



# Better Trading

## New life for WA consumer laws

Western Australian consumer protection laws and administration were fundamentally revitalised as the new Australian Consumer Law came into effect on 1 January 2011.

The Australian Consumer Law creates one consistent law for consumers and businesses, which is based on the former provisions of Part V of the *Trade Practices Act 1974* and takes account of best practice reforms from around Australia.

The single set of consumer laws will simplify the understanding of rights and responsibilities, creating a positive trading environment across the state and territory borders.

Two important pieces of legislation were recently passed through Western Australian State Parliament to establish the national laws in the State: the *Fair Trading Act 2010 (WA)* and *Acts Amendment (Fair Trading) Act 2010 (WA)*.

### **Fair Trading Act 2010 (WA)**

The *Fair Trading Act 2010* (the Act) came into effect on 1 January 2011. The Act achieves the following three key outcomes, it:

1. implements the new, nationally uniform law in Western Australia as the Australian Consumer Law (WA);
2. replaces the *Consumer Affairs Act 1971 (WA)*, the *Door to Door Trading Act 1987 (WA)* and the *Fair Trading Act 1987 (WA)*; and
3. continues the role of Commissioner for Consumer Protection, however, it makes a number of changes to the powers of the Commissioner.

The Act applies the Australian Consumer Law (as set out in Schedule 2 of the Commonwealth's *Competition and Consumer Act 2010*) as a law of Western Australia.

### **Any future amendments to the Australian Consumer Law will need separate amendments to the *Fair Trading Act 2010 (WA)* to apply as a law in Western Australia.**

Regulations relevant to the Commonwealth's Australian Consumer Law will automatically apply in Western Australia but they will be subject to disallowance by the Western Australian Parliament.

The Australian Consumer Law (WA) effectively replaces the consumer protection laws previously contained in the *Fair Trading Act 1987 (WA)*, *Door to Door Trading Act 1987 (WA)* and the product safety laws in both the *Consumer Affairs Act 1971 (WA)* and the *Fair Trading Act 1987 (WA)*.

Product safety laws remain essentially the same, however, the administration of product safety laws is subject to some changes.

Only the Commonwealth Minister is able to make safety standards for consumer goods or product related

services and impose a permanent ban on consumer goods or product related services. The State Minister will, however, be able to impose interim bans on goods or services.

Maximum penalties have been increased and there are a range of new remedies and enforcement actions provided for, including civil pecuniary penalties and substantiation notices.

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### **Where can I get a copy of the Australian Consumer Law?**

The full text is available by accessing Schedule 2 to the Commonwealth's *Competition and Consumer Act 2010*.

You can access the Commonwealth's legislation from [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au). Follow the links to the Australian Consumer Law and the Legislation.

By virtue of section 19 of the *Fair Trading Act 2010 (WA)* the Australian Consumer Law (WA) is set out in Schedule 2 to the Commonwealth's *Competition and Consumer Act 2010* as at 1 January 2011.

The text of the Australian Consumer Law (WA) is not set out in the *Fair Trading Act 2010 (WA)*.

# COMMISSIONER'S COLUMN



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It's been almost four years in the making, but the new Australian Consumer Law (ACL) has now become a reality, heralding a new era in consumer protection in Australia.

This edition of *Better Trading* is devoted to this new law which replaces dozens of different state and federal laws, providing a streamlined and harmonised set of regulations that will apply equally to all Australian consumers no matter where they live, and to all traders no matter where they operate in Australia.

The ACL reinforces and enhances consumer rights. The strengthening of 'consumer guarantees', new provisions relating to unfair contract terms and new rules regarding unsolicited sales are just some of the areas where the ACL will make the marketplace fairer. Consumers will be better informed and be able to demand better quality goods and services.

The changes also impact on traders who will need to become familiar with the new regulations to ensure they comply. Traders may need to review their standard consumer contracts, sales practices, sales documentation and advertising.

I urge all consumers and traders to become familiar with the new laws and be aware of their rights and obligations.

Along with the introduction of the ACL, 2011 will see a streamlining of processes with the abolition of five

Boards in Western Australia. These are: the Hairdressers Registration Board, Land Valuers Licensing Board, Motor Vehicle Industry Board, Real Estate and Business Agents Supervisory Board and Settlement Agents Supervisory Board.

The responsibility for consumer concerns about hairdressing has been transferred to me as Commissioner for Consumer Protection. The transfer of powers from the other boards is expected on 1 July 2011.

I would like to take this opportunity to thank the Board members and their staff for their valuable contribution over the years in providing the WA business community and consumers with the input of their industry expertise. Many key industry experts will continue to provide advice to the Department through two advisory committees, representing the motor vehicle and property industries.

Anne Driscoll  
Commissioner for  
Consumer Protection

We start the New Year with a new Minister – the Hon Simon O'Brien MLC was sworn in as the Minister for Finance, Commerce and Small Business on 14 December last year.

A parliamentarian of almost 14 years experience, Mr O'Brien has served the WA community as a Cabinet Minister, Shadow Minister and a Member of various Parliaments since his election to the Legislative Council in December 1996, with his term commencing in May 1997.

I would like to welcome Mr O'Brien to his new portfolio and we look forward to working with him as we continue the program of consumer law reform.







## Key changes to WA laws

The Australian Consumer Law carries over much of the consumer law that applied under the Trade Practices Act and the Fair Trading Act, however, there are a number of important new provisions. These include:

- entirely new provisions relating to unfair contract terms;
- new provisions in relation to 'consumer guarantees', which replace, with enhancements, existing provisions relating to implied conditions and statutory warranties;
- changes to the unconscionable conduct provisions;
- specific new provisions regulating false and misleading representations in relation to testimonials and statutory consumer guarantees;
- new obligations for those traders that offer rebates, gifts, prizes etc;
- new obligations for traders in relation to accepting payment in advance for goods and services;
- a new, express protection for consumers from any obligation to pay for unsolicited services;
- where goods have more than one displayed price, traders will be under a new obligation to sell the goods at the lowest price or withdraw the item from sale;
- new obligations for traders in relation to the advertising of goods or services to include a single price, including taxes and other charges;
- new requirements in relation to lay-by agreements, including an obligation on traders to provide written lay-by agreements;
- a new obligation on traders to provide consumers with receipts for purchases of goods or services over \$75 and a right for consumers to request a receipt (within a reasonable timeframe) for goods or services less than \$75;
- a new right for consumers to require traders to provide an itemised bill for any goods or services; and
- some documents required to be provided by traders to consumers will need to be 'transparent', that is, expressed in clear language, be legible and be presented clearly.

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The *Fair Trading Act 2010* (WA) preserves the power to make state specific codes of practice, and maintains the existing codes of practice in place for the retirement village industry and the fitness industry. There are, however, some changes to the way in which such codes are made and enforced.

The *Fair Trading Act 2010* (WA) also makes a number of changes to the powers of the Commissioner for Consumer Protection. An important example of these is a new power to institute or defend legal proceedings on behalf of a business where a matter of public interest is involved.

The articles on the following pages feature consumer guarantees, sales practices and unfair business practices in more detail.

## Acts Amendment (Fair Trading) Act 2010 (WA)

The second piece of legislation is the *Acts Amendment (Fair Trading) Act 2010* (WA). This Act contains a number of amendments consequential to the enactment of the *Fair Trading Act 2010* (WA) and contains important changes to occupational licensing within the Consumer Protection portfolio.

The most significant change is the transfer of four statutory licensing boards' responsibilities to the Commissioner for Consumer Protection.

The Land Valuers Licensing Board, the Motor Vehicle Industry Board, the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board are scheduled to be abolished as of 30 June 2011.

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## New life for WA consumer laws ...continued

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The licensing functions of these boards will be transferred to the Commissioner for Consumer Protection. The employing and financial responsibilities of these boards will be vested in the Director General of the Department of Commerce.

To preserve industry input into the licensing functions, the Act will establish advisory committees for both the motor vehicle and property industries. In addition, a new Consumer Advisory Committee will be created to provide general advice to the Minister and the Commissioner. It is expected that the new advisory committees will come into operation in the first half of 2011.

The Department of Commerce aims to provide stakeholders with substantial information about these changes in easy to understand language and accessible formats. Stakeholders affected by these laws, however, may need to seek separate advice on the implications of the changes on their activities.

More information about these laws is available on the Department of Commerce website:  
[www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection).



### Who will administer the ACL?

Administration and enforcement of the Australian Consumer Law will be a joint state and commonwealth responsibility. The Commissioner for Consumer Protection will remain the primary person responsible for administration and enforcement of the Australian Consumer Law (WA). This law extends to cover the actions of individuals and corporations.

The Australian Competition and Consumer Commission (ACCC) will be responsible for the administration and enforcement of the Commonwealth's version of the Australian Consumer Law. In general, the Commonwealth's version of the Australian Consumer Law applies to corporations and those engaging in inter-state or international trade or commerce.

For financial services, the Australia Securities and Investments Commission (ASIC) has been given similar powers to the ACCC.

Western Australians with enquiries regarding the Australian Consumer Law should contact Consumer Protection on 1300 30 40 54.

# Avoiding unfair business practices



The Australian Consumer Law prohibits both misleading or deceptive conduct and the making of false or misleading representations.

A business cannot:

- mislead a consumer about the price, quality or age of goods or services;
- advertise goods at a certain price if it does not have a reasonable supply for consumers to buy;
- accept payment for goods or services if they cannot supply them; or
- make false or misleading representations about the country of origin of goods.

The Australian Consumer Law grants the Commissioner for Consumer Protection and the Australian Competition and Consumer Commission more investigative powers and enforcement options, as well as providing for larger penalties should a business fail to comply with the law.



**Avoiding unfair business practices – A guide for business and legal practitioners** was developed to explain how to avoid misleading or deceptive conduct and making false or misleading representations.

### FOR MORE INFORMATION

For more information, or to get a copy of the guide, contact the Consumer Protection Advice Line on 1300 30 40 54 or visit: [www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection).



# Sales practices

Under the Australian Consumer Law certain sales practices are prohibited, and there are specific requirements for other practices.

## Unsolicited consumer agreements, unsolicited supplies

Provisions in the Australian Consumer Law cover methods of sale that the consumer does not initiate, including door-to-door sales and telemarketing. It also has provisions on the unsolicited supply of goods and services.

Sometimes goods or services are supplied to consumers who have not agreed to buy them. The new laws make it unlawful for businesses to request payment for unsolicited goods or services.

### That is, a business cannot issue an invoice for a good or service that was not requested or agreed to by the consumer.

A consumer has no obligation to pay for unsolicited goods or services. If a dispute arises, the person demanding payment must prove they have a legitimate right to the payment.

It is unlawful to send unsolicited credit cards or debit cards to a



## Examples

A mechanic is engaged by a consumer to replace the muffler on his car. The mechanic also replaces the tyres and brake pads. This extra work (and the parts) would be considered unsolicited and the consumer would only have to pay for the replacement of the muffler. If the mechanic had gained the consumer's consent to perform the extra work prior to carrying it out, the consumer would be obliged to pay for it.

A business mails a package of books, magazines and DVDs to a consumer who has not ordered them. As they are unsolicited, the business cannot demand payment. If they do not collect them from the consumer within three months, the consumer can keep them free of charge.

consumer.

It is also unlawful to request payment from a business for an advertisement, when the business did not authorise the advertisement.

Businesses selling goods or services door-to-door or over the phone need to be aware of their new obligations under the law.

In Western Australia, a consumer cannot be contacted:

- before 9 am or after 8 pm on a weekday;
- before 9 am or after 5 pm on a Saturday; or
- on a Sunday or public holiday.

Another key requirement placed on businesses is to ensure consumers are given a written copy of the agreement, which itself must:

- be in plain language, legible and clear; and

- clearly state the consumer's cooling-off right (10 business days), full terms of the agreement, total price payable and any postal or delivery charges.

If a salesperson is told to leave by the consumer, they must not contact the consumer to negotiate an agreement or for any incidental or related purpose for at least 30 days. However, they can contact the consumer again on behalf of a different supplier.

The consumer must be given a notice that may be used to terminate the contract during the cooling-off period. This notice must contain the business name and street address, Australian Business Number (ABN) or Australian Company Number (ACN) and fax number and email address, if the business has one.

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# Sales practices ... continued

From page 5.

Unsolicited consumer agreements that have not met the requirements set out in the ACL will entitle the consumer to cancel the agreement up to six months after they entered into it. The consumer also has additional termination rights if other key obligations are not met by the business or their sales representative.

Agreements that do not meet the requirements may result in the consumer being entitled to a refund. A business must not supply any services, or accept any payment during the cooling-off period.

A consumer cannot waive any of the protections provided to them under the Australian Consumer Law.

## Pricing, lay-bys and itemised bills

Provisions in the new law cover the correct pricing of goods and services, lay-by agreements and providing itemised bills.

### Lay-bys

The Australian Consumer Law requires that lay-by agreements, made after 1 January 2011, be in writing, expressed in plain language, be legible and clearly presented. The new law allows consumers to cancel a lay-by agreement but allow the business to charge a reasonable termination fee for the cancellation. The law also specifies the circumstances under which businesses can cancel lay-by agreements.

### Multiple prices

Multiple prices displayed on the same good can be an oversight or a deliberate sales tactic. Under the Australian Consumer Law, when multiple pricing occurs, the business must sell the goods for the lowest 'displayed price' or withdraw them from sale until the price is corrected. A price published in a catalogue or advertisement is considered a



'displayed price', unless a retraction is published.

a business fail to comply with the law.

A business must clearly state the full cost of the item that the consumer will need to pay to obtain the goods including any taxes, charges or others costs. The full cost should be displayed as prominently as any other component of the total price.

### Example:

A mobile phone provider advertises a mobile phone on a \$49/month cap plan. You can only get the phone and cap plan if you sign up for two years. The mobile phone provider must also advertise, as prominently as the \$49/month, the minimum cost that a consumer would pay over the length of the contract (\$1176).

### Proof of transaction

The new laws require businesses to provide proof of transaction to consumers for goods and services valued at \$75 or more. Consumers have the right to request an itemised bill for any services provided to them.

The Australian Consumer Law grants fair trading agencies more investigative powers and enforcement options, as well as providing for larger penalties should



**The sales practices guide** has been developed to assist businesses in meeting their sales practice obligations. The guide explains how to avoid illegal sales practices.

### FOR MORE INFORMATION

For more information, or to get a copy of the guide, contact the Consumer Protection Advice Line on 1300 30 40 54 or visit: [www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection).

# Consumer Guarantees

Consumer guarantees are a comprehensive set of rights and obligations in relation to the supply of goods and services to consumers. They replace the rights and obligations previously covered under implied conditions and statutory warranties.

From 1 January 2011, consumers are automatically provided with consumer guarantees on purchases of consumer goods and services.

For purchases made on or before 31 December 2010, previous fair trading laws will apply.

## Goods

If you supply goods to consumers, manufacture goods, or import goods, there are a number of guarantees you must meet.

Goods must be of acceptable quality - meaning they must be safe, durable and free from defects, acceptable in appearance and finish, and fit for their normal purpose.

Any description of goods must be accurate, and must match any sample or demonstration model shown to the consumer.

Manufacturers and importers of goods must take reasonable steps to provide spare parts and repair facilities for a reasonable time after goods are sold.

If a manufacturer or a business provides an additional warranty, there is also a guarantee that they will honour that warranty.

Businesses also guarantee that they have the right to sell the goods, that you are free to use the goods under the conditions of the sale or hire, and



that the goods are free of hidden securities and charges.

## Services

If you supply services to consumers, there are three key guarantees you must meet.

Businesses must provide services with due care and skill - meaning they must use an acceptable level of skill or technical knowledge when providing services, and take all necessary care to avoid causing loss or damage.

Businesses must also provide services that are fit for a particular purpose. As a service provider, you guarantee that any service you provide and any products resulting from that service achieve a consumer's stated purpose or desired result.

If the consumer doesn't specify a length of time in which the service is to be completed, you must provide the service within a reasonable time. What is considered a reasonable time will depend on the nature of the service.

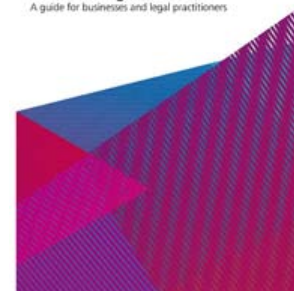
The Australian Consumer Law grants the Commissioner for Consumer Protection and the Australian Competition and Consumer Commission more investigative

powers and enforcement options, as well as providing for larger penalties should a business fail to comply with the law.

**Consumer guarantees – A guide for business and legal practitioners will assist businesses in meeting obligations. It explains all of the consumer guarantees including when they apply; who is responsible for each guarantee; and when remedies, such as a refund, repair or replacement, will be available to the consumer.**

australian consumer law

Consumer guarantees  
A guide for businesses and legal practitioners



## FOR MORE INFORMATION

For more information, or to get a copy of the guide, contact the Consumer Protection Advice Line on 1300 30 40 54 or visit: [www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection)



# Unfair Contract Terms information session

The Unfair Contract Terms (UCT) component of the new Australian Consumer Law will change the way that contracts for many sectors including mobile phones, cars, fitness centres, major event tickets and building or rental agreements are written in future.

An information session hosted by Consumer Protection, Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC), saw about 200 people – mostly lawyers – gather at Perth's Sheraton Hotel on 18 November 2010 to hear experts from three government agencies talk about the implications in more detail.

Peter Kell, Deputy Chair of the ACCC, outlined the structure and content of the UCT law, which applied to corporations from 1 July 2010 and will apply generally from 1 January 2011.

**Standard form consumer contracts for the supply of goods or services for personal, domestic or household use will be deemed unfair if any term:**

- creates a significant imbalance in rights or obligations;
- is not reasonably

necessary to protect business interests; and

- would cause detriment to the consumer.

New penalty, enforcement and redress provisions for the ACCC and the ASIC were introduced last July.

Greg Kirk, Senior Executive Leader at ASIC, explained how the UCT element of the ACL applies to credit contracts. One area is responsible lending; credit providers need to verify a customer's financial situation and not offer unsuitable loan options. He also highlighted early exit fees on mortgages as questionable.

The concluding speaker was Dr Elizabeth Lanyon, the Director of Policy and Legislation at Consumer Affairs Victoria, where UCT law has been in place since October 2003. Dr Lanyon has been a major driver of this legislation in Victoria. She provided some excellent examples of obviously unfair contract terms, such as: *'We may change [our terms] without your agreement'*.



However, she also pointed out that not only does the UCT aspect of the ACL better protect consumers; it can also give businesses the chance to improve their competitive edge. Simpler and clearer contracts are easier for staff to understand and in turn there can be better for customer satisfaction and a reduction in complaints.

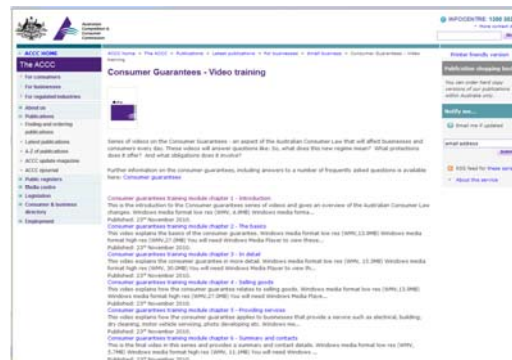
## FOR MORE INFORMATION

For copies of the presentations from this session visit and for more information on Unfair Contract Terms log on [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

## Consumer Guarantees video training

The Australian Competition and Consumer Commission (ACCC) has produced a consumer guarantees training module for business owners, managers and sales staff. It is currently accessible on the ACCC website at <http://www.accc.gov.au/content/index.php?id/itemId/957871>.

The training module explains the consumer guarantees provisions and the remedies available when a guarantee is not met. It also explains how the new law will apply to the supply of both goods and services.





# Licensing reform

Four State Government licensing boards will be abolished following the passing of legislation in Parliament, resulting in savings for the Western Australian taxpayer and improvements to consumer protection in WA.

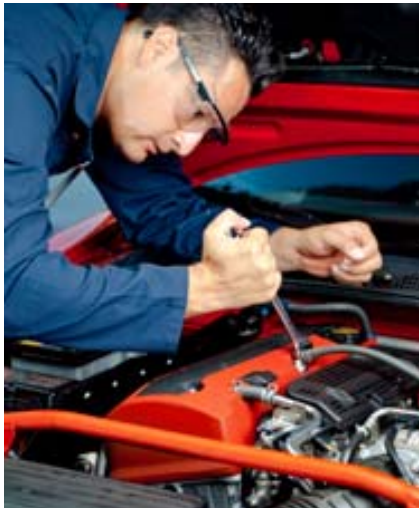
The *Acts Amendment (Fair Trading) Act 2010* simplifies occupational licensing and the regulation of the property and motor vehicle industries in WA.

It involves the abolition of the following boards scheduled for 30 June 2011:

- Land Valuers Licensing Board;
- Motor Vehicle Industry Board;
- Real Estate and Business Agents Supervisory Board; and
- Settlement Agents Supervisory Board.

The former Commerce Minister, Bill Marmion, welcomed the passing of the legislation, which was introduced into State Parliament last September to establish a more efficient and effective licensing and compliance system.

The new, streamlined system meets one of the recommendations of the State Government's Red Tape Reduction Group.



"Licensing powers will now be vested in a single authority - the Commissioner for Consumer Protection. The necessary safeguards will be in place to ensure consumer rights are protected," Mr Marmion said.

"The Director-General of the Department of Commerce will take over the employment and financial control responsibilities from the boards.

"The fragmented functions of four separate boards can now be streamlined through one regulatory body. The move is part of the State

Government's commitment to reduce the number of licensing boards and therefore lessen the financial burden on the taxpayer.

"The development of these laws was conducted in consultation with industry groups, which have expressed support for the changes."

**The abolition of the licensing boards will make administration and licensing more effective.**

It will not change the requirement for people operating in the affected industries to remain licensed and there will be no reduction in consumer protections.

Two new advisory committees will be established to ensure that the industries affected are able to discuss issues and raise any concerns with either the Commissioner or Minister.

The Motor Vehicle Industry Advisory and Property Industry Advisory Committees will comprise key industry representatives, giving them an effective voice in the new process.

## WA media awards



Most of Western Australia's TV, radio and newspaper journalists left their cameras, microphones and notepads at home and became the audience at the 2010 WA Media Awards iBall on Friday 12 November 2010.

A handful mixed work with pleasure by presenting on stage; mainly *The West Australian's* Daniel Hatch and Kate Ferguson hosted the event in the Perth Convention Centre ballroom.

Among the 370 guests attending the black-tie dinner was Consumer Protection's Commissioner and two person media team. Consumer Protection sponsors the Best Consumer Affairs Report category.

This was won by ABC TV's *Four Corners* producer Caro Meldrum-

Hanna, reporter Sarah Ferguson and researcher Michael Doyle for their story on Perth therapist Matthew Meinck.

It was accepted by Stateline WA presenter, Eliza Blue who can be seen (left in the photograph) receiving the award from Commissioner for Consumer Protection Anne Driscoll.

Runner-up in the category was Paige Taylor of *The Australian* for her series of

articles on Laverton money lender Sam Tomarchio. Paige was also co-winner of the prestigious Lovekin Prize for the Best Newspaper Report for her Tomarchio expose.

Ahead of the awards being given out, the room had filled with laughter during the annual tradition of the bloopers video.

Later, there were some tears shed during the emotional introduction of the Matt Price Award, in memory of the Perth journalist who died of brain tumours in 2007.

Find out who won the award and see the full list of winners at: <http://www.wamediaawards.com.au/winners-2010>.

# Products removed from sale in Christmas safety blitz

Yoyo balls, flotation toys and novelty cigarette lighters have been removed from sale in WA, during Consumer Protection's annual Christmas product safety blitz last year.

Product safety officers visited 164 stores and looked at 6,539 products in WA in a campaign to detect unsafe or banned items and take them off shop shelves.

They have inspected 1,200 toys for children under three, which may pose a choking or strangulation hazard, 273 flotation toys and 228 swimming aids. In addition to the toys inspected 745 candles and 868 candle-holders were also examined for flammability concerns.



It's part of the national Christmas Toy Survey program, involving all state and territory consumer regulators and the Australian Competition and Consumer Commission.

**In total more than 71,000 toys have been removed from sale or recalled across Australia.**

Commissioner for Consumer Protection Anne Driscoll said there had been only a small number of problem items on sale in WA, which is positive news.

"So far our product safety officers have found: 10 flotation toy product lines with incorrect warning labels, several liquid filled yoyo balls that did not comply with safety standards and some toy-like novelty lighters," she said.

"All of the items have been removed from sale and in the case of the yoyo balls the trader was given a formal warning as part of the compliance blitz."

The Commissioner urged parents to keep safety rules in mind when selecting toys for children.

"Making sure that you follow age recommendations and instructions on toys is so important but easy to forget, especially in all the excitement around Christmas.

"Small toys or toys with small removable parts including objects like jewellery, coins or batteries shouldn't be given to a child under three.

"In families with children across various age groups it's important to make sure toddlers do not get access to toys given to older siblings.

"When out shopping, pick sturdy, well made toys that will withstand biting, tugging and being thrown around. Also check for sharp



edges or other injury risks.

**"Remember, aquatic toys and swimming aids are not life-saving devices and children should always be strictly supervised when using them."**

Find more product safety advice, including details of product bans and mandatory standards, at [www.productsafety.gov.au](http://www.productsafety.gov.au).

Information about recalls is available at [www.recalls.gov.au](http://www.recalls.gov.au) and [twitter.com/productsafetyAU](https://twitter.com/productsafetyAU)





# Kimberley businesswoman loses \$7,000 in online scam

An East Kimberley woman has been scammed out of \$7,000 by a fake buyer responding to an online advert for her skincare product business.

It's prompted a warning by Consumer Protection's Senior Regional Officer for the Kimberley Annetta Bellingeri who has received reports of similar 'overpayment scams'. Ms Bellingeri explained how the con works.

"The business is contacted by someone claiming to be an overseas buyer wanting to place a big order," she said.

"The bogus customer finds a reason to overpay; in this case including extra money for shipping costs. Excuses like customs fees are also common.

**"The business owner is then asked to wire transfer the excess money to a third party organisation, like a specific shipping company, but in fact the money is going directly to the scammer who collects the overpayment in cash.**



"The total payment to the business has usually been made with stolen credit card details and the real card holder will eventually dispute the transaction, leaving the business out of pocket."

Cath, the Kununurra woman who wants to be known by her first name only, described the scam as highly convincing.

"I was taken in hook, line and sinker," she said.

"You don't think of a potential buyer as a scammer and when my bank confirmed the monetary deposit, including the overpayment, I truly believed it was a genuine order.

"I'm devastated about losing money out of my savings, it has put me under incredible personal strain and it's virtually impossible to trace who did this or get my \$7,000 back."

WA ScamNet at Consumer Protection has been seeing more and more evidence of the advancing techniques of cyber criminals.

Accommodation providers, online car sellers and even someone selling a computer console on eBay are among the victims.

Ms Bellingeri said consumers and businesses should beware of online buyers who want to overpay to cover costs like shipping or other fees.

"Make sure the payment has been cleared by your bank before completing the transaction.

"More importantly remember that this system of claiming overpayments is on the rise and is never genuine.



**"Remember, it is virtually impossible to trace where wire transferred monies are collected. It is imperative that you only send money via this payment method to people you know and trust.**

"When you send a payment to a 'UK shipping company' for example, this money could be collected by a scammer in Asia who simply knows the identifier words that you have supplied during the wire transfer transaction."

If you are in doubt about a buyer or seller during an online transaction check out the advice on the WA ScamNet website: [www.commerce.wa.gov.au/wascamnet](http://www.commerce.wa.gov.au/wascamnet), email [wascamnet@commerce.wa.gov.au](mailto:wascamnet@commerce.wa.gov.au) or call the Consumer Protection's Advice Line on 1300 30 40 54.

**WA ScamNet**

# Consumer Protection visits Harvey and Murray Shires

From 9 – 11 November 2010, officers from various Consumer Protection branches visited the Peel region to undertake a compliance 'sweep'.

The officers visited Harvey, Dwellingup, Pinjarra and various smaller towns in between.

The sweep forms part of Consumer Protection's outreach program whereby officers assist traders and consumers alike by checking compliance and providing educational advice.

The aim of the sweep is to assist the broader community become familiar with their rights and compliant with the obligations which arise from the various pieces of legislation administered by Consumer Protection.

A number of activities occurred during the sweep:

- The Building and Tenancy Branch provided an information session to 25 property managers, discussing common complaints from landlords and tenants, proposed new legislation and general compliance issues;
- The Motor Vehicles Branch visited

16 dealers who were all compliant;

- The Retail Branch undertook scanning audits to ensure traders charge their customers the same prices displayed on shelves or other labelling. They also examined product lines which are covered by mandatory safety standards in Australia, such as toys and furniture. Overall minimal issues were identified and are unlikely to warrant further action;
- The Registration Services Branch visited 205 businesses to check that businesses' names were registered and being used and displayed correctly. Seventy-nine percent were compliant, resulting in some follow-up action for Consumer Protection; and
- Community Education met with various community groups and schools, as well as set up static displays, to disseminate information and advice regarding registering a business name, scams and upcoming consumer law changes

The Commissioner for Consumer Protection also took part in the sweep, presenting to 30 members and colleagues of the Pinjarra Rotary Club.



## ASIC's Credit Outreach Team



Australian Securities and Investments Commission (ASIC) has a national financial literacy strategy and since taking over responsibility for credit an important part of that strategy has been to establish a national Credit Outreach Team. Diane Hayes and Anita Lumbus are ASIC's Credit Outreach Educators in WA.

Part of their role is to develop and deliver credit education strategies to help consumers make informed choices about credit, how to get help if things go wrong and promote the internet site FIDO ([www.fido.gov.au](http://www.fido.gov.au)) as a source of independent information.

Diane and Anita can also run training for community agencies about how the new credit regime impacts upon its clients, and produce information segments for radio, newspaper and magazine articles as well as on-line.

One of the key roles of the Credit Outreach Team is to establish effective stakeholder relationships with government and community bodies to ensure that Australian consumers are empowered to make informed choices around credit.

The team also is able to take complaints while in the field and is available to be contacted if a matter should be raised as a complaint to ASIC.

The ASIC Credit Outreach Team is currently working on two national educational campaigns that will focus on the following topics:

- Mortgage Stress; and
- Credit/ Debt Education for culturally and linguistically diverse groups, with a particular focus on newly arrived communities.

If you would like to contact the Credit Outreach Team here in WA please phone:

- Diane Hayes 9261 4146; or
- Anita Lumbus 9261 4123.



# Legislative Updates

**The Hairdressers Registration (Amendment and Expiry) Act 2010** abolish the Hairdressers Registration Board gazetted on 26 October, commenced on 1 November 2010 .

**Consumer Affairs Act 1971** (Product Safety) as a part of national product safety harmonisation:

Eight orders were revoked on 9 November 2010 :

- automotive air conditioning recharge sets
- chemistry sets
- children's toy umbrellas
- children's umbrellas – spring loaded
- domestic service lifts (dumbwaiters)
- exercise equipment for home use
- mad dog lighters
- underwater breathing apparatus (inc Diveman)

A further six products safety standards were made on 23 November 2010, which mirror recent bans by the Commonwealth:

- miniature motorcycles
- yoyo water balls
- inflatable toys
- imitation cigarettes
- children's art, craft and stationery sets
- no holes tongue studs.

**Fair Trading (Fitness Industry Code of Practice) Regulations 2010** to specify 31 December 2010 as the commencement day for the Regulations was gazetted on 10 December 2010.

**Acts Amendment (Fair Trading) Act 2010** and **Fair Trading Act 2010** specify 1 January 2011 as the commencement day for the Act was gazetted on 24 December 2010.

**Retail Trading Hours Amendment Act 2010** to specify 1 November 2010 as the commencement day for the Act was gazetted on 22 October 2010. This set up Western Australia's new retail trading hours regime, which will give general retail shops, including major grocery stores, the option to open to 9pm weeknights. The extension of weeknight trading will apply across the whole metropolitan area.

# News / Media

## December



### Students fleeced in rental scam

These international students who arrived in Perth last month have become victims of a rental scam. The scammer - who used the name of a well-known Perth-based real estate agent - had lured the students to a rental property in Perth that was not his own. The scammer had used the name of a well-known Perth-based real estate agent to lure the students to a rental property in Perth that was not his own.

- 30: International students devastated by accommodation scam
- 29: Fuel price advice for Perth drivers
- 22: Perth motorists facing high fuel prices
- 14: Fuel price advice for Perth drivers
- 10: Kimberley businesswoman loses \$7,000 in online scam
- 9: Perth widow loses \$600,000 in elaborate romance scam
- 8: Products removed from sale in Christmas safety blitz
- 7: Fuel price advice for Perth drivers

## November



### When tenants and landlords conflict

TENANTS and landlords make a habit of not reading the tenancy agreement. This is a mistake that can lead to a costly and stressful dispute. The tenancy agreement is a legal document that sets out the rights and responsibilities of both parties. It is important to read it carefully before signing it. If you have any questions, you should seek legal advice.



- 30: Fuel price advice for Perth drivers; Premium SMS alert for young consumers
- 23: Fuel price advice for Perth drivers; Unlicensed car sellers and dealers fined after crackdown
- 18: WA leads the way with cheaper-flights.com.au warning
- 16: Fuel price advice for Perth drivers
- 9: Melville car dealer fined over unlicensed salesperson
- 5: Real Estate Agent Suspended Morgan Realty Pty Ltd
- 2: Perth fuel prices the lowest this year; Consumer alert - beware white van salespeople

- 1: Consumer Protection to visit Harvey and Murray Shires; Suspended jail sentence for Aircon man

## October



- 29: Website warning – cheaper-flights.com.au
- 26: Unlicensed employment agency fined; Fuel price advice for Perth drivers
- 25: Consumer Protection in Kununurra and Wyndham
- 21: Illegal money lender to repay almost \$130,000
- 20: Price checks at Broome retailers
- 19: Fuel price advice for Perth drivers
- 13: Commerce advice comes to Esperance
- 12: Fill up today or tomorrow say, FuelWatch
- 11: Baby store customers left out of pocket; Court penalty for selling unroadworthy car
- 8: Phone scammers pose as Microsoft
- 5: Media conference scam mail intercept; Fuel price advice for Perth drivers
- 4: Department of Commerce office opens in Broome

All Consumer Protection media statements are available at [www.commerce.wa.gov.au/media](http://www.commerce.wa.gov.au/media)

You can now also follow us on Twitter @ConsumerWA or become a fan of our Facebook page - Consumer Protection WA.

# Compliance

## Unlicensed employment agency fined

**Work Ready Australia Pty Ltd**, a Belmont company, was fined \$500 in Perth Magistrates Court for operating as an employment agency without a licence on Friday, 22 October 2010.

## Unlicensed car sellers and dealers fined after crackdown

Two dealers and two salespeople were fined for being unlicensed in the Perth Magistrates Court on Friday, 19 November 2010.

**Chad Andrew Miller**, of Forrestfield, was fined \$1,500 and ordered to pay court costs of \$352 for selling 31 vehicles without a valid licence while working for **Melville Motors Pty Ltd**, trading as **Metro Motors** of Morley, between June 2009 and August 2009.

**Ross Ozanne**, of Palmyra, was fined \$850 and ordered to pay court costs of \$352 after negotiating the sale of 48 motor vehicles for two car dealers over a 10 month period between October 2008 and August 2009. **Melville Motors Pty Ltd**, trading as **Metro Motors** of Morley, was fined \$750 and ordered to pay court costs of \$352 for employing Mr Ozanne when he did not hold a licence.

On 5 November 2010, **National Fleet Services (WA) Pty Ltd**, trading as **Melville Euro**, was fined \$500 in the Fremantle Magistrates Court for also employing Mr Ozanne without a licence.

In another more serious matter, **Dameeka Anne Riley**, of Ellenbrook, was fined \$1,000 and ordered to pay court costs of \$352 after being convicted of unlicensed motor vehicle dealing. Ms Riley bought and sold 11 vehicles between September 2008 and May 2010.

## Suspended jail sentence for Aircon man

The Supreme Court sentenced an air conditioning business operator to 20 days jail, suspended for 12 months, after he was found guilty of six charges of contempt of Court in October 2010.

**Alwyn Robert Healy**, who operated **Aircon Factory Direct**, had breached an undertaking he gave to the Court in November 2009 relating to refunding deposits to customers, adhering to timeframes with regard to installation of his air conditioning systems and the ordering of equipment after a contract is signed and deposit paid.

## Illegal money lender to repay almost \$130,000

A Western Australian businessman, who illegally lent money to Indigenous consumers and charged as much as a 50 percent fee on each amount loaned, agreed to pay **\$149,642** to the Commissioner for Consumer Protection so that she can refund the interest they paid.

A settlement reached on 19 October 2010 and later settled as consent orders in November, followed Supreme Court of WA action by

Consumer Protection against **Mr Salvatore (Sam) Tomarchio of Laverton** alleging Mr Tomarchio unlawfully carried on a business of providing credit between January 2009 and January 2010.

**Note:** As of 1 July 2010, credit regulation is the responsibility of the Australian Securities and Investments Commission.

## Real Estate Agent Suspended: Morgan Realty Pty Ltd

The Real Estate and Business Agents Supervisory Board (REBA) obtained orders in the State Administrative Tribunal (SAT) in November 2010 suspending for two years the real estate licence of **Morgan Realty Pty Ltd** trading as **Century 21 Morgan Realty**.

The Tribunal found that Morgan Realty had not complied with the relevant requirements of the *Real Estate and Business Agents Act 1978* when it obtained payment of commission prior to the settlement of a number of real estate transactions.

The Tribunal added that the conduct of the agent led the purchasers involved in the transactions to suffer substantial monetary losses.

Additionally, the SAT has suspended both the Morgan Realty company director, **Mr Phillip Davies-Morgan**, and the person in bona fide control, Mr Salvatore Messina, from operating in the Western Australian real estate industry for a period of two years for the role each played in the matter.

# Publications



**Renting out your property** has recently received a thorough update of its content. This publication is a 'must have' for landlords and those considering owning rental properties in WA.

It explains your obligations as a landlord, and what steps you should take in order to minimise the chance of problems occurring. Topics include bonds, property condition reports, overdue rent and even going to court.

This revised version contains

information about the need to install smoke alarms, safety switches and pool fences, as well as current details of all the forms and notices you may need to use at various points throughout a tenancy.

All Consumer Protection publications are available online at [www.commerce.wa.gov.au/consumerprotection](http://www.commerce.wa.gov.au/consumerprotection). Hard copies can be ordered from the Consumer Protection Advice Line on 1300 30 40 54.