

Australian Consumer Law

Memorandum of Understanding

A Memorandum of Understanding between

- the Australian Competition and Consumer Commission
- the Australian Securities and Investments Commission
- the State and Territory offices of fair trading, being:
 - Australian Capital Territory – Access Canberra;
 - New South Wales – NSW Fair Trading;
 - Northern Territory – Northern Territory Consumer Affairs
 - Queensland – Office of Fair Trading;
 - South Australia – Consumer and Business Services;
 - Tasmania – Consumer Building and Occupational Services;
 - Victoria – Consumer Affairs Victoria; and
 - Western Australia – Department of Mines, Industry Regulation and Safety;
- the New Zealand Commerce Commission
- the New Zealand Ministry of Business, Innovation and Employment.

This Memorandum of Understanding sets out a framework for cooperation between the regulators of the Australian Consumer Law and to facilitate effective communication, cooperation and coordination of consumer laws in Australia and New Zealand so that they may best serve the interests of consumers and promote fair trading and competition.

Australian Consumer Law

Memorandum of Understanding

PART 1—PRELIMINARIES

1. In October 2008, the Council of Australian Governments (COAG) committed to a reform process that will provide a ‘...uniform and higher level of protection for Australian consumers’.¹ The centrepiece of the consumer policy reform agreed to by COAG was the introduction of a single national consumer law for Australia, the ‘Australian Consumer Law’ (ACL). The ACL was based on the consumer protection provisions of the former *Trade Practices Act 1974*, which was repealed and replaced by the *Competition and Consumer Act 2010* (the Act) on 1 January 2011, and also drew on best practice in existing state and territory consumer laws.
2. On 2 July 2009 the Commonwealth and all States and Territories ratified the Intergovernmental Agreement for the ACL (the 2009 IGA) agreeing to implement and enforce the ACL to ensure a nationally consistent consumer protection regime.
3. In accordance with the IGA, the first ACL Memorandum of Understanding (MOU) was signed in 2010 (the 2010 MOU).
4. In 2017, Consumer Affairs Australia and New Zealand (CAANZ) reported to the Legislative and Governance Forum on Consumer Affairs (CAF) on the review of the ACL. Also in 2017, the Productivity Commission reported to the Australian Government on Consumer Law Enforcement and Administration.
5. In 2018, the parties to this MOU undertook to review the 2009 IGA and the 2010 MOU. The 2010 MOU will be revoked on commencement of this MOU.
6. This MOU provides a framework for communication, cooperation and coordination between the Parties in administering and enforcing the ACL and to facilitate effective communication, cooperation and coordination of consumer laws in Australia and New Zealand.
7. The parties to this MOU are the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC) and the State and Territory offices of fair trading, which will jointly administer and enforce the ACL, as well as the New Zealand Ministry of Business, Innovation and Employment and New Zealand Commerce Commission to the extent that the matters are relevant to trans-Tasman administration and enforcement of consumer law as provided for under the IGA (the Parties).
8. The Parties agree that where possible, the governance of this MOU will be guided by the policies of the Legislative and Governance Forum on Consumer Affairs (CAF).

¹ COAG Communiqué (2 August 2008), p 2

9. This MOU is not intended to create legally binding obligations on the Parties. This MOU will not affect the understandings of the Parties contained in existing treaties, agreements and arrangements.

PART 2—OBJECTIVES

10. The object of this MOU is to set out a framework for communication, cooperation and coordination between the Parties so that they can, both collectively and within each of their own jurisdictions, most effectively protect and empower consumers (within the meaning of the ACL) and promote fair trading under the ACL.
11. The Parties each recognise that communication, cooperation and coordination are desirable and necessary to:
 - a) discharge their respective functions;
 - b) maximise the effective and consistent implementation of their regulatory powers; and
 - c) promote efficient and streamlined resource allocation.
12. The Parties each recognise the need for ongoing communication, cooperation and coordination between Australia and New Zealand in the administration and enforcement of consumer protection legislation to ensure consistency with the objectives of the Australia New Zealand Closer Economic Relations Trade Agreement.

PART 3—PARTIES TO THE UNDERSTANDING

13. While each agency has a specific role and functions, they share responsibilities in enforcing the consumer protection and fair trading laws under the 'one law multiple regulator model' for national matters.

The Australian Competition and Consumer Commission (ACCC)

14. The ACCC is responsible for enforcing consumer protection and fair trading laws and promoting competition in the marketplace. It does this by promoting compliance with and enforcing the provisions of the Act. The role of the ACCC is to facilitate and encourage compliance with the laws it enforces, to take appropriate action in response to contraventions of those laws, to determine certain competition and access issues and to educate the community in relation to such matters.

The Australian Securities and Investments Commission (ASIC)

15. ASIC is Australia's corporate and markets regulator as well as the consumer protection regulator for financial services and consumer credit. ASIC contributes to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers. ASIC is responsible for enforcing consumer protection and fair trading laws with respect to financial products and services under the *Australian Securities and Investments Commission Act 2001*. This includes laws dealing with unfair terms in both standard form consumer and small business contracts for financial products and services. ASIC also administers other consumer protection legislation, including the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*.

NSW Fair Trading (New South Wales)

16. NSW Fair Trading (part of the Department of Customer Service) is responsible for administering laws which promote consumer wellbeing and marketplace integrity across many transactions including general purchases, product safety, accommodation, motor vehicles and property. NSW Fair Trading promotes a fair market place in NSW by educating consumers and traders, resolving their disputes, investigating contraventions of the law and taking action to enforce the law.
17. This MOU has the status of an 'information sharing arrangement' for ACL matters, within the meaning of the *Fair Trading Act 1987* (NSW). This expressly permits NSW Fair Trading to request, receive and disclose information to the other jurisdictions to assist with NSW Fair Trading's and the other agencies' functions. The information in an information sharing arrangement is limited to:
 - a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters,
 - b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers,
 - c) any other information affecting the interests of consumers,
 - d) any other information of a type prescribed by the regulations.
18. When sharing personal information, NSW Fair Trading must comply with the principles of the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act). This includes restrictions on disclosures to other jurisdictions unless provisions of section 19(2) of the PPIP Act are complied with (for example, the disclosure is permitted or required by an Act), or exemptions to section 19 of the PPIP Act apply. Section 25 of the PPIP Act allows NSW Fair Trading to disclose personal information to other jurisdictions when lawfully authorised or when non-compliance is permitted under another law. Section 23(7) of the PPIP Act also permits disclosures to other jurisdictions for law enforcement purposes. (These provisions are subject to change.)

Consumer Affairs Victoria

19. Consumer Affairs Victoria (CAV) protects and promotes the interests of consumers by:
 - reviewing and advising Government on consumer legislation and industry codes;
 - advising and educating consumers, tenants, traders and landlords on their rights, responsibilities and changes to the law;
 - registering and licensing businesses, occupations and industries;
 - resolving disputes between consumers and traders, tenants and landlords; and
 - monitoring compliance with and enforcing consumer laws.
20. This MOU falls within the definition of an "information sharing arrangement" for the purposes of section 133 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) (ACLFTA). The Director of CAV may enter into an information sharing arrangement with the Parties relating to:

- information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters;
 - probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers;
 - any other information affecting the interests of consumers;
 - any other information of a prescribed kind; and
 - referring, or receiving, or conducting a joint investigation into, any matter (including any complaint) with respect to fair trading, or that affects the interests of consumers, to, from or with a Party or other law enforcement agency.
21. The Director of CAV is authorised to request and receive information from, and disclose information to, the Parties, and vice versa, to the extent the information is reasonably necessary to assist in the exercise of functions under the ACLFTA or a Consumer Act listed under Schedule 1, or the functions of the Parties.
22. CAV also has obligations to comply with the *Privacy and Data Protection Act 2014* (Vic) and the Information Privacy Principles set out in Schedule 1, in the collection, use, disclosure, transfer and security of personal information.

Office of Fair Trading (Queensland)

23. The Office of Fair Trading (QLD OFT) delivers a fair and safe marketplace for consumers and traders in Queensland. The QLD OFT achieves this by providing information and advice to consumers and traders about their rights and responsibilities and by maintaining and improving fair trading legislation. The QLD OFT assists both consumers and traders to resolve disputes through conciliation, complaint investigation and where necessary, the taking of enforcement action. The QLD OFT administers a range of industry licensing functions, maintains a register of business names and oversees the regulation and monitoring of product safety standards.

Department of Mines, Industry Regulation and Safety (Consumer Protection) (Western Australia)

24. Consumer Protection is a division of the Department of Mines, Industry Regulation and Safety (the Department). The Department has a broad range of functions and works with the community to ensure safety and protection for workers and consumers and facilitate growth through effective regulation. The Consumer Protection Division promotes consumer protection and fair trading in Western Australia by:
- providing information and advice to consumers and traders about their rights and responsibilities;
 - helping consumers resolve disputes with traders;
 - investigating complaints about unfair trade practices;
 - prosecuting unscrupulous traders;
 - regulating and licensing some business activities; and
 - developing legislation that protects consumers.

25. Information obtained by Consumer Protection is *prima facie* confidential under section 112 of the *Fair Trading Act 2010* (WA). Consumer Protection may release this information in certain circumstances, such as where: its release is for the purposes of performing the Commissioner for Consumer Protection's functions, the person to whom the information relates consents to its disclosure or the information provided is de-identified.

Consumer and Business Services (South Australia)

26. Consumer and Business Services (CBS) is a division of the South Australian Attorney-General's Department. CBS protects consumers, supports and regulates businesses and records significant life events in South Australia. This diverse role involves licensing and registration, dispute resolution, legislative compliance, policy development and providing education and awareness campaigns to ensure an informed community that is able to conduct business fairly, efficiently, competitively and safely.

27. CBS aims to:

- ensure compliance with legislation relating to liquor licensing, gambling (including the Casino), charitable organisations, occupational licensing, incorporated associations, fair trading and the Australian Consumer Law to ensure fairness of practice and harm minimisation, and protect and enhance public trust
- ensure transparency in business dealings and afford the community a level of consumer protection through fairly and effectively licensing and/or registering various occupations, industries, organisations and significant life events
- provide dispute resolution services for consumers and traders that support a fair, safe, and equitable marketplace in South Australia
- ensure effective advising and educating of consumers, tenants, businesses and landlords on their rights, responsibilities, and changes to the law.

28. Information shared under this memorandum of understanding is disclosed in accordance with section 96A of the *Fair Trading Act 1987* (SA), which limits those with whom information may be shared. These include persons concerned in the administration of another law of the State, or a law of another State, a Territory of the Commonwealth or the Commonwealth, relating to trade or commercial practices or the protection of consumers. Information may only be used for the purpose for which it was disclosed.

Consumer Building and Occupational Services (Tasmania)

29. Consumer Building and Occupational Services (CBOS) is a division of the Tasmanian Department of Justice. CBOS is the main advisor to government on matters affecting the interests of consumers. In partnership with the Australian Government, CBOS aims to protect consumers through enforcement of the ACL and by supporting a collaborative approach to the creation of a fair and equitable Australian marketplace for all consumers.

Access Canberra (Australian Capital Territory)

30. Access Canberra is responsible for promoting and protecting the community's consumer interests through the administration and enforcement of fair trading legislation which prevents unsafe, unfair and misleading conduct. Access Canberra educates consumers and businesses about their rights and responsibilities, encourages businesses to provide consumer redress where there is detriment, and takes effective action against non-compliant businesses and individuals where conduct impacts on consumers and the market.

Northern Territory Consumer Affairs

31. Northern Territory Consumer Affairs (NTCA) is a division of the Northern Territory Department of the Attorney-General and Justice. NTCA aims to promote and regulate responsible business practices through administration of a regulatory system that protects consumer interests. The role of NTCA includes educating consumer and traders about their fair trading rights and responsibilities.

New Zealand Ministry of Business, Innovation and Employment

32. The Ministry of Business, Innovation and Employment is responsible for advising the New Zealand Government on matters concerning:

- development of consumer policy and maintenance of consumer legislation;
- provision of appropriate, accurate and accessible information, education and advice for consumers and businesses on consumer law and issues; and
- investigation and management of unsafe consumer products.

New Zealand Commerce Commission

33. The Commerce Commission is responsible for the monitoring and enforcement of New Zealand's *Commerce Act 1986*, *Fair Trading Act 1986* and *Credit Contracts and Consumer Finance Act 2003*. The Commerce Commission's objective is to ensure that New Zealanders benefit from competitive prices, better quality and greater choice by ensuring that:

- markets are dynamic and all goods and services are provided at competitive prices;
- consumers are confident of the accuracy of information they receive when making choices; and
- regulated industries are constrained from earning excess profits, face incentives to invest appropriately and share efficiency gains with consumers.

PART 4—ELEMENTS OF UNDERSTANDING

Element 1: Communication, cooperation and coordination

34. The Parties agree that they will communicate, cooperate and coordinate with one another to:

- a) monitor compliance with the ACL;
- b) enforce the ACL and trans-Tasman consumer law, including through the exchange of information and intelligence;

- c) manage consumer complaints;
- d) inform the general public and educate consumers and businesses about the ACL;
- e) promote coordinated and consistent application of the ACL regulatory powers;
- f) promote coordination and cooperation between New Zealand agencies and Australian agencies for trans-Tasman consumer law monitoring and enforcement; and
- g) report on and review compliance and enforcement of the ACL.

35. The Parties also agree that they will each:

- a) use best endeavours to communicate, cooperate and coordinate efforts on ancillary or associated activities within the framework of this MOU and consistent with all relevant law;
- b) inform one another regularly of their general compliance and enforcement activities and priorities;
- c) consult one another in relation to recent judgments, current law reform, policy issues and other matters of mutual interest;
- d) consider and implement any appropriate opportunities for collaboration between the Parties in training, staff development and/or staff exchanges.

36. Each Party will appoint a Liaison Contact Officer (LCO) for the purpose of day-to-day liaison, communication and information sharing under this MOU, to be updated on the ACLINK platform (or any suitable replacement).

Element 2: Complaint handling

37. The Parties agree that they will collaborate to promote consistency in complaint management practices and principles to achieve effective outcomes for consumers, which may involve collaboration on complaint handling on emerging national issues and for national projects focussed on complaint handling. However, the Parties acknowledge that some Parties do not take an active role in complaint handling and will therefore have limited involvement in any collaboration on complaint management practices and principles.

38. The Parties recognise that in some cases it may be appropriate for a Party (the referring Party) to refer a consumer complaint or inquiry to another Party (the receiving Party), for instance, where:

- a) another party is the more appropriate body to deal with that particular ACL issue; or
- b) where a complaint or enquiry potentially relates to the services regulated under the ASIC-managed ACL provisions.

39. When a Party considers that a consumer complaint or inquiry is appropriate for referral to another Party, the Parties agree that the referring Party will, while having regard to all the circumstances of the particular complaint or inquiry:

- a) initiate the referral for consideration by the receiving Party as soon as practicable; and
- b) provide the receiving Party with any information and documentation held by the referring Party that will assist the efficient management of the complaint or inquiry, subject to any

legal restrictions on the disclosure of information.

Element 3: Information sharing and confidentiality

40. The Parties agree to collaborate to ensure that, as far as possible and subject to paragraph 39, procedures exist to support the effective information sharing of complaint and investigation information. This may include:
- a) keeping each other usefully or promptly informed;
 - b) ongoing development to enhance information sharing arrangements;
 - c) providing information to a requesting Party at that Party's request, where this is consistent with relevant legal requirements;
 - d) proactive sharing of information between Parties if the information is likely to assist another Party to administer or enforce relevant ACL provisions;
 - e) providing information to another Party in circumstances where the providing Party considers that it is likely to assist the receiving Party in the administration or enforcement of the ACL provisions within the receiving Party's jurisdiction; or
 - f) promoting legislative amendments, where appropriate, to enable information sharing between the Parties to occur more freely.
41. The Parties will have regard to the statutory privacy and confidentiality obligations governing the permitted disclosure of confidential or protected information and wherever appropriate seek to obtain information in such a way that can be shared with other Parties.
42. When a Party receives information from another Party it will:
- a) observe any express conditions placed upon the release of the information by the providing Party;
 - b) take all reasonable steps to ensure that such information is only:
 - i. used internally by the receiving Party in connection with carrying out its statutory functions or performing its duties;
 - ii. disclosed where required or permitted by law or as otherwise authorised by the providing Party; and
 - c) take all reasonable steps to keep the information secure in accordance with the Parties standard evidence handling procedures.
43. If a receiving Party is required by law to disclose information provided to it in-confidence it must:
- a) where possible, notify the providing Party of the disclosure requirement to allow the providing Party, in its discretion, to take all reasonable steps to maintain the confidentiality of the information required to be disclosed, including, if necessary and appropriate, making a claim for public interest immunity privilege or requiring confidentiality undertakings from the person or body to whom the information is required to be disclosed; and
 - b) disclose only the confidential information necessary to comply with the legal

requirements.

Element 4: Compliance strategies

44. The Parties agree to cooperatively develop strategies to address actual or prospective consumer harm, particularly in circumstances where that harm affects, or is likely to affect, consumers across the jurisdiction of two or more Parties. These strategies may involve, but not be limited to:
 - a) education campaigns;
 - b) targeted and general guidance for consumers and businesses; and
 - c) liaison and consultation involving one or more of the Parties with consumer and business representatives.
45. In developing education and guidance materials the Parties will, to the extent possible, develop consistent materials.
46. Where appropriate, a Party will consider inviting the staff of another Party to participate in compliance visits or other outreach activities.

Element 5: Enforcement activities

47. Where two or more Parties consider that consumer harm identified within their jurisdictions may be most effectively addressed by way of mutual investigation, litigation or other enforcement action, the Parties concerned may agree to establish a cooperative working arrangement, in writing, independently of this MOU.

Element 6: Product safety

48. The Parties agree that the administration and enforcement of product safety will be supported by a specific cooperative framework.
49. The cooperative framework will include the Parties to this MOU to the extent that they have jurisdiction for the administration and enforcement of product safety.
50. The cooperative framework will set out:
 - a) protocols for complaint handling, exchange of information and intelligence, surveillance, compliance and joint enforcement;
 - b) cooperative arrangements for informing the parties to this agreement and the general public and educating consumers and business about product safety;
 - c) protocols for dealing with warning notices, product bans, mandatory safety standards and recalls;
 - d) contact officer arrangements; and
 - e) all other matters necessary for ongoing implementation and administration of the Product Safety Framework.
51. The protocols and principles under the cooperative framework will not apply to or affect any cooperative arrangements made under this MOU with ASIC.

52. The cooperative framework will not affect the general application of this MOU or any other cooperative arrangements.

PART 5—ADMINISTRATIVE ARRANGEMENTS

Commencement of this MOU

53. This MOU shall take effect on and from the date that it is signed by all Parties, and on that date the previous MOU shall cease to have effect.

Review and amendment of this MOU

54. The Parties will review the operation of this MOU at intervals of no more than five (5) years, with a view to improving its operation and resolving any issues that may arise.
55. The MOU may be amended at any time in writing by agreement of all the Parties.

Dispute resolution

56. Any Party may give notice to one or all Parties of a dispute concerning the operation of this MOU.
57. Where there is a conflict or disagreement between any of the Parties over any issue relating to or covered by this MOU, the Parties will attempt to resolve the issue by negotiation in the first instance.
58. If a dispute cannot be resolved between the Parties, it will be referred for resolution through CAANZ.

The Parties have confirmed their commitment to this MOU as follows:

Signed for and on behalf of Australian Competition and Consumer Commission by

signed

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Mr Rod Sims
Chair of ACCC

Date: 17th April 2020

Signed *for and on behalf of Australian Securities and Investments Commission by*



signed

Mr James R. F. Shipton
Chair of ASIC

Date: 7 May 2020


Signed for and on behalf of NSW Fair Trading (New South Wales) by

signed  _____

Ms Rose Webb
Commissioner of Fair Trading

Date: 20.4.20

Signed for and on behalf of Consumer Affairs Victoria by

signed -----

Ms Michelle Osborne
Acting, Executive Director, Regulatory Services and Director, Consumer Affairs Victoria

Date: 05/06/2020

Signed for and on behalf of Office of Fair Trading (Queensland) by

signed  -----

Ms Victoria Thomson

Deputy Director-General of Liquor, Gaming and Fair Trading

Date: 21-04-2020

Signed for and on behalf of Department of Mines, Industry regulation and Safety (Western Australia) by

signed Kristin Berger

Ms Kristin Berger

Acting Director General of the Department of Mines, Industry Regulation and Safety

Date: 17 April 2020

Signed for and on behalf of Consumer & Business Services (South Australia) by

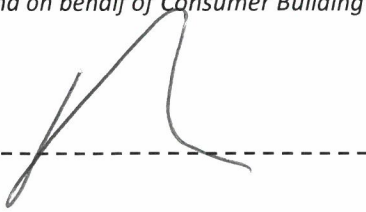
signed 

Mr Dini Soulio
Commissioner for Consumer Affairs

Date: 17 April 2020

Signed for and on behalf of Consumer Building and Occupational Services (Tasmania) by

signed

A handwritten signature in black ink, appearing to be 'Peter Graham', written over a horizontal dashed line.

Mr Peter Graham

Executive Director of Consumer Building and Occupational Services

Date:

21/4/20

Signed for and on behalf of Access Canberra (Australian Capital Territory) by

signed  -----

Mr David Snowden
Commissioner of Fair Trading

Date: 16th April 2020

Signed for and on behalf of Northern Territory Consumer Affairs by

signed 

Mr Stephen Gelding
Commissioner of Consumer Affairs

Date: 16/04/2020

Signed for and on behalf of New Zealand Commerce Commission by

Signed 

Ms Anna Rawlings
Chair, New Zealand Commerce Commission

Date: 10th July 2020

Signed *for and on behalf of New Zealand Ministry of Business, Innovation and Employment by*



signed

Ms Carolyn Tremain

Chief Executive, Ministry of Business, Innovation and Employment

Date: 9 April 2020
