



Better Trading

Issue 20 April / May 2011

Australian Consumer Law: New rules for retail sales

The Australian Consumer Law came into force on 1 January 2011, the focus now is on ensuring the provisions of the new law are well understood by businesses and consumers alike.

Many of the provisions of the Australian Consumer Law are the same as those previously in the Trade Practices Act and State Fair Trading Acts, however there are important new provisions.

Over coming issues of Better Trading we will be providing a focus on these new provisions.

In this issue we focus on some of the new rights and responsibilities under the Australian Consumer Law that relate to retail sales.

Lay-bys

Lay-bys are a common way for consumers to spread the cost of an item over weeks or pay packets. It refers to a consumer paying for goods in instalments, with any deposit being the first instalment, and where the item is held by the business and not released to the consumer until the final instalment is paid.

Lay-bys have been unregulated in the past but the Australian Consumer Law introduces a number of requirements for lay-bys. All lay-by agreements must be in writing, specifying all terms and conditions in easy to understand language, including any termination charge.

Example 1:

A consumer lay-bys a new winter coat in July for \$180 and then decides to cancel it at the end of August when it goes on sale for \$90. The consumer may be charged the difference in the sale price, as long as this is provided for in the lay-by agreement.

A copy of the lay-by agreement must be given to the consumer.

Cancelling lay-bys

Businesses can only cancel a lay-by if:

- the consumer has breached a term of the agreement (such as missing a scheduled payment).
- the supplier is no longer engaged in trade or commerce; or
- the goods are no longer available due to circumstances outside the supplier's control (not because the supplier decided to withdraw the goods from sale).

Lay-by termination charges

Businesses can charge a termination fee if a consumer cancels the lay-by. Consumers must be refunded all their money, less any termination charge.

If the termination fee was not stipulated in the written lay-by agreement, then the business must refund the consumer's full payments up to the date of termination.

The termination fee is to cover any reasonable costs relating to the agreement such as a discounted value to resell the item due to seasonal changes or technology upgrades.

Lay-by agreements that are standard form contracts may be covered by the unfair contract terms provisions under the Australian Consumer Law.

More information about unfair contract terms is available on our [website](#).

Receipts

Consumers must be given a 'proof of transaction' for goods or services valued at \$75 or more (including GST), such as a receipt, itemised bill, card statement, tax invoice or lay-by agreement.

INVOICE	
Bricks X 2000	\$ 1 600
Cost of Laying (sand & mortar etc) X 2000 Bricks	\$ 1 200
Labour X 40 hours	\$ 2 000
GST 10%	\$ 480
TOTAL	\$ 5 280

The 'proof of transaction' must contain the:

- supplier of the goods or services;
- supplier's ABN, if they have one;
- supplier's ACN, if they have one but do not have an ABN;
- date of the supply;
- goods or services supplied to the consumer; and
- price of the goods or services.

A GST tax invoice will be sufficient proof of a transaction.

Where a transaction is valued at less than \$75, consumers have the option of requiring a proof of transaction to be provided within 7 days of the transaction.

Itemised Bills for Services

Where a consumer has purchased services from a business (for example repair work) the consumer can ask for an itemised bill to be provided.

The itemised bill must contain: how the price was calculated; the number of labour hours and the hourly rate (if relevant); and a list of the materials used and the amount charged for them (if relevant).

Commissioner's Column



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Major changes are being planned at Consumer Protection over the next few months as the agency undergoes an organisational re-structure, taking on new roles and responsibilities.

This has been prompted by the WA Government's decision to abolish four Boards which are currently in control of the licensing of real estate and settlement agents, land valuers, business brokers and motor vehicle dealers and repairers. The Boards' powers will be transferred to the Commissioner for Consumer Protection from 1 July.

While this has meant some internal changes, we anticipate that the transition will be seamless and the changes will not affect those who have dealings with the Department. Consumer protections in these areas will be preserved and the requirement for licensees to comply with relevant legislation will continue. In most cases, key contact personnel will remain the same but, if there are any changes, relevant stakeholders will be advised.

Two advisory committees representing the real estate and motor vehicle industries will ensure that we will continue to get valuable input on any government policies and actions that may affect these areas.

Our planned re-structure will make sure that we are well placed to carry out our new responsibilities efficiently and effectively.

Recently I was a guest speaker at a seminar on "green washing" which looked at the possible misleading, or perhaps exaggerated, claims being made by businesses about their products being sustainable, environmentally friendly or carbon-neutral.

"Green" and "clean" have become marketing buzz words with promoters of products hoping to gain advantage from the concern about climate change within the community.

It is illegal to make claims that are false or misleading and, under the new Australian Consumer Law, businesses may be asked to provide proof of their claims, so it's important that the marketing of products with a "green" logo or slogan is based on fact and not fiction.

In the past, Consumer Protection has taken action against companies making false claims in promoting fuel saving devices and additives. We have also received lots of enquiries from consumers about claims being made by the solar industry about potential savings in household energy costs.

Green washing is a practice which will come under increased scrutiny by both consumers and regulators and businesses need to have the evidence to back up their claims to comply with fair trading laws and maintain their credibility with their customers.

Recently, we honoured the consumer champions in our community with the annual Consumer Protection Awards.

For me, it highlighted the importance of the excellent work being carried out by consumer advocates, community groups and other individuals and organisations – all of whom are important pieces in the consumer protection jigsaw.

The contribution from those who work on the front-line in our community is extremely valuable in the process of developing government policies and identifying emerging issues. As regulators, we rely very much on their input.

I would like to congratulate the winners and nominees of this year's Awards and I hope the recognition will help highlight their achievements and inspire others who work in this vital area.

Anne Driscoll
Commissioner for
Consumer Protection

If a consumer wants an itemised bill, they must ask for it within 30 days of receiving the services or receiving an unitemised bill from the service provider, whichever happens last.

Once a request for an itemised bill has been made, the supplier has seven days to provide the itemised bill.

Unsolicited Goods and Services - No Obligation to Pay

Consumers only have to pay for goods or services they have requested. If a business supplies goods or services without getting the consumer's agreement, then the consumer does not have to pay for them.

What is more, it is an offence for a business to seek payment for goods and services that were not requested by a consumer.

Where a business has provided a consumer with unsolicited goods the business is entitled to recover the goods within three months, but if the consumer advises the business in writing that they do not want the goods, then the recovery period is reduced to one month.

The consumer is not liable for any loss or damage resulting from a supply of unsolicited services, however, they may be liable if they willfully damage the goods during the recovery period.

If the unsolicited goods have not been collected within the recovery period the consumer can keep the goods.

The consumer can't keep the goods if it is obvious they have been sent to the wrong person (for example they have been delivered to the wrong address).

Example 2:

During a routine car service, a motor vehicle repairer decides to replace two tyres on a consumer's car without notifying them. An additional \$500 was added to the consumer's bill. The consumer does not have to pay this extra amount but the repairer is entitled to replace the new tyres with the former tyres.

Multiple and Component Pricing

If a business displays an item with more than one price on it then they must sell it for the lowest displayed price or withdraw the item from sale

Advertised mistakes

If price is incorrectly displayed in catalogues or advertisements, a retraction must be published in a publication with similar reach and circulation.

Components

A business cannot advertise an item at part only of its cost (for example, less fixed fees and charges) unless the full total price is also prominently advertised. If the item does not have a known static delivery charge then that delivery fee does not have to be included.

Example 3:

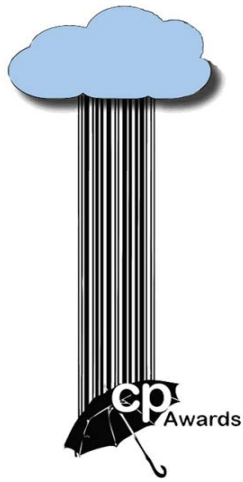
A Western Australian consumer is buying clothes from an internet site of a Victorian company.

If the delivery price was a standard \$10 anywhere in the country, then that price must be included as part of the sale price. If the delivery charges increase depending on weight of items or distance then those fees do not have to be included in the sale price.

However any delivery fees must be shown clearly before the final purchase process so the consumer is aware of the full costs before deciding to purchase the item.



Consumer protection champions awarded



commerce.wa.gov.au/cpawards
1300 30 40 54

The seventh annual Western Australian Consumer Protection Awards were held on Friday 18 March 2011.

More than 100 guests including previous award winners, members of the media and key consumer groups attended the ceremony at the University Club of WA.

Deborah Kennedy was the MC and Commerce Minister Simon O'Brien presented each award.

For the presentation of the Rona Okely Award, Minister O'Brien was joined on stage by Mrs Okely herself. The well-known consumer protection pioneer declared that Gosnells Community Legal Centre

Solicitor, Linda Saverimutto, was the winner.

Ms Saverimutto, who helps to facilitate financial counselling, tenancy advocacy, community legal education activities and family dispute resolution services, said: "It's a great honour to be nominated, let alone win the Rona Okely Award. Thank you to Consumer Protection for providing this opportunity to recognise those who are working in the community."

When it was time to announce the winner of the Richard (Dick) Fletcher Award, the widow of the former Consumer Affairs Commissioner, after whom the award is named, took to the stage with the Minister.

Diana Fletcher handed over the trophy to the Western Australian Retirement Complexes Residents Association (WARCRA) represented by Patrick Wyburn.

WARCRA has more than 8000 members located in 80 retirement village complexes and provides residents with a forum to voice concerns and have questions answered.

Mr Wyburn said he was very pleased to accept the award on behalf of WARCRA.

"Thank you to our members for their strong support over the years – without them, we are powerless," he said.

"Also, thank you to the committee who have worked hard to provide a range of services to residents and prospective residents. There is always a lot of preparation and organisation that goes into our activities, which are always over-subscribed."

The third and final award of the day was the Kidsafe WA Award. It went to the City of Stirling's Road Safety Group for its Child Car Restraint (CCR) program.

This scheme included free CCR fitting and checking services together with a drop-off recycling point for old or second-hand CCRs.

City of Stirling's Deputy Mayor, Giovanni Italiano, accepted the honour and said: "I am proud that the City of Stirling's efforts in promoting child safety in the

community have been recognised. To the City of Stirling staff who have been involved, thank you for all of your hard work and congratulations.

"The services of the CCR program have been well received by rate payers. The City of Stirling is setting an example and leads the way for child safety in the community – other local government departments should follow our example."

It was Commerce Minister Simon O'Brien's first time at the Consumer Protection Awards. He took over the Commerce portfolio late last year.

The Minister described the awards as a great way to highlight the work being done by consumer advocates across the State.

"The efforts to protect consumers, made by both this year's winners and finalists are inspirational and highly commendable," he said.

"We hope that the recognition received through the Western Australian Consumer Protection Awards goes some way toward marking those outstanding contributions and thanking all of the individuals involved."

Both the Minister and the Commissioner for Consumer Protection, Anne Driscoll, acknowledged the very important role that the WA media play in educating consumers about their rights.

This acknowledgement was well-received by the media representatives including ABC Mornings producers, Graham Mabury from 6PR, Sue Myc from Twin Cities FM, David Cohen from Post Newspapers and John Logan from the Community Newspaper Group. The awards were also covered by Chanel 44.

Consumer Protection's Journalist tweeted throughout the ceremony and several other organisations joined in the Twitter conversation, with encouragement for nominees and other positive comments.

Planning is already underway for next year. To find out how to nominate for the 2012 WA Consumer Protection Awards and see the full list of 2011 nominees and winners, log on to the [Consumer Protection website](#).



Consumer issues trends in 2010

In 2010 Consumer Protection received a total of 139,798 enquiries from consumers and business operators (compared to 142,036 in 2009) and received 9,940 formal complaints (compared to 10,145 in 2009).

Retail & Services (including Travel):

Complaints relating to the selling of goods and provision of services, including product safety and travel, totalled 4,377 in 2010 (compared to 4,154 in 2009). Enquiries totalled 24,492 in 2010 (compared to 24,763 in 2009).

Major issues in the retail area were triggered by sudden business closures and the impact it had on consumers. Many consumers reported the loss of deposits they had paid up front for goods and services and, in some cases, consumers had paid the full purchase price while waiting for goods to arrive or to secure goods into storage for future events. This again prompted Consumer Protection to re-issue advice to consumers to pay the smallest deposit possible and never pay the full amount until the goods are delivered or the service completed to the consumer's total satisfaction.

Significantly a number of business closures occurred where there were significant numbers of discount vouchers sold in the marketplace. These vouchers were not honoured as a result of the business closing down or new ownership not accepting responsibility for old 'debts'.

In one major incident the Rick Hart stores, owned by the Clive Peeters Group, went into receivership in May and Consumer Protection received more than 500 calls from worried customers who had more than a million dollars paid as deposits at risk. In this case, there was a good outcome when the receivers managing the affairs of the company were able to negotiate the satisfaction of outstanding orders.

Other business closures prompting calls and complaints were Baby World/Baby Boom, WA Institute of Beauty Therapy and Inspired Life gym, unfortunately in these cases a positive outcome could not be realised.

Disputes between consumers and retailers over warranties continued to be high with consumers complaining that retailers were not meeting warranty obligations or were transferring their obligations to manufacturers.

There were high levels of complaints relating to electrical and computer equipment, whitegoods, mobile phones, clothing and furniture.

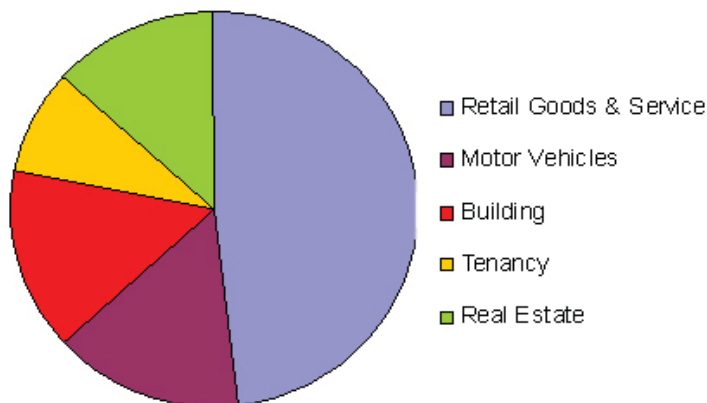
Consumer Protection recognised an increasing trend in the number of complaints against pet shops and breeders of pets of all types. Investigations into the cause of these complaints and specific instances of misleading behaviour have been instigated. Consumer Protection is developing information and highlighting issues the consumers should be alert to when purchasing pets.

Complaints against airlines and especially those in the budget categories provided an insight into a growing trend of concerns about the additional charges incurred online such as booking, luggage and credit card fees. The Australian market is becoming more aware of the issues relating to travelling with budget airlines compared to full-service airlines and Consumer Protection highlights the need to be aware of extra costs relating to luggage, food and entertainment on these carriers as well as problems if the flight is delayed or cancelled and connections are missed. Conditions of travelling on these airlines are specific in terms of check-in times and point to point travel rather than a 'whole of journey' so if consumers are planning on making connecting flights from one destination to another those terms and conditions can have a significant impact if connections are missed.

Scams:

Scams continued to be a major and increasing area of concern to

Complaints



Consumer Protection in 2010 with the number of reports totalling 7,050 (compared to 4,352 in 2009). We believe this represents an increase in awareness of contacts that are likely to be a scam and more consumers are taking the time to report these matters.

The techniques and methods used by overseas fraudsters, have become increasingly more professional, making it more likely to entice victims.

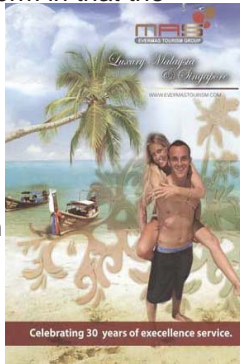
The majority of scams encourage people to send money by wire transfer which makes it impossible to trace and recover the funds. Other scam types that encourage recipients to send amounts of money to recover so called prizes and merchandise rely on consumers thinking that it is only a relatively small amount of money (up to \$100) but when this is multiplied across 100's of recipients the level of detriment is clearly more serious.

Apart from a huge increase in scam reports, there have also been records set with regard to the individual amounts lost by scam victims. In September, a Western Australian working in South Africa reported to us that he had his identity stolen and scammers sold his Karrinyup home, collecting the \$485,000 proceeds from the sale. It was also discovered that a second property in Perth was being readied for sale. This amount was eclipsed in December when a Perth woman reported losing \$600,000 in a romance scam.

Phishing scams seek personal details of recipients, including bank and credit card account information,

Continued on page 6.

they are as prolific as the scams that try to get the recipient to pay money upfront for a prize or gift that they have supposedly won. Major scams in this area include cold callers claiming to be from major computer companies, attempting to gain access to consumer's computers. This particular scam is different to the norm in that the perpetrators actually telephone consumers and talk them into superfluous computer services and have the victim pay on the spot by way of credit card deductions.



Scam letters from the EverMAS Travel Group in Malaysia containing fake scatchies promoting bogus prizes hit Perth mailboxes. In one instance a Perth woman advised she had lost \$50,000 in the EverMAS scam seeking to claim her promised winnings. In cooperation with Australia Post, Consumer Protection has intercepted many of these scam letters, preventing them from reaching WA homes.

Reports of fake advertisements and supposed buyers on websites remained high in 2010 with online accommodation and car sales sites the major targets. Warnings were also issued concerning a fake travel website.

Motor Vehicles:

Enquiries and complaints about the new and used car market remained fairly static over the year. (1,373 complaints in 2010 -1,384 in 2009 and 11,092 telephone enquiries - 11,064 in 2009).

Concerns highlighted about new car purchases were contracts, delays in delivery and the customer not getting exactly what they ordered. The principal area of complaint for used car purchases after sales breakdowns and the realisation that the vehicle purchased may have serious faults.

Used motor cars are provided with a statutory warranty if the vehicle is less than 12 years old, has travelled less than 180,000 kms and

the purchase price exceeds \$4,000. Vehicles that are sold outside of these parameters must still be "fit for purpose" and safe to drive Consumer Protection deals with a number of complaints in this area every year. The hail storm in March gave rise to an increased level of disputation because of delays in completing repairs. Further concerns have arisen because hail damaged vehicles have found there way back into the used car market through some unlicensed activities which has shown that some were also poorly repaired and subsequently resold to unsuspecting members of the public.

Small Building Works (fencing/Patios/floor covering):

The Building area was subject to 1,345 complaints in 2010 (compared to 1,157 in 2009) and 9,323 enquiries (compared to 8,010 in 2009).

There continues to be a high number of complaints against small contractors in the area of fencing, patios, air conditioning and timber flooring concerning incomplete work, unreasonable delays or dissatisfaction with the quality of the workmanship or products supplied. There was also an increase in enquiries/complaints about roof insulation and solar system installers.

Many of these issues were compounded by the increase in activity in this area as a result of Government rebate schemes.

Tenancy:

Tenancy attracted 804 formal complaints (compared to 829 in 2009) and 50,254 enquiries (compared to 50,133 in 2009). The main issues in this area related to disputes over the termination of

tenancy agreements, surprise inspections and confusion over who is responsible for repair or maintenance items at properties.

An issue which continued in 2010 was the practice of some landlords and property managers demanding tenants give 21-days notice to terminate a fixed term tenancy agreement and subsequently seeking to impose a penalty on the tenant if it was not given. This is illegal under the *Residential Tenancies Act 1987*

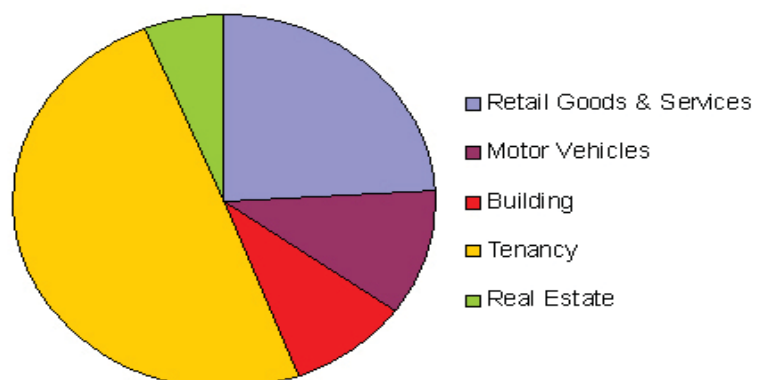
Enquiries about bonds remained high but relatively static with 24,420 calls in 2010 (compared to 23,555 in 2009).

One of the significant drivers in this area is the need for tenants to be provided with a refund of their bond money in a timely manner. Tenants face huge costs when moving home with costs including paying rent in advance, a bond on another home, furniture removal and reconnection to utilities. With the average bond being about \$1,600 and rent in advance being \$800per week. It is a substantial amount of money that must be found at relatively short notice.

Real Estate, Land Valuers & Settlement Agencies

This industry received 1,205 complaints in 2010 (compared to 1,125 in 2009) and 6,263 enquiries (compared to 7,193 in 2009). These related to the use of money held in trust by real estate agents and property managers and the dissatisfaction of landlords with the quality of service offered by property managers.

Enquiries



Buying pets

Purchasing a pet is a tough decision involving careful consideration. Not only is buying a pet an emotional decision for the consumer, it can also involve spending a significant amount of money.

So far this year, the number of enquires regarding pet purchases received by Consumer Protection has been higher than usual (the number of enquiries in both January and February 2011 more than doubled on December 2010).

Common issues among the complaints received are animals being sold with worms or illnesses such as parvo virus, both of which can be fatal if not treated in time. There are also issues surrounding pedigree puppies and inherited disorders which become apparent only after purchase.

Because of this, Consumer Protection has identified the importance of educating both consumers and suppliers of their rights and responsibilities when it comes to pets. Essentially, under consumer protection laws, a transaction involving a pet has the same protections as a transaction involving any other type of consumer good.

However, often the supply and purchase of a pet is not as straight forward as there are other factors involved, such as a consumer's emotional attachment to their new pet, which may stop some consumers seeking the remedy they are entitled to.

A new publication on the issues involved in purchasing pets has now been developed by Consumer Protection in conjunction with the Animal Welfare Branch of the Department of Local Government. Input was also sought from the Australian Veterinary Association and RSPCA Western Australia.

The brochure will be circulated to vet clinics and pet shops around Western Australia and recommends that consumers do their research and ask a number of key questions before they buy.

The publication also outlines the most important provisions of the new Australian Consumer Law (ACL) as they apply to the purchase of pets, namely the consumer guarantees of acceptable quality, fit for purpose, accurate description and matching any description and 'sample' given or shown.

Purchases made before 1 January 2011 still have a number of key protections but those bought through a once-off private sale are not covered under the ACL. In an industry where there are a lot of "fringe" suppliers, some of the issues that needed to be resolved included the status of pet shelters as suppliers and what constitutes a professional "breeder".

It was noted that the nature of an individual transaction needs to be considered in determining whether or not a purchase is covered by the ACL; namely, whether or not the pet was supplied in the course of trade or commerce or any business or professional activity, whether or not carried on for profit.

The new brochure also explains that if a supplier fails to meet one or more of the consumer guarantees, the consumer may have rights against the supplier. The remedy that a supplier needs to provide in such a situation will depend on whether the problem can be classified as major or minor.

In all its publications, Consumer Protection recommends that if there is a problem with a purchase, the consumer and supplier should attempt to negotiate an outcome that both parties can agree to. If there continues to be a disagreement, Consumer Protection can provide advice and help resolve the dispute.

If you would like to distribute copies of the pet brochure, or if you require further information on the ACL, please call 1300 30 40 54



Business Names Project

Comments on the Business Names Project are being sought until 24 April 2011

As part of the Council of Australian Governments' (COAG's) regulatory reform agenda, the national business names project will develop a seamless online registration process for ABNs

and business names, including trade mark searching.

The system will also deliver online business information services and improve ongoing interactions between government and business.

Draft legislation on a [national business names register](#) was out for public consultation.

The new national business names register is expected to start operating in 2012 and will be managed by the Australian Securities and Investments Commission (ASIC).



ABN BN PROJECT:
BUSINESS ONLINE SERVICES AND BUSINESS NAMES

Young consumer rights promoted during Youth Week

Consumer Protection embraced National Youth Week (1-10 April 2011) as an opportunity to encourage young Western Australians to be smart shoppers and know their rights. A special youth web page was developed (www.commerce.wa.gov.au/youth) and promoted through the WA media.

Community education events culminated in a stall, run by three of Consumer Protection's graduate officers, at Youth Week WA's 'Chillin at the Y' in Leederville on Saturday 9 April 2011. Karina Schaap, Jonathan Georgiou and Clarence Paul (pictured) engaged with about 45 young people, giving out free branded items such as lollypops, wristbands and stress balls.

The graduate officers also supplied information and publications. This included a specially developed credit card sized wallet insert, which promotes key points of the Australian Consumer Law and invites young consumers to make use of the Consumer Protection general advice line, website and social media accounts.

Five young consumers each won a \$30 iTunes gift card, in a prize draw designed to encourage event attendees to ask Consumer Protection a question.



An Australian, State, Territory and Local Government Initiative

Most of the kids who took part had pre-paid mobiles and some bought things online – these potential consumer issues were noted to help with future educative messages.

Throughout Youth Week Consumer Protection interacted with organisers and participants through [Facebook](#) and [Twitter](#). This was well-received by the social media community, with several people clicking “like” on Facebook updates and photos, and a number of retweets (re-issuing) of Twitter posts and images.



Consultation on licensing of strata managers

The Minister for Commerce, the Hon Simon O'Brien MLC, has recently asked the Department of Commerce to undertake consultation on whether strata managers should be licensed in Western Australia.

While most States have some form of regulation for strata managers, at present they are not licensed in Western Australia.

The strata industry has grown substantially in recent years, with an estimated 10,000 strata lots being created each year; and strata managers can hold considerable sums of money on behalf of strata companies.

Furthermore the development of the Council of Australian Governments National Occupational Licensing System (NOLS) has focussed new attention on the question of whether strata managers should be licensed in this State.

The NOLS would create a single occupational licence for selected occupations allowing licensees to work anywhere in Australia with the one licence.

Property agents are one of the occupations covered by the NOLS, with proposed effect from 1 July 2012.

It is proposed that strata managers would be one of the categories of the NOLS property agent licence.

The NOLS Intergovernmental Agreement provides that States or Territories that do not licence an occupation at the time the NOLS commences are not obliged to begin licensing it merely because of the NOLS. However, any licensing of the occupation would need to be under the terms of the NOLS.

Consequently, from July 2012 Western Australia has a choice of retaining the status quo (no licensing) or licensing strata managers under the NOLS.

In order to make an informed recommendation to the Minister, Consumer Protection is preparing to conduct consultation in the first half of 2011 on the merits of proceeding with strata manager licensing under the NOLS.

To support the consultation process, Consumer Protection is currently developing a concise discussion paper which will be released for public comment. It is expected that the discussion paper and advice on how to participate in the consultation will be released in the near future.

If you are interested, keep an eye on the Consumer Protection website, follow us on [Twitter](#), or be a fan on [Facebook](#).

Green-washing: are companies clean when it comes to environmental claims?

“Wipe out your electricity bills”, “100% eco friendly”, “Using only green energy”, “Carbon neutral” – are they all extravagant claims or are businesses making statements like that able to back them up?



Under the Australian Consumer Law (ACL) substantiation notices can be issued, which require companies to prove to consumer protection authorities that their advertising is truthful, and the advertised product ‘does what it says on the label’.

Misleading consumers with environmental

claims that are not true or are only half true in order to sell a product is classed as a false or misleading misrepresentation and misleading or deceptive conduct. Harsh penalties apply if legal action is taken up to \$1.1 million for a corporation or \$220,000 for an individual.

Prior to the ACL, businesses were often asked to prove that their product worked, on a voluntary basis. In a number of cases authorities had to engage in extensive testing to prove whether the claims being made could be substantiated.

Now a range of tools have been provided for ACL regulators to call upon a business to substantiate claims. Failing to comply with a substantiation notice carries a fine of up to \$16,500 for a corporation and \$3,300 for an individual. Meanwhile providing false or misleading information in a substantiation notice could cost a corporation up to \$27,500 and an individual \$5,500.

One area where these powers might be used is in response to so-called ‘green-washing’ in Australia. The term refers to the deceptive use of green PR to create the impression that a company’s policies or products are environmentally-friendly. This form of marketing spin was the subject of a recent conference hosted by the Sustainable Energy Association at Perth Convention Centre (24 March 2011).

Brand consultant Tracey King kicked off by promoting honesty in green marketing. She outlined several cases where companies had been caught stretching the truth about environmentally friendliness. This included an air-conditioning manufacturer which, in 2006, had to pay back \$3.1 million to consumers who purchased air-con units that did not comply with energy efficiency claims on the labels. Another example was a car-maker, which after being challenged by the ACCC, agreed not to re-publish an advert claiming a certain brand of its vehicles are green, with carbon neutral emissions.

In warning the audience about the use of words like ‘eco’, ‘recyclable’ and so on, Ms King outlined the sins of green marketing. These include hidden trade-offs e.g. recycling that produces greenhouse gas emissions, no proof or vagueness – “all-natural” etc (see [terrachoice](#)). You can view the presentation [online](#)

Katrina Alidenes, Senior Associate at Minter Ellison, outlined the substantiation notice provisions in the ACL. The ACL regulators have produced a guide to inform businesses about their obligations under the ACL when it comes to promoting green credentials. It examines some issues surrounding carbon offset and neutrality claims and can be found [online](#)

Anthony Hilton, Deputy Director of the ACCC, spoke about the need for explanation when making green claims: not just a carbon calculator but all the workings. He said the ACCC was concerned about consumer detriment and used enforcement action, such as that taken against suppliers of “power-saving” devices, as a deterrent. The ACCC, he said, is very interested in hearing about dodgy environmental claims from consumers, competitors or people within government. Businesses need to get it 100% right or they could be subject to naming and shaming.

Commissioner for Consumer Protection Anne Driscoll concurred and spoke about publicly naming several products which wrongly claimed to be able to reduce fuel consumption in motor vehicles. She discussed the emerging issue of solar power claims. Consumer Protection received 211 solar power related enquiries in just the first quarter of 2011. Concerns included the system cost versus the time it will take to break-even through power savings, how much electricity is truly produced and what system capacity is required to create enough power to reduce household bills or even feed back into the grid.

Western Australia is leading the way in tackling misleading claims by solar power system providers, in conjunction with other Australian Consumer Law regulators: NSW, ACT, and the ACCC by coordinating a national compliance program looking at environmental claims. Consumer Protection relies on the community to be its eyes and ears. Consumers and businesses can report any concerns about misleading practices by calling on 1300 30 40 54 or by emailing consumer@commerce.wa.gov.au



New website helps you make MoneySmart choices

The Australian Securities and Investments Commission (ASIC) recently launched a new personal finance website called MoneySmart at www.moneysmart.gov.au, which will be of great use to consumers.

According to ASIC, research shows that about half of Australians are not confident they're getting the best deal when making important financial decisions. Those surveyed said they didn't necessarily know where to go to get the information they need.

MoneySmart aims to help you make good choices financially, by providing free, independent and unbiased advice and tools. There are 26 calculators and tools to choose from, including some for use on mobile phones. By following simple steps you can get quick answers to questions about money.

MoneySmart covers not only the basics such as budgeting, saving, credit cards and loans, but also more complicated issues like superannuation contributions, margin loans and income tax.

There is information for people at particular turning points in their lives; starting work, buying a home, losing a job, having a baby, saving for a holiday, getting divorced or retiring.

Whether you're young or old, rich or poor, investing or paying off debt; the site offers uninfluenced free-of-charge guidance, so that you can pick the best options for you.

For example: if you are planning for retirement, the 'retirement planner' estimates what your income will be after you retire and what you can do now to boost it. It demonstrates how increasing employer contributions would give a big boost to income in retirement.

MoneySmart does not just provide information; the website empowers you to act by demonstrating the benefits of taking control of your personal finances. It takes Australians from simply acquiring knowledge, to setting and implementing financial goals.

Log on to the [Money Smart](http://www.moneysmart.gov.au) website (www.moneysmart.gov.au) to have a look around. If you find it beneficial why not recommend it to your friends and family.



Registration for Consumers 2011 is now open

consumers
2011

Consumers 2011
Australian consumer policy, law and practice

Early bird rates are available until 30 April 2011.

Discounted rates apply for community and academic delegates.

For more information about the *Consumers 2011: Australian Consumer Policy, Law and Practice* conference go to the [Australian Consumer Law](http://www.consumerlaw.gov.au) website: www.consumerlaw.gov.au

29 Mar: Geraldton woman fined for failing to give information

Megan Emma Healy of Healthy Home Airconditioning, was fined \$400 and ordered to pay \$253 in costs in the Geraldton Magistrates Court for failing to comply with a compulsory notice to provide information and documents, a breach of the Consumer Affairs Act.

Supposedly the woman's father Mr Alwyn Robert Healy, was operating the business. Mr Healy, operated Perth-based Aircon Factory Direct, was ordered to pay about \$16,000 in damages to several customers in the Perth Magistrates Court last year. Mr Healy is also subject to a Supreme Court undertaking. In November last year he was given a suspended jail sentence over contempt of Court for breaching the undertaking.

28 Mar: Car wrecker fined for selling parts without a licence

Nevin Inni, a Perth car wrecker, was fined \$7,500 and ordered to pay costs of \$535 in the Perth Magistrates Court for selling car parts without a licence.

Mr Inni purchased about 41 vehicles between February 2009 and January 2011 and placed about 400 advertisements to sell parts.

8 Mar: Company fined \$2000 for receipt wording – Jisoo Holdings

Garden City Shopping Centre store Jisoo Holdings Pty Ltd and its sole director Mr Sami Zaher have been fined for stating "NO REFUNDS EXCHANGE WITHIN 7 DAYS ONLY" on receipts for ladies jewellery and accessories. Consumers are entitled to a refund if goods are faulty, and a seller cannot restrict or modify rights or specify a timeframe for the return. Fines of \$1,000 for the company and \$1,000 for Mr Zaher, along with an order to pay \$532 in costs were handed down at Fremantle Magistrates Court.

25 Feb: Finance broker fined over false statements

A Perth finance broker has been fined \$1,000 by the State Administrative Tribunal (SAT) over misrepresentations in two loan applications.

Richard Edward Trevor Lowenhoff of Jane Brook was also ordered to pay costs of \$1,000 after admitting two breaches of the Finance Brokers (Code of Conduct). Regulations 2007. Control

Regulation of consumer credit became the responsibility of the Australian Securities and Investments Commission (ASIC) last year.

25 Jan: \$15,000 fine for car hire operator

A car hire company, Pearl Court Investments Pty Ltd, trading as Action Hire Cars, has been fined \$15,000 and ordered to pay \$638 Court costs for operating without a motor vehicle dealer's licence or an exemption from having to hold a dealer's licence.

Pearl Court Investments Pty Ltd had an exemption which expired in August 2007. The company made a number of incomplete requests to renew the exemption, failing to provide necessary documents and pay the required fee.

Eventually an exemption was granted in April 2010, almost three years later. However during this period Action Hire Cars continued operating without an exemption from the Board.

During sentencing the Magistrate noted there had been 'no deliberate disregard of the requirements of the Act' but the period during which the operator was unlicensed was 'significant'.

25 Jan: Landlord fined over bond breaches

A Cloverdale landlord, Siobhan Erin McLaughlin, was fined \$2,000 and ordered to pay costs of \$344 in the Perth Magistrates Court for breaching laws relating to a

security bond payment from her tenant. Bonds must be appropriately lodged within 14 days of being received.

Ms McLaughlin had previously held a real estate licence for nine years and has been renting premises to tenants for ten years.

Ms McLaughlin was previously fined in 2008 for nine offences under the Residential Tenancies Act, one of which related to the failure to lodge bond money correctly.

21 Jan: First unlicensed car repairer fined under new laws

Aldo Gentile, owner of Morley Mechanics, was fined \$2,500 and ordered to pay \$346 in costs in the Perth Magistrates Court after pleading guilty to a charge of carrying out unlicensed repair work.

A number of formal warnings were issued to the business before legal proceedings were commenced. Mr Gentile lodged a licence application in September 2010.

This is the first conviction under the Motor Vehicles Repairers Act, which came into effect in July 2008.

17 Jan: Car dealer fined for having no licence

Jayde Ashleigh Grundy has been fined \$5,000 and ordered to pay \$417.56 Court costs after pleading guilty to unlicensed motor vehicle dealing.

Ms Grundy acquired at least 13 vehicles and supplied them to private buyers and licensed dealers, for profit, between December 2008 and June 2010.

14 Jan: Unlicensed car dealer fined in Esperance Court

An unlicensed car dealer was fined \$4,000 and ordered to pay costs of \$110 in the Esperance Court on 11 January 2010. Allen David Jones of Esperance was found guilty of selling 26 vehicles without a licence between November 2008 and May 2010.

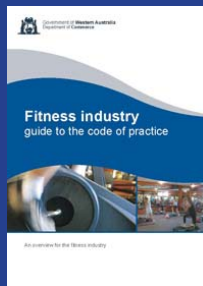
Legislative updates

Competition and Consumer Act 2010 (Commonwealth) copies of the Consumer Protection Notices were published in the WA Government Gazette on 1 March 2011 to give permanent bans on the following consumer goods:

- children's products containing more than 1% DEHP;
- combustible candle holders;
- inflatable toys, novelties and furniture containing beads;
- miniature motorbikes (monkey bikes) with unsafe design features;
- novelty cigarettes;
- pools and spas with unsafe design features;
- sky lanterns;
- toy-like novelty cigarette lighters;
- undeclared knives or cutters in art, craft and stationery sets; and
- yo-yo water balls

Publications

Fitness industry guide to the code of practice has been reviewed and published with the renewal of the code. It covers the Fair Trading (Fitness Industry Code of Practice) Regulations 2010 which sets out specific standards of conduct for the fitness industry.



All Consumer Protection publications are available from our [website](#) or by calling 1300 30 40 54.

Contact us

If you need information or advice on any consumer protection issue:

- contact our Consumer Protection Advice Line on 1300 30 40 54 from anywhere in Western Australia for the cost of a local call; or
- visit our website at: www.commerce.wa.gov.au/consumerprotection.

Keep up to date

Consumer Protection [website](#)
follow us on [Twitter](#), be a fan on [Facebook](#).

April

26: Fuel price advice for Perth drivers

19: Easter fuel price advice for Perth drivers

Employment agent fined for breaking licensing laws

18: Perth man fleeced by dodgy 'back of van salesmen'

12: Consumer Protection field trip to the Wheatbelt

Fuel prices clocking up to more than \$1.50

11: \$11,000 fine for migrants who sold cars illegally

6: Fuel price advice for Perth drivers

4: Check retail trading hours over the Easter ANZAC Day period (Minister)

1: Young consumers know your rights



March

30: Geraldton woman fined for failing to give information

29: Fuel price advice for Perth drivers

28: Car wrecker fined for selling parts without a licence

22: Fuel price advice for Perth drivers

18: Consumer Protection Awards

15: Fuel price advice for Perth drivers

11: Public consultation on travel industry regulation

09: Company fined for receipt wording – Jisoo Holdings

08: Fuel price advice for Perth drivers

01: Fuel price advice for Perth drivers



February

28: Bogus earthquake charity collections

25: Finance broker fined over false statements

24: Scammers targeting WA property sellers

22: Fuel price advice for Perth drivers

16: Dodgy 'back of van salesmen' spotted in Perth suburbs

15: Fuel price advice for Perth drivers

14: Westpoint Realty Pty Ltd and director Norman Carey found guilty

08: Bitumen Bandits strike in Perth suburbs

01: Fuel price advice for Perth drivers



January

25: Fuel price advice for Perth drivers

'Bikini Girls Massage' operators permanently restrained

Landlord fined over bond breaches

21: First unlicensed car repairer fined under new laws

20: Flood appeal email scam targets WA businesses

19: Fuel price advice for Perth drivers

17: Car dealer fined for having no licence

14: Unlicensed car dealer fined in Esperance Court

13: Advice to truly help flood victims

12: Fuel price advice for Perth drivers

Charity worker claws back money after scam warning

07: WA urged to fill in scam survey

06: New national consumer law active

05: Fuel price advice for Perth drivers

DNA testing kit scam hits WA homes



All Consumer Protection media statements are available online.