

Chapter 1 : Aus Contract Law | Legislation | TPA (historical)

Trade Practices Act An Act relating to certain Trade Practices: 5 Extended application of this Act to conduct outside Australia.

Conclusion How does it affect you? The Trade Practices Act Cth the TPA has been renamed the Competition and Consumer Act Cth the CCA ; The Australian Consumer Law or ACL forms Schedule 2 to the CCA and introduces a number of new provisions, including a new system of statutory consumer guarantees; new prohibitions on false and misleading representations in relation to testimonials and consumer guarantees; a new regime prohibiting unfair contract terms in standard form consumer contracts; a single national product safety regime; and additional investigative and enforcement powers for the Australian Competition and Consumer Commission ACCC. There have been a number of structural changes to the TPA. Key changes The ACL is intended to provide uniform national consumer law provisions. Existing prohibitions against misleading conduct, unconscionable conduct and false and misleading representations have been relocated to the ACL but are largely unchanged in substance. The ACL also contains a number of new provisions, including new consumer guarantees, new prohibitions on specific false and misleading representations, a new regime prohibiting unfair contract terms in standard form consumer contracts and a single national product safety regime. The ACCC has also been given additional enforcement powers in respect of consumer protection contraventions. Consumer guarantees The ACL provides for a single set of consumer guarantees to replace the current system of implied warranties under the TPA. In relation to the supply of goods, the guarantees are: In relation to the supply of services, the guarantees are: These guarantees cannot be excluded by contract, however, a failure to comply with a guarantee will not constitute a contravention of the ACL. Remedies against the manufacturer for a failure to comply with a guarantee include recovery of damages for any reduction in the value of the goods as well as damages for any reasonably foreseeable loss or damage suffered. Remedies against the supplier for a major failure to comply with a guarantee include recovery of damages for any reduction in the value of the goods as well as damages for any reasonably foreseeable loss or damage suffered. For failures that are not major, the consumer can, for example, require the supplier to remedy the breach. If the supplier fails or refuses to do so in a reasonable time, the consumer can, for example, require the supplier to reimburse the consumer for the reasonable costs of repairs. Unfair contract terms regime Under the new regime, a term in a consumer contract is void if it is unfair and the contract is a standard form contract. A term in a consumer contract is unfair if it: Single national product safety regime The ACL introduces a single national law for consumer product safety. Although the new regime will be administered jointly by the ACCC and by state and territory regulators, there has been a significant transfer of powers to the Commonwealth. Under the new provisions, only the Federal Minister has power to prescribe safety standards and impose permanent bans on consumer goods and product-related services. The administrative powers to temporarily or permanently ban consumer goods or product-related services may only be exercised where the relevant minister believes that the goods or services in question pose a risk of injury to any person, either through their normal use or a reasonably foreseeable misuse. Other important changes include: The new consumer guarantees discussed above also form part of the reforms to product safety. The same level of maximum penalties applies to breaches of the consumer protection provisions, including false or misleading representations but excluding misleading and deceptive conduct under s Conclusion The ACL reforms require businesses to review the way they interact with consumers, and may have far reaching consequences for your business. Please contact us if you require training or advice in relation to the ACL reforms and how they affect your business. For further information, please contact:

Chapter 2 : Trade Practices Act

Trade Practices Act (Cth) Please note that the 'Trade Practices Act' was renamed the Competition and Consumer Act, effective 1 January. This name change does not have any impact on the the numbering or content of the competition provisions in the Act.

Access to Services[edit] See also: For example, it covers access to electricity grids or natural gas pipelines. The aim of this part of the act is to encourage competition in upstream or downstream markets. The National Competition Council and the ACCC are both involved in registering agreement and assessing what is fair to owners, to public, to users. As an alternative to declaring a service, it may be subject to undertakings registered with the ACCC. Restrictive Trade Practices[edit] The restrictive trade practices, or antitrust, provisions in the CCA are aimed at deterring practices by firms which are anti-competitive in that they restrict free competition. Private actions for compensation may also be available. Most Price Agreements see Cartel and Price-Fixing Primary boycotts an agreement between parties to exclude another Secondary boycotts whose purpose is to cause substantially less competition Actions between two persons engaging in conduct hindering 3rd person from supplying or acquiring goods or services from 4th Misuse of market power "taking advantage of substantial market power in a particular market, for one or more proscribed purposes; namely, to eliminate or damage an actual or potential competitor, to prevent a person from entering a market, or to deter or prevent a person from engaging in competitive conduct. Most forms of exclusive dealing are only prohibited if they have the purpose or likely effect of substantially lessening competition in a market. A type of exclusive dealing, third-line forcing involves the supply of goods or services on the condition that the acquirer also acquires goods or services from a third party. Third-line forcing is prohibited per se. Resale price maintenance "fixing a price below which resellers cannot sell or advertise Mergers and acquisitions that would result in a substantial lessening of competition A priority of ACCC enforcement action in recent years has been cartels. The ACCC has in place an immunity policy, which grants immunity from prosecution to the first party in a cartel to provide information to the ACCC allowing it to prosecute. The ACCC administers ongoing compliance with these codes. There are currently[when? Part VII Authorisations, Notifications, and clearances in respect of restrictive trade practices[edit] A unique feature of the Competition and Consumer Act, which does not exist in similar legislation overseas, is that the ACCC may grant exemptions. Such exemptions do not apply to resale price maintenance or misuse of market power. The ACCC maintains a public register of authorisations and notifications. In the Act was amended to include a new Division 3 to Part VIIA providing a process for formal clearance and authorisation of mergers. This allows some control over price rises To monitor the prices, costs and profits of an industry or business under the direction of the minister and to publicly report the results to the Minister. Australia is a free market economy; consequently, the Act does not establish the ACCC as a price-fixing body. An example of the use of this section is that, under a direction from the Minister, the ACCC monitors the price of petrol. Upon registration of agreements with the registrar of liner shipping, shipping operators may discuss and fix prices, pool revenues and losses, coordinate schedules and engage in other conduct that would otherwise breach Part IV provisions. Telecommunications Regulation[edit] The Act also regulates aspects of the Telecommunications market. In Australia the previously government-owned Telstra, now privatised, has traditionally dominated the telecommunications sector. Telstra owns the copper network infrastructure. The market was partially deregulated in with the introduction of Optus as a competitor. In deregulation continued when new entities were permitted to enter the market see Communications in Australia. However, a feature of the Australian telecommunications market is that it is neither feasible nor efficient to have multiple networks, for example, of fibre-optic cables or of copper cables. Part XIB of the Act allows the ACCC to issue a Competition Notice to a carrier telecommunications corporation if it has reason to believe the corporation has engaged in "anti-competitive conduct". Competition Notices also allow third parties to take legal action. Part XIC is a telecommunications-specific access regime. The object of Part XIC is to promote the long-term interests of end-users of telecommunications carriage services and services that facilitate the supply of such carriage

services: The extent to which something promotes the long-term interests of end-users is assessed by having regard to three, and only three, objectives, namely: Suppliers of declared services must comply with standard access obligations: Persons can obtain access to declared services on terms and conditions set either: Australian Consumer Law[edit] The Australian Consumer Law ACL is based on the proposition that low consumer power or lack of information is a market failure which needs to be addressed by interference in the market. These parts deal with: Unfair Practices including unconscionable conduct, misleading or deceptive conduct and unfair contracts - Chapter 2 and Part Conditions and Warranties in Consumer Transactions

Part Product safety and information - Part Product Liability - Part Main article: Misleading or deceptive conduct Misleading or deceptive conduct s 18 of the ACL, formerly s 52 of the TPA is one of the most important consumer parts of the act. It allows both individuals and the ACCC to take action against corporations who engage in conduct that is misleading or deceptive, or likely to mislead or deceive. Misleading or deceptive conduct carried out by companies can also be prosecuted by the state under Chapter 4 of the ACL. However, the inclusion of section 20 allows for remedies under the Law. Section 21 bans unconscionability in consumer transactions. Section 22 gives factors that indicate unconscionability. This clarifies the application of unconscionability and circumstances where a consumer is at a "special disability". Consumer Guarantees Division 1 of Part [edit] The Australian Consumer Law implies into contracts with consumers certain guarantees these were formerly known as warranties. Similar conditions are implied by the State Sale of Goods Acts, but these acts have slightly different jurisdictional limits e. Under the Trade Practices Act implied conditions and warranties are mandatory: The implied conditions are as to title s 53 of the ACL, formerly s 69 of the TPA , quiet possession, freedom from encumbrances, fitness for purpose s 55 of the ACL, formerly s 71 of the TPA , supply by description or sample s 56, s 57 and that the goods are of acceptable quality s 54 of the ACL, formerly s 66 of the TPA, which used the term "merchantable quality". As a caveat, where the consumer guarantees are not that of title, undisturbed possession or undisclosed securities, they only apply if the goods or services in question are supplied in trade or commerce. The most important of these to a consumer is likely to be acceptable quality. If goods fail to reach a basic level of quality considering the price of the goods

that is they are defective, break, or do not do what they should do then the ACL has been breached. The scope of the report was quite broad, with recommendations regarding mergers and acquisitions, exclusionary provisions, third line forcing, joint ventures, penalties and remedies, and the functions and powers of the ACCC. As a result, some amendments have been made to the Act.

Chapter 3 : Australia: Trade Practices Act (consolidated as of 19 April)

The Australian Trade Practices Act proscriptions and prescriptions for a more competitive economy. [David K Round;] -- This book presents a collection of papers which evaluate the achievements of the Australian Trade Practices Act in making Australian markets more competitive.

This act continues to provide business with surprises - usually unpleasant ones. There are several areas where Members can easily fall foul of the Act, the major one being that of Misleading and Deceptive Conduct. Misleading and deceptive conduct The Act does not confine misleading or deceptive conduct to oral or written misrepresentation. It includes all conduct that is misleading or deceptive. An example would be where a party contracts with the Member on the basis of an informal discussion. Silence can constitute misleading or deceptive conduct if the Member allows the party to persist in a mistaken assumption of which the Member is aware. If the conduct has or is likely to have the effect of misleading or deceiving, then that is enough to constitute a breach of the Act. The Act does not specify who must be misled or deceived. This allows a party to take action against another party even though the party allegedly misled or deceived is a further party, unrelated to the parties in the action. For example, an organisation may take action against a competitor even though the party allegedly misled or deceived is a consumer. However, in order to recover damages, a claimant will need to show a causal connection between the conduct complained of and the loss or damage suffered. Disclaimer clauses, where the Member seeks to absolve itself from the truth or otherwise of its representation, will not necessarily provide protection against liability. This is so even if the contract properly incorporates such clauses. Disclaimer clauses generally have very little, or no, effect in the face of a claim for misleading or deceptive conduct under the Act. The Act assists plaintiffs in proving misleading or deceptive conduct in relation to representations concerning future matters. If a Member predicts what it will do, then the Member must be able to show that it made this prediction on reasonable grounds if the prediction proves to be incorrect. For example, if a Member advertises that it will carry goods with skill and care, then in answer to a claim of misleading or deceptive conduct under the Act, it must show that procedures and systems are in place to ensure and promote a proper degree of care and skill. The Member may indeed be skillful - but must prove it. General These comments in relation to misleading and deceptive conduct are of necessity extremely general. They call attention to the statutory provisions of the Trade Practices Act that may impact upon the operations of carriers and forwarders. Isolated occasions of negligence may not themselves be misleading or deceptive. They may be evidence of a lack of proper procedures or systems that may render misleading or deceptive any representation that asserts that the Member is a competent practitioner in its field, leaving the Member vulnerable for breaches of the Trade Practices Act Exclusion and limitation clauses in contracts may be ineffective in combating claims under the Trade Practices Act It would be prudent to consult with a lawyer familiar with the Act if Members are unsure of anything that they may have done or said which may give rise to a possible claim under the Act. This Act can apply to anyone trading in Australia. They do not have to be incorporated in Australia or as an Australian company. The TT Club provides cover for legal liabilities that Members may incur under this Act, subject to the policy wording and the scope of cover requested.

Chapter 4 : Australian Competition and Consumer Commission - Wikipedia

Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.

The Act did not declare any practices illegal ipso facto, but only did so after detailed investigation by the Trade Practices Commissioner. There were so many restrictive practices reported to the Commissioner, and the investigations were so prolonged, that one cynic remarked that at the then current rate of progress, it would take a hundred years to examine them all! The area badly needed reform. Attorney-General in the Whitlam Labor Government Lionel Murphy solicited the advice and help of the eminent economist and business commentator, Professor Ted Wheelwright. In April Wheelwright produced a report for Murphy which became the blueprint of the coming legislation. He recommended, inter alia, that the Act be clearly focused on protecting the consumer. His Trade Practices Bill, which was passed on August 6, , for the first time in Australian Federal law, introduced offences concerning monopolisation, exclusive dealing, price discrimination, resale price maintenance, restraints of trade by agreement, anti-competitive mergers, misleading advertising, coercive sales conduct, pyramid selling and the sale of unsolicited goods. The Competition and Consumer Act is a broad range of provisions, such as provisions on anti-competitive conduct, the Australian Consumer Law and regulation of telecommunications and energy industries. The ACCC, under the Act, also regulates certain industries by providing access to national infrastructure. The ACCC also has an educative role and seeks to educate both consumers and businesses as to their rights and responsibilities under the act. Restrictive trade practices[edit] In most cases the spirit of the act, and thus the actions of the ACCC, favours neither consumer nor supplier, but strives to achieve a competitive market without artificial restrictions. For example, refusal to deal “ a producer refusing to supply a potential retailer or customer with a product “ is not itself illegal unless the action would have an anti-competitive effect on the market as a whole. Penalties for non-compliance of the CCA can be quite severe. Companies that do not comply with the restrictive trade practices provisions of CCA may be fined by the Federal Court. There are three ways the maximum fine can be calculated. Such undertakings may include a wide range of remedies to the conduct. A range of other remedies can be ordered by the court. For example, companies are frequently forced to publish retractions of false advertising claims in national newspapers and at their places of business. Companies found in breach of the CCA are usually bound to implement a compliance program to ensure future compliance with the Act. Consumer confidence[edit] The ACCC is regarded by some Australian business people as necessary but often ineffective, echoing the critics of American anti-trust laws, while Australian consumers generally hold the ACCC in high regard. This criticism is most likely due to the inherent difficulty in obtaining sufficient evidence to prove breaches of the restrictive trade practices provisions of the Competition and Consumer Act. Recently the ACCC has exercised its authority in a number of retail areas, including fining retailer Target for false advertising [6] and Woolworths including some Safeway branded supermarkets in Victoria for anti-competitive liquor deals. The report found that the Australian supermarket sector is " workably competitive ", but price competition is limited by barriers to entry and a lack of incentive for the two major players, Coles and Woolworths , to compete on price. The report also noted that Coles and Woolworths engage in deliberate strategies designed to ensure they maintain exclusive access to prime sites such as shopping centres to prevent centre managers leasing space to competing supermarkets.

Chapter 5 : Allens: Publication: Focus: The Australian Consumer Law: what you need to know now

*The Australian Trade Practices Act Proscriptions and Prescriptions for a More Competitive Economy (Studies in Industrial Organization) [D.K. Round] on calendrierdelascience.com *FREE* shipping on qualifying offers.*

Conclusion The benefits of a single national law The benefits of a national approach to consumer law have been apparent for some decades. Indeed, there was a largely successful attempt to implement consistent consumer laws in the s through a template legislation scheme based on Part V of the Trade Practices Act The net result is that businesses and consumers are not able to fully understand their rights and obligations under the law, which leads to costs in terms of time, money and reduced confidence in markets. These developments are understandable governments face pressures to address specific concerns every day and the answer is often to do something. However, the consequences of such unilateral action by individual jurisdictions for both businesses and consumers are not always fully appreciated. These principles are not remarkable in themselves, and reflect the sorts of issues that all policymakers at all levels of government consider. What these considerations do make clear, however, is that, to the extent that there is a balance, it is not between competing sectoral interests, but between the degree to which a policy decision does or does not enhance the wellbeing of Australians. In considering consumer policy, this approach is reflected in the national consumer policy objective: Consumer policy and the Australian Consumer Law I now want to turn to some of the specifics of the Australian Consumer Law and the reform process we are now engaged in. In Australia we have as the Productivity Commission found a largely effective regime of consumer laws. They increase costs for consumers by making them pay for the inefficiencies that they impose on businesses. They also reduce consumer confidence in making choices, asserting their rights and seeking redress when things go wrong. Through their complexity, these laws have a negative effect on competition, innovation and efficiency in the economy. In considering the move to a single law, it is worth considering the complexity that it will start to replace. Based on a count of substantive consumer provisions, the Australian Consumer Law will replace at least sections in these Acts, not including many of the ancillary enforcement and other provisions that support them. As an economist, and one that has only recently moved into this area of policy, I am often stunned by the ability of lawyers and legislation to introduce complexity in to what appear to be readily straightforward ideas. Every jurisdiction also has a wide range of sector-specific consumer protection laws, designed to address the needs of individual economic sectors, extending from the regulation of hairdressers to electricity retailing. Back on 2 October , the Council of Australian Governments agreed to the creation of an Australian Consumer Law 9 based on the recommendations of the Ministerial Council on Consumer Affairs, 10 which would include: Governments are also examining a national approach to the rights consumers have when they buy goods and services, and their conditions and warranties. The Law will introduce nationally consistent rules for business and trading practices, product safety obligations and the conduct of business-to-consumer transactions, including consumer contracts. These rules will apply to all businesses, and will apply throughout Australia. The Australian Consumer Law will be enacted as a schedule to the Trade Practices Act , which itself will be renamed as the more apt Competition and Consumer Act As part of this process the existing provisions of the Act dealing with unconscionable conduct, unfair practices, pyramid selling, enforcement powers, penalties and remedies and definitions will form the core of the new Law. Unfair contract terms The introduction of a national unfair contract terms law has received intense scrutiny and led to considerable debate. The proposed law is based on the recommendations of the Productivity Commission and on the law which has been in place in Victoria since Enforcement powers, penalties and remedies The Australian Consumer Law will include a single suite of enforcement powers, penalties and remedies for breaches of consumer laws. These will carry across the existing enforcement powers, penalties and remedies found in the Trade Practices Act such as criminal sanctions for the most serious breaches of the law, injunctions, damages, and others. The Law will also introduce a new set of enforcement powers, which commonly exist at the state and territory level, but which will become consistent for the first time and will be used by all Australian consumer agencies. These new powers will allow for

consistency in consumer law enforcement, improve outcomes for consumers and provide more certainty for businesses. Of course the States and Territories will remain intimately involved, in the enforcement of product safety laws, and ensuring the protection of the public. Statutory conditions and warranties Ministers have agreed to examine the effectiveness of the current laws about statutory conditions and warranties. To this end, the National Education and Information Advisory Taskforce undertook a detailed quantitative and qualitative study of the experience of Australian consumers with these laws. Reforms based on best practice in state and territory consumer laws Lastly, the Productivity Commission recommended that the Australian Consumer Law should be enhanced by reference to best practice in existing state and territory consumer laws. The unfair contract terms provisions are now proposed to commence on 1 July and the new enforcement powers, penalties and remedies will commence as soon as the Bill is passed, and these will form the basis of the new common powers to be included in the Australian Consumer Law. The second implementation Bill In early , the Government will introduce a second Bill to: Once this legislative process is completed at the national level “ which we hope will be by mid “ each State and Territory will then enact an application law, which will make the Australian Consumer Law a law of that jurisdiction and repeal its own consumer laws of general application. The Australian Consumer Law is then required, according to agreed COAG timeline, to commence on 1 January along with the required supporting enforcement and compliance framework. Changing the Law Amendments to the Law will be made in accordance with a process set out in the Intergovernmental Agreement. For a change to be made, the Commonwealth plus four jurisdictions “ three of which must be States “ must agree after a regulatory impact assessment, to the extent relevant changes cover any amendment to the text of the Law and any regulations made under it. Enforcing and administering the Law The Agreement also makes provision for the enforcement and administration of the Law. This will be discussed in more detail by Marcus Bezzi from the ACCC shortly, but will be guided by a Memorandum of Understanding between all Australian consumer agencies and our New Zealand counterparts, which is in the final stages of development. The Intergovernmental Agreement codifies a range of requirements when considering policy proposals. And it requires a review of the Law and its enforcement within seven years of its commencement. Conclusion We are fast approaching the time at which the Australian Consumer Law will be completed. In this process we have benefited from the views of many stakeholders, for which we, and our SCOCA colleagues, are grateful. And of course we will consult further on the detail of provisions in the coming months. The Australian Consumer Law represents an opportunity for a new approach to consumer policy, drawing on the widest range of consumer policy and enforcement experience and expertise. We can introduce a consistent approach to consumer law and policy, enabling all Australian consumers to enjoy the benefits of consistent rights wherever they may be, and allowing all Australian businesses to obtain greater efficiencies through a single, simplified national law. In this way, it will enhance the wellbeing of all Australians. National Income, Expenditure and Product. Statutory implied conditions and warranties Australian Government, Canberra <https://>

Chapter 6 : About the ACCC | ACCC

Trade Practices Act This publication incorporates the 26 July amendments to the Trade Practices Act. The amendments are in orange print. The objective of the Trade Practices Act, as set out in the legislation, is to enhance the welfare of Australians through the promotion of competition and fair trading and providing for consumer protection.

A range of issues was raised with the Committee concerning the regulation of market conduct. The most frequent proposal for amendment was the simple addition of an alternative effects test. The Committee concluded that to adopt this proposal would increase the risk of regulatory error and render purpose ineffective as a means of distinguishing between pro-competitive and anti-competitive behaviour. A number of submissions to the Committee sought the reintroduction of a prohibition against price discrimination. This matter has been considered by previous reviews. Submissions in support of the proposal relied on the proposition that it is difficult for the ACCC to obtain interim injunctions speedily requiring the cessation of anti-competitive conduct. It was not demonstrated that the existing process for obtaining an interim injunction is cumbersome or overly difficult. Indeed, it is not clear that the proposed order to cease and desist would be a speedier or more efficient remedy than an interim injunction. Paragraph 1 f refers to the capacity of the competition provisions to deal with the transitional needs of industries and communities undergoing change. The authorisation provisions provide scope for the ACCC to authorise conduct that offers public benefits sufficient to outweigh any detriment to competition. The Committee considers that this is an important feature of the Australian system of competition regulation. In most circumstances, conduct that maximises competition will maximise economic efficiency. The authorisation provisions are a means of dealing with situations in which the application of the competition provisions may not facilitate the most economically efficient outcome. They provide a means of responding in a flexible manner to a particular situation, including that of industries undergoing structural change. The availability of authorisation also continues to be an important aspect of the Act in view of the broadening of the scope of the competition provisions in There are concerns about the authorisation process that centre on the cost, time and the uncertainty involved. Some of these concerns would be met through the introduction of a time limit for the consideration of an application. Flexibility could also be provided in relation to the fee charged to recover the cost of processing authorisation applications. Wilkinson Review Consistently with the recommendations of the Review of the impact of Part IV of the Trade Practices Act on the recruitment and retention of medical practitioners in rural and regional Australia the Wilkinson Review , it is desirable that the ACCC ensures that parties contemplating authorisation are able to seek informal guidance from the Commission prior to lodging an application. Some collective marketing arrangements that previously existed for agricultural products, which were of particular significance to rural and regional areas, have been dismantled. These developments are consistent with the universal application of the competition provisions across the economy, but raise the question whether the Act is adequate to deal with problems arising from the transition. Collective bargaining by a number of competing small businesses may be necessary if they are to achieve bargaining power to balance that of the big businesses with which they have to deal. Collective bargaining at one level may lessen competition but, at another level, may be in the public interest, provided that the countervailing power is not excessive. Currently, collective bargaining is constrained by the Act when it takes the form of contracts, arrangements or understandings having the purpose or effect of substantially lessening competition. Any agreement between competitors to fix, control or maintain prices for goods or services is prohibited regardless of its purpose or effect on competition. The authorisation provisions include the necessary scope to provide relief to competitors wishing to undertake collective negotiation. In addition to the changes it proposes to the authorisation provisions, the Committee favours the introduction of a notification process for small business seeking to bargain collectively. This would provide a speedy and simple means of enabling small businesses to take themselves outside the Act in order to bargain collectively with businesses possessing a large degree of market power, in circumstances where collective bargaining would be to the benefit of the public. The Committee considers, however, that the notification process should be available only to small business in

negotiation with big business, where experience has shown that collective bargaining may do little or no harm to the competitive process and may generate public benefit. A transaction value approach is the preferable means of restricting the notification process to small business. A transaction value approach should be adopted to provide a definition of small business. These include a prohibition on price fixing that is justified because of its inherently anti-competitive nature. The Committee considered that, whilst the general prohibition should remain, there should be a competition defence available in relation to proceedings based upon the prohibition. Moreover, the current provision prohibiting third line forcing was shown to be discriminatory on the basis of corporate structure. There are concerns that the exemption does not provide for some existing practices in mining and manufacturing joint ventures and is framed too narrowly to benefit other kinds of collaborative alliances and arrangements that are now more common in areas of recent innovative growth. The authorisation process provides a means of avoiding the per se prohibition, but the Committee concluded that a competition defence to the prohibition should be made available for joint ventures. The Act should be amended to allow intra-party transactions in a DLC to be treated on the same basis as related party transactions within a group of companies.

Chapter 7 : TPA Review -Review of the Trade Practices Act - Report

The Competition and Consumer Act (CCA) is an Act of the Parliament of Australia. Prior to 1 January , it was known as the Trade Practices Act (TPA). [2] The Act is the legislative vehicle for competition law in Australia, and seeks to promote competition, fair trading as well as providing protection for consumers.

Connections at Firm Key Points From 1 January the Trade Practices Act Cth has been replaced by the Competition and Consumer Act Cth Whilst most substantive amendments relate to fair trading and consumer protection, a broadening of the definition of a consumer means that many B-to-B transactions will be affected The implementation of the national Australian Consumer Law has led to a restructure of some parts of the Act, meaning many sections have been moved and received new numbering. Further, State fair trading legislation has been repealed As a consequence, all businesses should immediately review current agreements and their standard form contracts to ensure they are both compliant and refer to the correct legislative provisions. Background 2 phases of change The new year has ushered in phase 2 of a raft of changes to the consumer law landscape in Australia with the Trade Practices Amendment Australian Consumer Law Act No 2 Cth which commenced 1 January Phase 1 introduced into the then TPA and the Australian Securities and Investments Commission Act Cth a new prohibition on unfair contract terms in standard form consumer contracts. Unfair terms in such contracts will be void under the new national regime but a contract will continue if it is capable of operating without the unfair term. While to a large extent the effect of the Phase 2 reforms is to harmonise the existing State and Federal consumer law, it does also implement some important substantive changes to the law of which all businesses ought to be aware. Key legislative changes from 1 January 1. Repeal of State and Territory laws All States and Territories have enacted legislation repealing their respective fair trading legislation and adopting the national competition and consumer law regime For transactions that occurred up to 31 December , the previous State or Territory consumer laws will continue to apply. Infringement notices can now be issued by the ACCC for alleged breaches of certain provisions of the ACL as an alternative to the commencement of legal proceedings. However, in the event of compliance, the regulator is precluded from taking any further action. Consumer guarantees Statutorily implied conditions and warranties have been replaced with new consumer guarantees. Importantly, a person is taken to have acquired goods as a "consumer" where the goods or services: Certain exceptions apply, for example, where the goods are acquired to be re-supplied or are to be used up in commercial production or manufacture. This significantly broader concept of "consumer" under the ACL means that these guarantees will have a much wider application than the former implied conditions and warranties regime. Clearly, a significant number of business-to-business transactions will be subjected to the new statutory guarantees. Product safety law and enforcement The ACL provides a single national approach and enforcement tools for product safety in relation to consumer goods and product related services including safety bans, product recalls and reporting and notification requirements. Unsolicited consumer agreements The ACL includes a new, national law for unsolicited consumer agreements which replaces existing relevant State and Territory laws. The ACL sets limits upon the formation and negotiation of unsolicited consumer agreements including in relation to permitted contact hours, disclosure, the exiting of premises on request and cooling off periods. Lay-bys The ACL provides simple national rules for lay-by agreements. Enforcement and remedies The ACL introduces some new penalties, enforcement powers and options for redress of consumer grievances. The enforcement measures available for breaches or suspected breaches of the ACL are: The remedies available under the ACL are:

Chapter 8 : Federal Register of Legislation - Australian Government

The Australian Competition and Consumer Commission has issued the fourth edition of the Summary of the Trade Practices Act which incorporates the 26 July amendments to the Act.

Chapter 9 : Stop Loss 5 - The Trade Practices Act - Australia - TT Club

Trade Practices Amendment (Australian Consumer Law) Act (No. 2) Citation Trade Practices Act