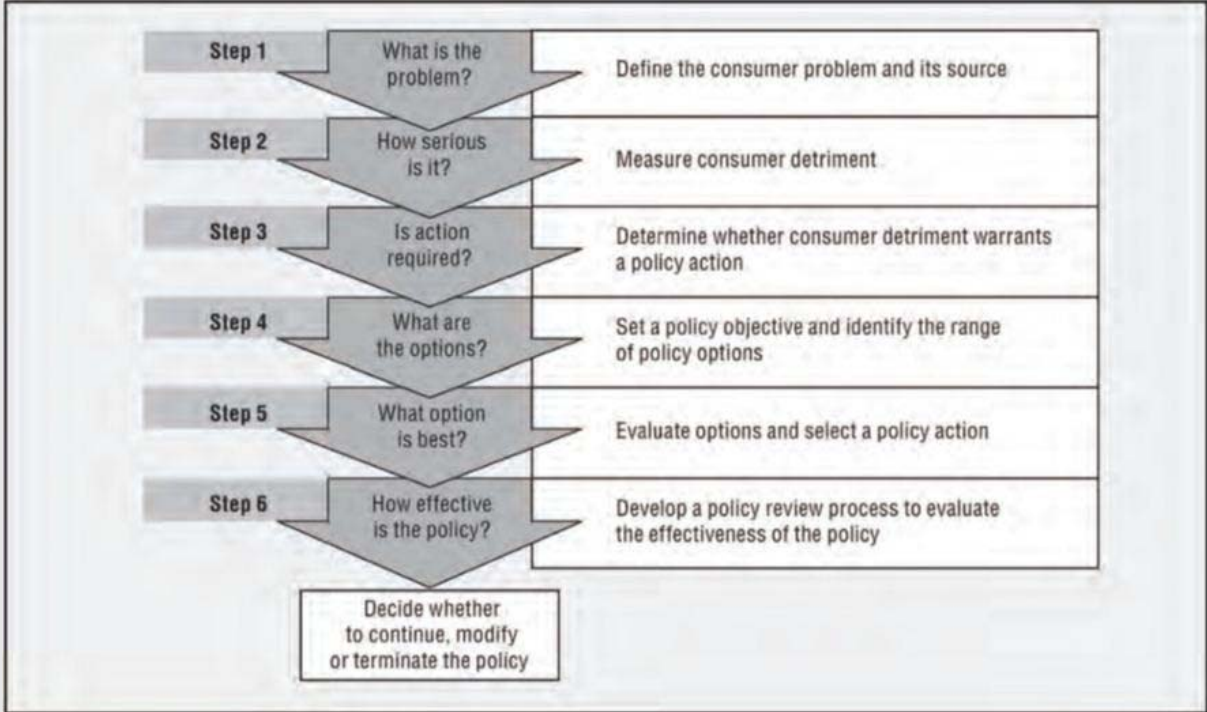
PRAC also considered the Productivity Commission's recommendation to exempt restaurants and café menus from the component pricing provisions of the ACL. The component pricing provisions of the ACL require businesses making price representations to provide, in a prominent way and as a single figure, the single price for the goods or services. The component pricing provisions cover percentage surcharges applied by restaurants and cafes on public holidays and weekends. PRAC has coordinated further consultation with industry and consumer stakeholders and has undertaken a cost-benefit analysis of the recommended exemption to support state and territory Ministers in their decision making.

Case study 2 outlines the evidence based approach adopted by PRAC when considering consumer policy issues.

Case study 2 — An evidence based approach to consumer policy

Australia’s consumer agencies apply a systematic approach to identifying, evaluating and resolving consumer problems. This approach is informed by the Organisation for Economic Co-operation and Development’s (OECD’s) *Consumer Policy Toolkit* (the Toolkit). The Toolkit provides an evidence based approach to consumer policy which supports policy practitioners when considering consumer problems and assessing the appropriateness of policy tools.

In March 2011, Commonwealth, state and territory officials jointly released *A companion to the OECD Consumer Policy Toolkit* (the Companion). The Companion provides practical information and advice to government officials, and those interested in consumer policy, when considering consumer policy issues in an Australian context. The Companion promotes the six-step approach to consumer policy making outlined in the Toolkit.



Source: OECD Consumer Policy Toolkit

The six step approach was applied when the Assistant Treasurer, on behalf of CAF Ministers, requested that the Commonwealth Consumer Affairs Advisory Committee (CCAAC) commence a review into gift cards in the Australian market. By applying the six-step approach, CCAAC identified that gift cards are a popular choice for consumers, but that there was further scope for industry to develop and promote best practice principles that support consumers when engaging with gift card products. CCAAC’s report *Gift cards in the Australian market* was considered by Ministers at the 6 July 2012 CAF meeting.

The Companion and the report *Gift cards in the Australian market* are available at www.consumerlaw.gov.au.

Responding to industry concerns

Country-of-origin labelling for food was referred to PRAC for further examination. Consumer agencies were asked to undertake a review of existing guidance on country-of-origin labelling in consultation with relevant agencies. Consumer agencies have reviewed current guidance material, developed specific targeted guidance for consumers on the operation of the labelling framework. In collaboration with CDRAC, a national compliance and enforcement strategy has also been developed to determine the level and nature of any concerns with country-of-origin labelling of food products in Australia.

Work on a travel industry transition plan has been coordinated with the support of PRAC. This has included working with key stakeholders to identify and, where necessary, develop measures that ensure that consumers remain appropriately protected when engaging with the broader travel and travel services market. The transition plan was subject to consultation with interested parties, including industry and consumer groups during the development of the plan.

Supporting broader strategic goals including COAG's National Partnership to deliver a Seamless National Economy

PRAC developed a discussion paper setting out options for harmonising debt collection regulation. The discussion paper was published in October 2011 and submissions closed in December 2011. The harmonisation of debt collection regulation aims to minimise the regulatory overlap between the regulation and licensing of debt collectors and the regulation of debt collection currently administered by the states and territories, and the new national consumer credit regime.

In addition, PRAC progressed the implementation of the *Australian Uniform Co-operative Laws Agreement* that improves consistency and introduces simpler requirements for cross border operations by co-operatives, and supported the implementation of the National Occupational Licensing Scheme.

PRAC considered options for resolving inconsistency between state and territory Legal Profession Acts (LPAs) and section 101 of the ACL, which requires a supplier to provide a consumer with an itemised bill within seven days after a request is made. This work has been considered in the light of further work being undertaken nationally.

PRAC assisted in the development of a discussion paper setting out options for a new national approach to regulation of charitable fundraising. The discussion paper was released in February 2012 and submissions closed in April 2012 with work progressing within the context of the broader not-for-profit reform agenda.

Consolidating collaborative partnerships formed to deliver key outcomes

PRAC members have worked collaboratively to consider issues relating to online comparison tools and online consumer contracts in the light of concerns relating to electricity switching sites, made to the NSW Department of Fair Trading. Through PRAC, these issues have been considered at a national level.

The Consumers 2011 conference, organised with the support of PRAC, provided Commonwealth, state and territory policy officers the opportunity to build networks and support the collaborative partnerships developed through the implementation of the ACL. The conference was also an opportunity for consumer advocates, competition and consumer academics and policy officers to engage in professional dialogue about a range of consumer issues.

EDUCATION AND INFORMATION FOR CONSUMERS AND BUSINESS

Summary

In 2011-12, education and information activities have improved consumer understanding of the ACL by focussing on consumers' understanding of their rights, and have complemented the compliance activities of consumer agencies. Key communications strategies were delivered, including campaigns on consumer guarantees, product safety, travelling consumer and unfair trading practices in regional and remote Indigenous communities.

OVERVIEW

EIAC has used a range of media to communicate information on the ACL to reach wide and diverse audiences. The collaborative leadership model for the ACL has provided new opportunities for EIAC to support and promote policy and compliance activities. Resources are developed collaboratively to minimise duplication and distributed nationally to ensure consistent messaging.

Improving consumer understanding of the ACL

EIAC supported the delivery of a campaign highlighting consumer awareness of their rights when buying goods and services that are faulty, unsafe or do not work as intended (see Case study 3). A key focus of the consumer guarantees campaign was to encourage consumers to go back to the business when they experience a problem or contact their local consumer protection agency or the Australian Competition and Consumer Commission (ACCC) where they are unable to reach a resolution.

A range of multi modal tools, including those that recognise linguistically and culturally diverse communities, were used to communicate the campaign's key messages including national radio advertisements, outdoor advertising in select regional areas and online marketing tools. These tools were specifically designed to support consumers when pursuing redress and identifying trader obligations.

Case study 3 — Consumer guarantees awareness campaign

To increase consumer awareness of their rights under the consumer guarantees provisions of the ACL, the consumer guarantees national awareness campaign was implemented from February to June 2012. The campaign's key message was: *If it's not right, use your rights: repair, replace, refund.*

The campaign was developed in consultation with ACL consumer agencies and was coordinated by the ACCC. Agencies supported the campaign by using their existing stakeholder and liaison networks to raise awareness of the consumer guarantees regime especially for consumers experiencing disadvantage and vulnerability. Complaints handling transfer arrangements were implemented between the ACCC and consumer agencies to streamline referral of complaints from the ACCC.

The campaign supported a national compliance program, run jointly by the ACCC and consumer agencies, aimed at improving compliance with consumer guarantees in the whitegoods, electrical and telecommunications sectors.

Campaign messaging was broadcast through a range of advertising and direct communications activities including national radio and digital advertising, and select outdoor advertising in regional locations. These activities were supported by the ACCC's interactive online consumer guarantees problem solver ('Wizard'), and consumer guarantees-specific ACCC website and Facebook pages.

Over 120 stakeholders actively supported the campaign by placing articles in newsletters or as website content, website links to the campaign webpage and organising face-to-face presentations. Campaign materials, including 49,000 publications translated into 14 languages, were also disseminated through several key intermediaries in touch with the various target community groups such as migrant communities and regional consumers.

At its conclusion, the campaign was evaluated by conducting surveys that examined consumers' knowledge of their consumer rights when they purchase a faulty product or service. The surveys indicated that the campaign was effective in achieving an increase in consumers' knowledge about consumer guarantees and their rights more broadly.

Supporting and promoting compliance activities

EIAC has supported compliance initiatives by developing accompanying communication strategies. EIAC delivered communications strategies to support the travelling consumer campaign (see Case studies 4 and 8), and to educate electrical and whitegoods retailers about consumer guarantees and the primary areas of concern for consumer agencies. In addition, EIAC delivered a communications strategy to educate online retailers about fair terms on conditions when selling goods.

EIAC developed five industry specific guides on trader obligations under the ACL. The guides targeted electrical and whitegoods retailers, motor car sellers and rental companies, personal service providers as well as travel and accommodation providers.

Case study 4 — Travelling conmen communications strategy

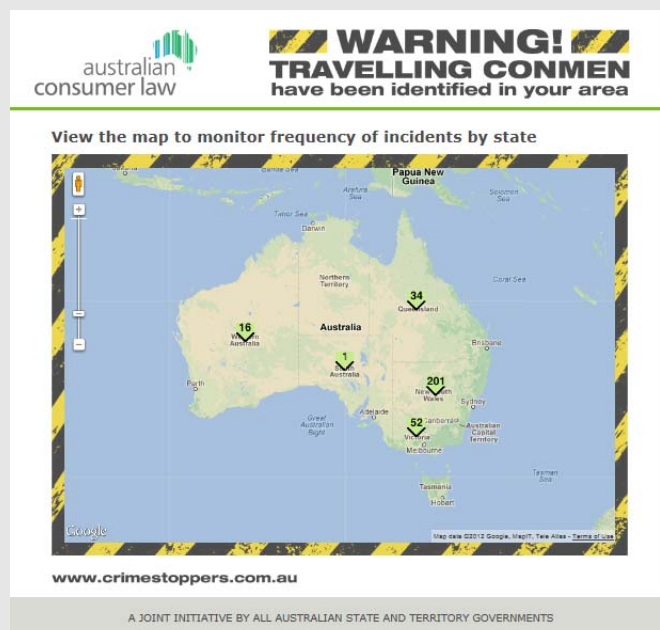
In 2011-12, ACL consumer agencies responded to concerns that a number of local and international organised crime groups – often posing as traders offering a range of services such as bitumen laying, roof painting and repairs, and the pressure cleaning of homes and driveways – were targeting communities experiencing vulnerability in relation to scams.

A national travelling conmen telephone hotline, website (www.stoptravellingconmen.org) and Facebook page (www.facebook.com/stoptravellingconmen) were launched in October 2011 to support compliance initiatives carried out by consumer agencies. By June 2012 the hotline had taken over 300 confirmed sightings of travelling conmen.

Compliance initiatives were highlighted through the media, with key newspaper coverage in metropolitan and regional areas nationally, as well as nightly current affairs programs covering the issue.



Source: www.facebook.com/StopTravellingConMen



Source: www.stoptravellingconmen.org

Assisting consumers as they engage with the marketplace

The Indigenous consumer issues campaign commenced in July 2011 to support the needs of Indigenous consumers where they are subject to unfair trading and high pressure sales tactics. The campaign involved a series of national radio advertisements, as well as the distribution of a reference kit for Indigenous community workers including fact sheets covering topics on book-up, mobile phones, sales practices, whitegoods, unfair business practices, as well as do not knock stickers (see Case study 5).

Case study 5 — Indigenous consumer issues campaign

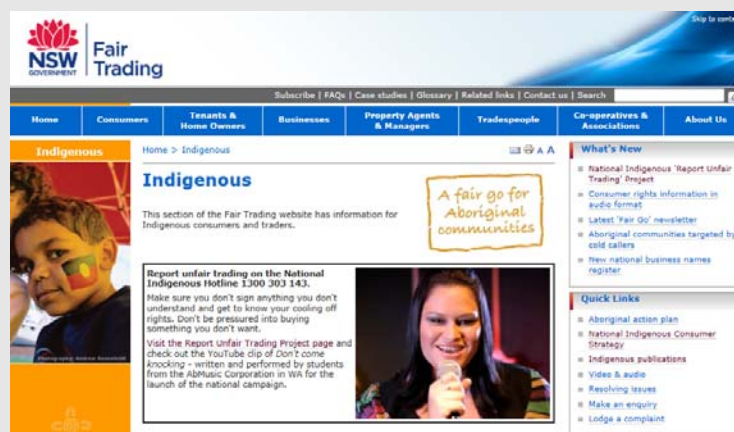
A joint national project delivered by EIAC and CDRAC into unfair trading practices in regional and remote Indigenous communities was undertaken throughout 2011-12. The project objectives included a coordinated regulatory and communications approach to raise awareness about the assistance that can be provided by consumer agencies and to encourage trader compliance with the ACL in regional and remote Indigenous communities.

Consumers from regional and remote communities often experience lack of choice and competition, and may have restricted access to services. CAF Ministers identified the issue of high pressure sales tactics in Indigenous communities as a concern which resulted in this issue being a key focus of the campaign. Key actions of the campaign included a four-week radio campaign delivered through 93 radio stations that service regional and remote communities.

A specially commissioned song 'Don't come knocking' was produced by AbMusic Corporation WA students. A YouTube clip was made of the song as performed by the students to promote the launch of the project.

The aim of the campaign was to raise awareness and encourage the reporting of unfair trading. Multilingual advertisements covered topics such as door-to-door sales, mobile phone sales and book-up (short term trader credit) and included the promotion of a national hotline.

A reference kit for Indigenous community workers with five fact sheets covering the radio advertisement topics as well as information on buying goods and unfair trading was produced and distributed through existing networks.



Source: www.fairtrading.nsw.gov.au/Indigenous.html

COMPLIANCE AND DISPUTE RESOLUTION

Summary

In 2011-12, consumer agencies have provided coordinated action on a range of consumer protection matters, including by providing timely support for consumers and ensuring compliance with the ACL. A range of compliance projects and targeted campaigns were delivered nationally, including in relation to unfair contract terms, consumer guarantees, environmental claims, and trader compliance in remote communities.

OVERVIEW

CDRAC has supported CAANZ through its role in coordinating enforcement action including timely responses to consumer protection issues. CDRAC has supported consumers by delivering efficient and effective redress in response to emerging national consumer issues, including through negotiation on behalf of Australia's consumer agencies.

Achieving compliance with the ACL

Work commenced on the national Unfair Contract Terms project with the examination of the standard form consumer contracts used by 80 online businesses. Consumer agencies have worked with businesses to amend or delete their unfair contract terms to comply with the law.

Also, in 2011-12, consumer agencies sought to increase consumer awareness of, and business compliance with, the consumer guarantee provisions of the ACL. Throughout the year a national compliance campaign focussed on 53 suppliers and manufacturers within the telecommunications, white goods and electronics industries. The industries were selected following national research and businesses were selected based on complaints data. Compliance activities included distribution of educational letters, reviewing websites and complaint data, attending stores and meeting with business leaders. Consumer agencies undertook mystery shopping activities to assess compliance levels.

CDRAC has supported CAANZ through the implementation of a national project addressing environmental claims, with a focus on the solar panel industry. Complaints data was collected and analysed for each jurisdiction and common complaint issues and traders which attracted complaints were identified. Consumer agencies wrote to all solar industry participants outlining identified areas of concern, the need to comply with state or territory laws and regulations, and the requirement to operate within industry rules and guidelines.

Providing timely support for consumers

CDRAC achieved positive negotiated outcomes for consumers following the grounding of Tiger Airways and Qantas, as well as for consumers affected by the voluntary administration of Air Australia. Through CDRAC, consumer agencies collectively represented the rights of consumers in their negotiations with the airlines, the administrator and other relevant parties. ACL consumer agencies achieved a range of remedies for consumers and ensured that consumers affected by these events were kept informed.

Case study 6 — Supporting consumers affected by disruptions in the airline sector

In response to the grounding of airline services in 2011, consumer agencies worked together to deliver prompt outcomes for consumers.

When Tiger Airways' Australian domestic flights were suspended in July 2011, consumer agencies raised concerns with Tiger Airways about how the rights of affected consumers would be addressed. Tiger Airways responded by committing to meet their obligations to consumers under the ACL.

Consumer agencies negotiated with Tiger Airways to arrange full refunds for affected customers, and to ensure appropriate external communication mechanisms were in place so consumers were aware of their rights. It was also agreed that Tiger Airways would keep consumer agencies informed through regular reports on the progress of refunds to affected consumers.

After the grounding of the Qantas fleet in October 2011, consumer agencies made immediate contact with Qantas to ensure consumer remedies were sufficient. Consumer agencies negotiated a common position on what was expected of Qantas, notwithstanding that the grounding was announced on a weekend. Negotiations led to Qantas extending its offer of refunds and compensation for reasonable losses to any consumer that was affected by the grounding.

Qantas provided regular updates to consumer agencies in relation to customer refunds and compensation claims. Consumer agencies monitored the process to ensure customer claims were managed in a timely fashion.

The structured governance arrangements already established under CAANZ facilitated an efficient response that provided positive outcomes for consumers and demonstrated effective collaboration between regulators under the ACL.

Responding to unfair trader practices

The Indigenous consumer issues project aimed to address unfair trader practices that utilise high pressure sales techniques in regional and remote Indigenous communities. The central goal of this project was to increase the awareness of communities and their support networks about combating unfair practices. CDRAC has worked to identify whether targeted traders have engaged in breaches of the ACL. Traders were assessed for their compliance with those parts of the ACL dealing with unfair contract terms, false or misleading representations and unsolicited consumer agreements.

The ACCC hosted a national hotline which enabled reports of traders breaching the ACL to be assessed and dealt with by all participating agencies. Investigators focused on identifying patterns of conduct to facilitate strategic enforcement. The intelligence gathering phase of the

pilot project was conducted in April 2012. Field inspections occurred throughout June and July 2012 and 21 traders of interest have been identified.

Consumer agencies have actively sought redress for consumers experiencing difficulties with traders that have failed to act in accordance with their obligations under the ACL. Case study 7 provides an overview of enforcement outcomes including a number of examples of enforcement activities to highlight the breadth of collective enforcement outcomes secured in the second year of the ACL.

Case study 7 — ACL Enforcement Outcomes

The ACL contains penalties, enforcement powers and consumer redress options which enhance the ability for regulators to enforce the ACL and for effective remedies to be recovered for parties affected by a breach. These powers and remedies include:

- enforceable undertakings;
- substantiation, infringement and public warning notices;
- civil pecuniary penalties and criminal penalties of up to \$1.1 million for a body corporate and \$220,000 for an individual;
- damages and injunctions;
- orders for non-party redress;
- adverse publicity and non-punitive orders; and
- disqualification orders from managing corporations.

The penalties, enforcement powers and remedies available under the ACL allows for effective enforcement by regulators, greater consistency in how matters are enforced and how powers and remedies are applied, and access to enhanced redress options for affected parties. In 2011-12, consumer agencies obtained orders for civil pecuniary penalties for breaches of the ACL and issued infringement notices with penalties of over \$200,000 recovered.

Example 1

Consumer Protection Western Australia (CPWA) commenced injunctive action in May 2011 to prevent a defendant from selling diseased animals. In June 2011, the litigation was settled on the basis that the defendant enter into an enforceable undertaking which prevented the defendant from selling or offering to sell any animal unless certain conditions were met.

Following the giving of the enforceable undertaking, the defendant continued to sell diseased animals in breach of the undertaking. In April 2012, CPWA commenced action to enforce the undertaking.

In August 2012 the Supreme Court of WA granted an injunction requiring that the trader stop selling diseased animals and ordered compensation be paid to affected consumers.

In November 2012, CPWA took further action under the Animal Welfare Act and the trader is now banned from owning more than one dog, was fined \$34,000 and court costs of \$9,500 were imposed.

Example 2

Columbus Sales Group Pty Ltd and Aqua Conscious Pty Ltd marketed and sold 830 rainwater tanks, some with free TV and DVD incentive packages. None of the TV or DVD incentives were supplied and less than fifty tanks were delivered to consumers. Columbus and Aqua Conscious refunded eight consumers, however failed to refund the remainder.

Case study 7 — ACL Enforcement Outcomes (continued)

On 10 January 2011 NSW Fair Trading commenced injunctive proceedings in the NSW Supreme Court under section 64 of the *Fair Trading Act 1987 (NSW)* and section 232 of the ACL seeking to restrain further conduct by the defendants and to freeze approximately \$60,000 in funds. The Court made interlocutory orders as requested by NSW Fair Trading and also orders freezing the bank account. On 4 May 2011, the Court granted orders restraining the companies from representing that they had capacity to fulfil orders for rainwater tanks, or supply free TVs or DVDs.

Following negotiations with the representatives of Columbus Sales Grout Pty Ltd, consent orders were agreed and on 12 October 2012 the Court made its final orders, the effect of which was that the funds in the frozen bank account were to be used to compensate affected consumers.

Example 3

Consumer Affairs Victoria (CAV) commenced action against J W Real Estate Pty Ltd, Sovereign Homes Australia Pty Ltd, Eric Liang Apen Group Pty Ltd and Whealth Holdings who operated as unlicensed estate agents targeting the Chinese community.

CAV obtained interim and final orders together with corrective advertising orders pursuant to section 246 of the ACL and an order requiring the defendants to disclose the details of any consumer they had dealings with and any monies held on behalf of consumers.

Example 4

The Australian Securities and Investments Commission (ASIC) raised concerns with a number of entities about contractual terms that may be potentially unfair and/or unconscionable under the ACL. For example, in one of the first actions of this type under the ACL, ASIC raised concerns with MyBudget Pty Ltd (MyBudget), an entity that provides budgeting and debt management services to people experiencing financial difficulty. The issues raised with MyBudget included concerns about a number of potentially unfair and/or unconscionable terms. These issues, addressed in a revised agreement, included:

- administration fees payable after termination until full discharge of client's liability, even when MyBudget terminated the agreement on notice;
- failure to inform clients that MyBudget's weekly administration fee had the same priority as weekly living expenses;
- charging a direct penalty fee if the client authorised a creditor to debit its MyBudget account;
- retention of interest on MyBudget accounts without clear disclosure to the client.

In the revised agreement, post-termination administration fees were amended in line with the principles of fairness and direct penalty fees were removed. Disclosure of key terms and conditions was also improved.

Case study 7 — ACL Enforcement Outcomes (continued)

Example 5

The breadth of enforcement outcomes achieved by Commonwealth, state and territory consumer agencies are enhanced by the range of enforcement and compliance tools available under the ACL. For example, highlights from the ACCC's enforcement activities in the financial year 2011-2012 include:

- Civil pecuniary penalties totalling \$10.67 million in penalties were obtained through the courts in eleven consumer protection and fair trade proceedings.

A total of 34 infringement notices were issued and paid, totalling over \$220,000 in penalties.

- One public warning notice was issued against Safety Compliance. Proceedings have now been instituted in this matter.
- A company director was banned by the Federal Court from managing a corporation for 15 years, after it was found that he and the firms he established engaged in false, misleading or deceptive conduct in selling business directorships.
- Non-party redress has been sought in the matter of Sensaslim, for which the ACCC is currently awaiting judgement.
- Eight substantiation notices were issued in ACCC initiated matters.

The ACCC commenced its first action under the unfair contract terms provisions of the ACL, in the matter of NRM Corporation Pty Ltd and the Advanced Medical Institute.

Combatting unlawful selling practices

Consumer agencies have worked to restrict unlawful selling of goods and services by travelling conmen (see Case studies 4 and 8). The conmen failed to comply with key requirements under the ACL including those relating to unsolicited door-to-door selling and consumer guarantees. Work, when carried out, was usually poor, overpriced and often left incomplete. They verbally intimidated consumers into payment and quoted prices often became inflated once payment was requested.

Case study 8 — Travelling conmen

In June 2011, all Australian Consumer Affairs Ministers agreed to establish a national project to adopt a consistent and coordinated enforcement approach to eradicate unlawful selling of goods and services by travelling conmen.

A national taskforce was established in September 2011. This taskforce liaised closely with customs officers, immigration and law enforcement agencies. Key outcomes resulting from the taskforce by 30 June 2012, include:

- undertaking 30 successful prosecutions against 28 individuals for 105 breaches of the ACL and state laws, resulting in fines and related court costs of \$296,235; and
- assisting Commonwealth authorities to arrange for the departure from Australia of 39 individuals for breaching various visa conditions.

Identifying and responding to emerging consumer issues

CDRAC has responded to growth in the online group buying market and an identified increase in enquiries and complaints. A national group buying project was established as part of an integrated approach to encouraging compliance with the ACL (see Case study 9). The project used a range of compliance and enforcement tools.

The working party has also implemented a coordinated approach to dispute resolution of group buying complaints. There have also been activities to raise awareness of the benefits as well as the risks for consumers and small businesses when it comes to group buying and the working party has engaged with industry to promote best practice principles.

The working party has engaged with the Australian Direct Marketing Association to review and provide feedback on the Australian Group Buying Code of Conduct and the industry's Group Buying Merchant Guide.

There has been ongoing analysis and sharing of national data highlighting complaint trends, problem traders and common issues. There has also been coordinated direct engagement with a number of group buying providers and where appropriate, consumer agencies have investigated and taken enforcement action.

Case study 9 — Group buying

Group buying websites emerged in Australia and New Zealand in 2010 and became increasingly popular in 2011. These sites sell vouchers online for discounted goods and services for a limited time, usually on the condition that a minimum number of purchasers take up the deal.

In early 2011 consumer agencies noted a significant and sustained increase in complaints about group buying. The increasing popularity of group buying also led to concerns about its impact on consumers and small businesses. By mid-2011 consumer agencies' shared concern about the impact of group buying led to ongoing discussion at FTOG and confirmed the view that national cooperation was appropriate to tackle issues in this market sector.

An analysis of national data demonstrated that after peaking in May 2012 at more than 800 cases, complaints to consumer agencies have roughly halved by September 2012. On an individual level, all major group buying traders have shown significant improvement over the course of the project. As the project concludes, it is anticipated that a certain number of investigations into traders will remain ongoing and many of the initiatives established under the national project will continue and become business as usual for consumer agencies.

Through the implementation of the coordinated approach to this industry, clear lines of communication and cooperation between consumer agencies have been established and are a model for future work at a national level.

Supporting business compliance with the ACL

CDRAC has coordinated effectively with EIAC to develop a simple ACL checklist that will guide small businesses towards key ACL information relating to their business activities. The checklist encourages businesses to conduct a self-audit to identify which of their activities are regulated under the ACL, and how they can find more information to ensure compliance.

PRODUCT SAFETY

Summary

In 2011-12, consumer agencies continued to promote, maintain and achieve compliance with Australia's product safety system. Key work included educating traders and consumers on the safe supply, purchase and use of regulated products. Compliance activities included targeted campaigns, such as the 2011 Christmas toy survey, and consumer agencies continued to monitor and assess emerging hazards.

OVERVIEW

The PSCC has supported coordinated efforts to ensure suppliers are aware of their ACL product safety obligations. The PSCC has undertaken strategic and integrated compliance programs on behalf of consumer agencies. In addition, the PSCC continues to assess emerging hazards and work collaboratively to revise existing and develop new regulations.

Promoting product safety in the community

The national DIY vehicle maintenance safety education campaign: *Don't be a jackass with jacks* – was launched in September 2011 and ran until the end of February 2012. The campaign was a joint initiative between consumer agencies aimed at curbing death and serious injury among DIY home mechanics. The campaign focussed on the safe use of several regulated products such as vehicle jacks, trolley jacks, vehicle support stands and vehicle ramps and included a market surveillance component.

The campaign used a variety of traditional and new media sources to raise awareness of the risks of working under a vehicle to reach the target audience. Key safety messages were delivered and feedback was received through discussions in car forums, a mobile website and an online competition. A presence in online forums generated very useful and interesting conversations about safe use.

A national education campaign targeted to discount variety stores was jointly led by Victoria and New South Wales with the aim of improving the level of compliance of safe products in this sector. Outputs from this campaign include a product safety guide which was published in Chinese and Vietnamese as well as a national distribution strategy and a market surveillance program.

Achieving compliance with Australia's product safety system

The first national product safety survey program for 2011-12 concluded on 30 November 2011. This inspection program included the pre-Christmas toy survey (see Case study 10) and products associated with the DIY education campaign.

The second national surveillance program for 2011-12 was endorsed by CDRAC on 20 February 2012 and ran from 1 March to 30 June 2012. The focus of this survey was on baby dummies with decorations, baby dummy chains with decorations, babies' dummies, baby walkers, child restraints, children's nightwear, cosmetics labelling on baby products, household cots, portable cots, prams and strollers.

A PSCC working party was convened to consider the implementation of a more strategic and integrated compliance program. The working party considered an approach to compliance that would incorporate an educative element going forward to ensure ongoing industry compliance and efficient use of resources.

Case study 10 — Pre-Christmas toy survey

Consumer agencies coordinate their product safety activities through the PSCC. The PSCC meets regularly to develop, coordinate and conduct joint national product safety surveillance activities including the annual pre-Christmas toy survey.

The first pre-Christmas toy survey to be conducted under the ACL ran from September to December 2011. The aim of the survey is to ensure that toys commonly purchased as children's gifts for Christmas are safe and comply with all mandatory product safety requirements.

A total of 2,931 retail outlets (including on-line suppliers) were surveyed during the program. The inspection of products involved in-store checking to ensure they have the required safety warning labels, and also testing products for lead and other toxic elements.

Of the 119,167 products surveyed, 506 breaches were identified. Of these breaches, 166 were non-compliant children's toys for up to and including 36 months of age and 63 were non-compliant aquatic toys. The breaches were subject to various administrative resolutions including withdrawal from sale and/or product recalls. Products supplied in the discount variety sector accounted for the majority of breaches.

The coordination of the survey through the PSCC successfully targeted a wide range of suppliers in specific market sectors. The results of the 2011 pre-Christmas toy survey were communicated through a media release on the Product Safety Australia website.

Consumer agencies continue to proactively conduct surveillance operations in the marketplace to ensure suppliers are fulfilling their mandatory requirements relating to product safety.



Source: Annual Product Safety Survey 2011, NSW Fair Trading

Identifying and assessing emerging hazards

Consumer agencies have continued to collaborate on a range of emerging issues. In 2011-12, this has included discussions on magnets in toys, flotation aids and hair dyes. Working parties were established to consider emerging hazards including:

- the appropriateness of national regulation regarding the safety of products (for example bunk beds in short term accommodation);
- the installation of evaporative air conditioners in existing homes in bushfire prone zones;
- product safety concerns relating to quad bikes and whether regulatory intervention is required to improve the safety of these products; and
- the regulation of small powerful magnets that may pose risk of injury to children where they are ingested.

Maintaining Australia's product safety system

Permanent bans on babies' dummies with decorations and babies' dummy chains with decorations came into effect on 9 September 2011 following the revocation of the former interim bans. The banned products contained small decorations which could detach and become a small parts choking, inhalation and ingestion hazard.

The mandatory standard on Tobacco (Graphic Health Warnings) commenced on 1 January 2012 and took full effect from 1 December 2012. The standard is the first product safety information standard developed under the ACL. A Supplier Guide has been drafted to assist suppliers to comply with this requirement.

The PSCC, continued to progress work on a number of regulations including a possible services standard for the installation of curtain and blind cords, a possible mandatory standard (mandated warning labels) for children's portable pools and a possible mandatory standard (mandated warning labels) for trampolines.

APPENDIX 1 — AUSTRALIA'S CONSUMER POLICY FRAMEWORK

Summary

To support the ACL, Australia's governments and consumer agencies have made formal agreements and administrative arrangements to provide for a cooperative and coordinated approach to the enforcement and policy development of the ACL.

THE NATIONAL CONSUMER POLICY OBJECTIVE

Australia's consumer policy framework is informed by the *National Consumer Policy Objective*, which was agreed by MCCA³ on 3 December 2009. The National Consumer Policy Objective is:

[t]o improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly.⁴

The Objective is supported by six operational objectives (see Figure 2 for the implementation of these objectives by CAANZ committees):

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

3 Now the COAG Legislative and Governance Forum on Consumer Affairs (CAF).

4 Ministerial Council on Consumer Affairs (2009). *A new approach to consumer policy: Strategy 2010-2012*, p 4.

Figure 2: Alignment of operational objectives with CAANZ committees

National operational objective	PSCC	EIAC	CDRAC
...ensure well informed consumers...	Promoting product safety in the community	Improving consumer understanding of the ACL	
...ensure that goods and services are safe...	Achieving compliance with Australia’s product safety system Maintaining Australia’s product safety system		
...prevent practices that are unfair...		Supporting and promoting compliance activities	Achieving compliance with the ACL Combatting unlawful selling practices Supporting business compliance with the ACL
...meet the needs of vulnerable consumers...	Identifying and assessing emerging hazards	Assisting consumers as they engage with the marketplace	Responding to unfair trader practices
..provide accessible and timely redress...			Providing timely support for consumers
...promote proportionate, risk-based enforcement...			Identifying and responding to emerging consumer issues

INTERGOVERNMENTAL AGREEMENT FOR THE AUSTRALIAN CONSUMER LAW

The development and administration of the ACL, is governed by the *Intergovernmental Agreement for the Australian Consumer Law* (IGA), which was signed by COAG on 2 July 2009. The IGA provides for the operation of the ACL through:

- arrangements for the implementation and future amendment of the ACL; and
- arrangements for the administration and enforcement of the ACL.

The ACL was implemented through the following Commonwealth legislation, which commenced on 1 January 2011:

- *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*;
- *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*; and
- *Trade Practices Amendment (Australian Consumer Law) Regulations 2010*.

The ACL was then applied by each state and territory through their own Acts, namely:

- the *Fair Trading (Australian Consumer Law) Amendment Act 2010* (ACT);
- the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (NSW);
- the *Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010* (NT);
- the *Fair Trading (Australian Consumer Law) Amendment Act 2010* (Queensland);
- the *Statutes Amendment and Repeal (Australian Consumer Law) Act 2010* (SA);
- the *Australian Consumer Law (Tasmania) Act 2010 and Australian Consumer Law (Tasmania) (Consequential Amendments) Act 2010* (Tasmania);
- the *Fair Trading Amendment (Australian Consumer Law) Act 2010* (Victoria); and
- the *Fair Trading Act 2010* (Western Australia).

The ACL commenced as a law of the Commonwealth and of each state and territory on 1 January 2011.

Review of the ACL

The enforcement and administration arrangements are to be reviewed by COAG within seven years of the commencement of the ACL. The operation and effect of the new provisions of the ACL are also subject to be reviewed within this period.

AUSTRALIA'S CONSUMER AGENCIES

Australia has two national consumer agencies: the **Australian Competition and Consumer Commission** and the **Australian Securities and Investments Commission**. Each state and territory also has its own consumer agency:

- **New South Wales Fair Trading** within the NSW Department of Finance and Services;
- **Consumer Affairs Victoria**, within the Victorian Department of Justice;
- the **Queensland Office of Fair Trading**, within the Queensland Department of Justice and Attorney-General;
- the **Western Australia Department of Commerce – Consumer Protection**;
- the **Consumer and Business Services Division**, within the SA Attorney-General's Department;
- the **Tasmanian Office of Consumer Affairs and Fair Trading**, within the Tasmanian Department of Justice;
- the **Australian Capital Territory Office of Regulatory Services**, within the ACT Justice and Community Safety Directorate; and
- **NT Consumer Affairs**, within the NT Department of Justice.

In New Zealand consumer law enforcement responsibilities lie with both the **New Zealand Ministry of Business, Innovation and Employment** (for some specific issues) and the **New Zealand Commerce Commission**.

Each of these agencies also has a range of other statutory and regulatory functions which it must fulfil under the laws of each jurisdiction, in addition to their responsibilities for general consumer protection and fair trading matters.

The ACL Memorandum of Understanding

In July 2010, Australia's consumer agencies agreed to a Memorandum of Understanding (MoU) for the administration and enforcement of the ACL. The MoU is a comprehensive framework which builds on a previously limited range of often informal arrangements which were not universal among the jurisdictions. The MoU makes arrangements for:

- enforcing the ACL, including the exchange of information and intelligence;
- informing the general public and educating consumers and businesses about the ACL;
- monitoring compliance with the ACL, including market surveillance;
- specific arrangements relating to the administration of the national product safety system; and
- ongoing reporting and review of the administration and enforcement of the ACL, including specific arrangements to report to CAF.