

# The *Fair Trading Act* a guide for the fair trader

April 2008

**The Fair Trading Act 1987 (WA) is designed to encourage fair and honest business practices, protecting both consumers and ethical traders alike.**

## What is the Act intended to do

The Western Australian *Fair Trading Act 1987* (the Act) contains similar provisions to the consumer protection provisions contained in Part V of the *Commonwealth Trade Practices Act*.

It imposes sanctions against a wide range of unfair trading practices. It also allows product safety and information standards to be set and codes of practice to be developed between suppliers and customers.

## Prohibited and unfair trading practices

### Misleading or deceptive conduct

Misleading or deceptive conduct leads people to hold false beliefs or draw wrong conclusions. Conduct which is capable of misleading or deceiving is also sufficient to breach the law if it occurs in the course of business.

Conduct may fall within this prohibition even if the trader did not intend to mislead or deceive anyone and even if consumers would not have been misled had they not been careless or had made appropriate enquiries.

There are also provisions in the Act which prevent the making of false representations. For example, a person or business should not claim goods or services:

- are of a standard or quality that they are not;
- have uses or benefits they don't have; or
- have the endorsement of a person or organisation when they do not.

They also should not:

- offer prizes or gifts unless they intend to supply them as offered;
- accept payment for goods or services if they intend to supply something materially different; or
- make false or misleading statements about the place of origin of goods or services.

### Unconscionable conduct

Unconscionable conduct is unfair or unreasonable commercial conduct which results from a stronger party to a transaction taking advantage of that position. For example:

- where there is no real opportunity for the weaker party to exercise a choice;
- where the supplier knew or ought to have known that the consumer did not fully understand the transaction;
- where the sales techniques, by their very nature, produce a disadvantage to the other party; or
- where a contract is extremely one-sided.

All forms of coercion or harassment must be avoided by traders in their dealings with consumers.

## Consumer Protection Division

Forrest Centre, 219 St Georges Terrace  
Perth, Western Australia 6000 (Hours: 8:30am - 5:00pm)  
Admin: 9282 0777 Advice Line: **1300 30 40 54**  
Facsimile: 9282 0850 Email: [consumer@docep.wa.gov.au](mailto:consumer@docep.wa.gov.au)  
Internet: [www.docep.wa.gov.au](http://www.docep.wa.gov.au)



Department of Consumer  
and Employment Protection  
Government of Western Australia

## Pyramid selling

These are trading schemes in which people pay a fee for the right to participate in the scheme and receive a benefit for recruiting other participants into the scheme.

The prohibition applies to schemes involving the transfer of goods and services and those involving the transfer of money only.

These schemes operate mainly to recruit new participants. Their common characteristic is that the recipient of a benefit is entirely dependant on the introduction of other people to the scheme. Typically the goods or services to be provided under a pyramid scheme are of little value or use.

The market soon becomes saturated with new participants and those entering the scheme later are usually destined to lose their money.

## Unsolicited credit cards, goods and services

The practice of sending consumers goods or credit cards, or rendering services which were not ordered by the consumer and then demanding payment, is prohibited under the Act.

The Act also prohibits unsolicited advertising. This involves the unauthorised placing of an advertisement in a publication and demanding payment for it.

Anyone who receives accounts or other requests for payment for advertisements for their business placed without their knowledge or authorisation should advise the Department of Consumer and Employment Protection.

## Implied conditions and warranties in consumer contracts

The Act implies a number of conditions and warranties into all contracts with consumers.

In relation to the supply of goods there are implied conditions that:

- the supplier has the right to sell the goods and that the goods are free of any encumbrance other than those disclosed;
- the goods correspond with any description or sample given in the course of negotiations; and
- the goods are of merchantable quality and reasonably fit for the purpose for which they are sold.

In relation to the supply of services conditions are implied that:

- the service will be rendered with due care and skill; and
- any materials supplied in connection with the service will be reasonably fit for the purpose.

It is not possible to prevent these conditions and warranties from being part of the consumer contract. It is also an offence for a person in trade or commerce to make a false or misleading claim about the existence

or effect of any warranty, condition right or remedy relating to the supply of goods or services.

## Product safety and information standards

There are four types of compulsory product standards which can be established under the *Fair Trading Act*:

- safety standards which require goods to comply with particular design rules or to display certain warning labels;
- information standards which require prescribed information to be given with the goods;
- quality standards which consist of requirements for the construction, testing and labelling of materials; and
- packaging standards which aim to prevent deceptive packaging or ensure that packaging is convenient to the consumer.

Standards may be established to help inform the people who sell and use the goods or services. They assure customers who buy a product that it complies with a minimum level of quality, construction and design.

Standards are usually developed by the Australian Standards Association and made mandatory.

The Commissioner for Consumer Protection also has power under the Act to issue public warning notices about dangerous goods and to order suppliers to recall consumer goods with safety related defects.

## Codes of practice

Standards which are acceptable to industry and consumers can also be developed through codes of practice. Examples of these codes include the retirement villages industry code and the fitness industry code of practice.

Codes of practice eliminate the need for excessive legislative intervention and allow industry to develop fair trading standards in conjunction with government. Although industry self-regulation is preferred, mandatory codes of practice made under the *Fair Trading Act* are ultimately enforceable by the Commissioner for Consumer Protection and the Commercial Tribunal.

## Further information

This note has been prepared to assist you but it does not replace the *Fair Trading Act*. You should read the Act and Regulations to be certain of your legal position.

For further information about your rights and responsibilities under the Act, phone the Consumer Protection Advice Line on 1300 30 40 54 (for the cost of a local call from anywhere in the state).

Copies of the Act and Regulations are available from the State Law Publisher, 10 William Street, Perth. Phone: (08) 9321 7688 Fax: (08) 9321 7536

This publication is available on request in other formats to assist people with special needs.

### Regional offices:

Goldfields/Esperance (08) 9021 5966  
Great Southern ..... (08) 9842 8366  
Kimberley ..... (08) 9169 2811  
Mid-West ..... (08) 9964 5644  
North-West ..... (08) 9185 0900  
South-West ..... (08) 9722 2888

DP098767/5000

National Relay Service: 13 36 77

Quality of Service Feedback Line: Tel: 1800 30 40 59