



# Training providers

## training marketers and the Australian Consumer Law

*This factsheet will help training providers and marketers understand their obligations under the Australian Consumer Law. Sections of the law particularly relevant for businesses operating in the training and education sector are discussed in detail.*

### Australian Consumer Law (ACL)

The ACL is Australia's national consumer protection and fair trading law. It sets out the rights of consumers and the obligations of businesses, including training providers and marketers.

It gives consumers options for redress (refunds) and allows regulators like Consumer Protection in Western Australia to take enforcement action against businesses who break the law.

The ACL applies to all education and training services, including:

- advertising, marketing and promotion
- soliciting and taking enrolments
- training delivery
- student assessment
- handling of complaints by training providers
- requests to cancel a student's enrolment.

The ACL also applies when these services are provided by third parties on behalf of a training provider. Following these obligations is in addition to those placed on training providers and marketers by other laws or regulators.

### Misleading and deceptive conduct and unconscionable conduct

The ACL prohibits misleading and deceptive conduct by businesses in their dealings with consumers.

It is illegal to make a false or misleading representation about:

- price
- quality
- the need for particular services.

Examples might include providing misleading advice about:

- the expected benefit of doing a particular course, including eligibility for further study or employment prospects
- the overall price of the course, including VET FEE-HELP loan arrangements.

Unconscionable conduct – conduct against good conscience – is also illegal. Extra care must be taken when marketing to vulnerable consumers who may be less able to understand what they are signing up for.

This might include consumers:

- with a disability
- who do not speak English as a first language
- of culturally diverse backgrounds
- with low literacy skills
- with otherwise limited ability to complete the course.

The onus is on the training provider or marketer to ensure students meet certain basic prerequisites before they can be enrolled. Prerequisites might include English language proficiency or meeting particular licencing or regulatory requirements.

Targeting vulnerable consumers with the promise of incentives if they sign up to a VET FEE-HELP loan, without fully explaining the course and loan scheme, could also be considered unconscionable conduct. Offering incentives to consumers to enrol in a VET FEE-HELP course was banned from 1 April 2015.

Courts can impose penalties for these offences of up to \$1.1 million for corporations and \$220,000 for individuals. Consumer Protection can also seek injunctions or court orders for refunds and damages.

More information on avoiding unfair business practices is available from

[www.commerce.wa.gov.au/aclguides](http://www.commerce.wa.gov.au/aclguides). Training providers and marketers can also consider getting legal advice about their business practices and compliance with the law.

## Door-to-door sales, telemarketing and shopping centre/footpath sales

Some training providers and marketers approach consumers door-to-door, in public, or over the phone.

If a consumer signs up after being approached like this, it's called an 'unsolicited consumer agreement'. Consumers have extra protections, because the training provider or marketer initiated contact, not the consumer.

The extra protections include:

- Consumers have a 10 business day cooling-off period, during which they can cancel the contract without payment or penalty.
- Approaches can only be made during certain hours and days.
- The salesperson must present ID and give the consumer a truthful explanation of their rights.
- The salesperson must leave or cease contact if asked to do so by the consumer.
- The salesperson must provide the consumer with a copy of the complete agreement, at the time of any face-to-face sale or within five days following a telephone sale.

The cooling-off period is designed to allow the consumer time to fully consider their personal circumstances and the contract terms, and cancel the contract without penalty if they have changed their mind. If a training provider or marketer fails to afford a consumer their rights in an unsolicited sale, the cooling-off period automatically extends to 6 months.

Complaints of this nature commonly received by regulators allege:

- vulnerable consumers have been signed up to courses but not provided a copy of the contract
- consumers not being told about their cooling-off period or contract cancellation rights.

Courts can impose penalties for these offences of up to \$50,000 for corporations and \$10,000 for individuals.

More information on sales practices is available from [www.commerce.wa.gov.au/aclguides](http://www.commerce.wa.gov.au/aclguides)

## Unfair contract terms

Training providers and marketers often use standard, 'take it or leave it' style contracts when signing up consumers. The consumer has no genuine opportunity to negotiate the contract terms.

Care needs to be taken with those contracts to ensure they do not contain 'unfair' terms that:

- cause a significant imbalance in the parties' contractual rights and obligations
- are not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the terms
- would cause detriment (whether financial or otherwise) to a party if they were to be applied or relied on.

Only courts can declare terms 'unfair'. If a court does so, the unfair term or terms are removed from the contract, but the rest of the contract stands.

More information on unfair contract terms is available from [www.commerce.wa.gov.au/aclguides](http://www.commerce.wa.gov.au/aclguides). Training providers and marketers are encouraged to review their contracts and consider getting legal advice if necessary.

## Consumer guarantees

When consumers buy services, they come with automatic guarantees.

Services must:

- be provided with acceptable care, skill and technical knowledge
- be fit for the purpose or give the results that the consumer and the business had agreed to
- be delivered within a reasonable time when there is no agreed end date.

If services do not meet the consumer guarantees, consumers can claim remedies including:

- cancelling a service for a full refund
- seeking partial refund for the drop in value of the service
- seeking compensation for damages and loss.

More information on consumer guarantees is available from [www.commerce.wa.gov.au/aclguides](http://www.commerce.wa.gov.au/aclguides).

## Vocational education and training sector reforms

A number of Commonwealth Government reforms have been announced that affect suppliers and marketers in the vocational education and training (VET) sector.

See [www.vetreform.industry.gov.au](http://www.vetreform.industry.gov.au) and [www.education.gov.au/vet-fee-help-reforms](http://www.education.gov.au/vet-fee-help-reforms) for more information.

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