



Australian Government

australian consumer law 

The Australian Consumer Law

An introduction



November 2010

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FOREWORD

The Australian Consumer Law (ACL) is a key part of the regulatory reforms of the Council of Australian Governments (COAG) to deliver a seamless national economy. The ACL replaces provisions spread across 20 State and Territory Acts and in the *Trade Practices Act 1974* (TPA).

The ACL is the culmination of a process of cooperation between the Australian Government and the States and Territories through the Ministerial Council on Consumer Affairs (MCCA). It draws on the conclusions of the 2008 Productivity Commission (PC) *Review of Australia's consumer policy framework* and best practice in existing State and Territory laws, and the consultations that have been undertaken over the past two years.

In the *National Partnership Agreement to Deliver a Seamless National Economy*, the Australian, State and Territory governments agreed to complete the legislative process to implement the ACL by 31 December 2010 and that it will commence in all jurisdictions on 1 January 2011.

The *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* is the first of two Acts to implement the ACL and includes the unfair contract terms provisions of the ACL, as well as enhanced enforcement and redress provisions for the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). This Act passed both houses of the Australian Parliament on 17 March 2010 and received the Royal Assent on 14 April 2010.

The remainder of the ACL was implemented, along with related and supporting reforms, by the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* which was passed by both Houses of the Australian Parliament on 24 June 2010 and received the Royal Assent on 13 July 2010.

The *Trade Practices Amendment (Australian Consumer Law) Amendment Regulations 2010 (No.1)*, which are made pursuant to provisions of the ACL were made by the Federal Executive Council on 16 November 2010.

State and Territory governments are finalising application legislation to apply the entire ACL in each Australian jurisdiction.

This *Introduction* to the ACL has been prepared as a practical aid to understanding the ACL. A companion guide to provisions has been prepared to explain the contents of the ACL.

This brief guide reflects the ACL as it is on 1 January 2011.

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GLOSSARY OF TERMS

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACL Regulations	Trade Practices Amendment (Australian Consumer Law) Amendment Regulations 2010 (No.1)
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
BRCWG	Business Regulation and Competition Working Group
CCA	<i>Competition and Consumer Act 2010</i>
COAG	Council of Australian Governments
IGA	<i>Intergovernmental Agreement for an Australian Consumer Law</i> , signed by members of the Council of Australian Governments on 2 July 2009.
MCCA	Ministerial Council on Consumer Affairs
MINCO	Ministerial Council for Corporations
PC	Productivity Commission
SCOCA	Standing Committee of Officials of Consumer Affairs
The first Commonwealth Act	<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010</i> . This Act received the Royal Assent on 14 April 2010. It includes measures to implement: <ul style="list-style-type: none">• a national unfair contract terms law; and• new enforcement powers, penalties and redress options in the TPA. The measures of this Act are incorporated into the schedule version of the ACL. The Act also makes consequential amendments to the ASIC Act.
The second Commonwealth Act or the Act	<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> was passed by both Houses of the Australian Parliament on 24 June 2010 and received the Royal Assent on 13 July 2010.
TPA	<i>Trade Practices Act 1974</i> , which will be called the <i>Competition and Consumer Act 2010</i> from 1 January 2011.

THE ROLE OF THIS BRIEF GUIDE

This brief guide is intended to provide information about the development of the ACL and its contents.

In *The Australian Consumer Law: A guide to provisions* you can find a more detailed explanation of the provisions of the ACL.

For a comprehensive explanation of the ACL, please refer to the Explanatory Memorandum and Supplementary Explanatory Memorandum for the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* (available at www.consumerlaw.gov.au).

This brief guide reflects the ACL as it is on 1 January 2011.

THE AUSTRALIAN CONSUMER LAW

The ACL is a single, national law concerning consumer protection and fair trading, which applies in the same way nationally and in each State and Territory.

For the first time, consumers have the same protections and expectations about business conduct wherever they are in Australia. Similarly, businesses have the same obligations and responsibilities wherever they operate in Australia.

The Productivity Commission estimated that this reform could provide benefits to the Australian community of between \$1.5 billion and \$4.5 billion a year.

The ACL:

- replaces a wide range of existing national and State and Territory consumer laws and clarifies understanding of the law for both Australian consumers and businesses;
- is a schedule to the *Competition and Consumer Act 2010*, which is the new name of the *Trade Practices Act 1974*;
- is applied as a law of the Commonwealth. Each State and Territory will also make the ACL a law of its jurisdiction so that the same provisions will apply across Australia;
- is enforced by all Australian courts and tribunals, including the courts and tribunals of the States and Territories;
- is administered by the ACCC and each State and Territory's consumer law agency; and
- is generally reflected in similar provisions in the *Australian Securities and Investments Commission Act 2001* (ASIC Act), so that financial products and services are treated in the same way.

What does the ACL cover?

The ACL includes:

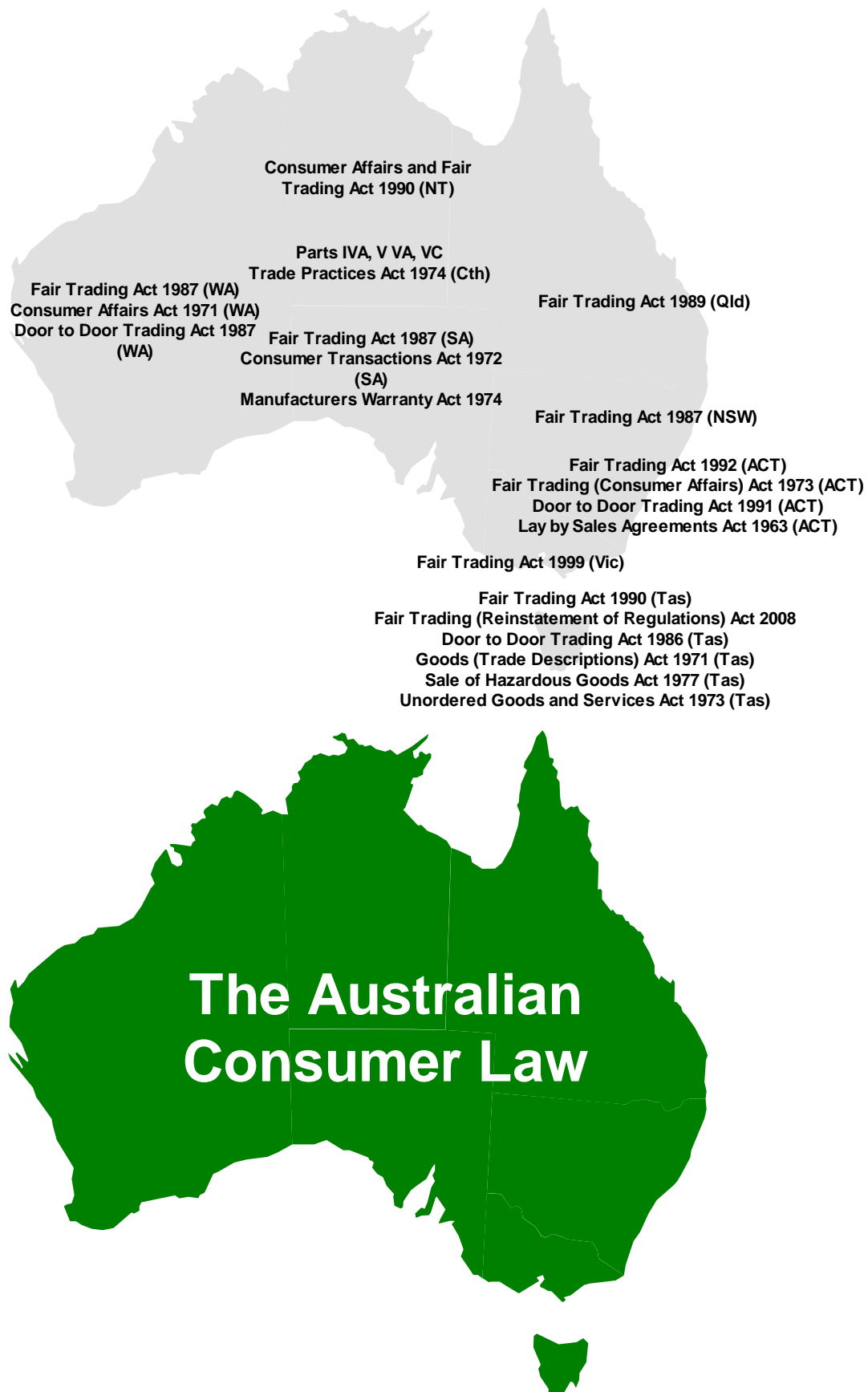
- **Chapter 1 – Introduction:** a single set of definitions and interpretive provisions about consumer law concepts.
- **Chapter 2 – General protections:** general protections, which create standards of business conduct in the market. Specifically, Chapter 2 includes:
 - a general ban on misleading and deceptive conduct in trade or commerce;
 - a general ban on unconscionable conduct in trade or commerce and specific bans on unconscionable conduct in consumer and some business transactions; and
 - a provision that makes unfair contract terms in consumer contracts void.
- **Chapter 3 – Specific protections:** specific protections which address identified forms of business conduct. Specifically, Chapter 3 includes provisions:
 - banning specific unfair practices in trade or commerce;
 - dealing with consumer transactions for goods or services;
 - on the safety of consumer goods and product related services;
 - on the making and enforcement of information standards; and
 - on the liability of manufacturers for goods with safety defects.
- **Chapter 4 – Offences:** criminal offences relating to certain matters covered in Chapter 3.
- **Chapter 5 – Enforcement and remedies:** national enforcement powers and remedies relating to consumer law.

What are the principal changes that are introduced by the ACL?

The main changes being implemented in the ACL are:

- a single set of definitions and interpretive provisions, some of which differ from those currently used in the TPA (Chapter 1);
- a new, national law on unfair contract terms (Chapter 2, Part 2-3);
- a single set of provisions about unfair practices and fair trading, including amendments and additions which reflect existing provisions in State and Territory consumer laws (Chapter 3, Part 3-1);
- new national consumer guarantees provisions, which will replace statutory implied conditions and warranties (Chapter 3, Part 3-2, Division 1);
- a new national regime for unsolicited consumer agreements, which will replace existing State and Territory laws on door-to-door sales and other direct marketing (Chapter 3, Part 3-2, Division 2);
- simple national rules for lay-by agreements (Chapter 3, Part 3-2, Division 3);
- a new, national product safety legislative regime (Chapter 3, Part 3-3); and
- new, national provisions on information standards which apply to services as well as goods (Chapter 3, Part 3-4).

A simpler legislative framework for generic consumer law



CHAPTER 1 — INTRODUCTION

Chapter 1 sets out relevant definitions of terms used in the ACL and explains key concepts used in the ACL.

CHAPTER 2 — GENERAL PROTECTIONS

Chapter 2 creates general standards of business conduct.

Misleading or deceptive conduct

The ACL prohibits misleading or deceptive conduct in trade or commerce. The ACL will provide the same broad protection as section 52 of the TPA.

Unconscionable conduct

The ACL includes provisions prohibiting persons from engaging in unconscionable conduct towards consumers or businesses. The ACL adopts the unconscionable conduct provisions currently in the TPA.

Unfair contract terms

The ACL includes provisions that address the use of unfair contract terms in standard form consumer contracts. A term is 'unfair' when: it causes a significant imbalance in the parties' rights and obligations arising under the contract; it is not reasonably necessary to protect the legitimate interests of the supplier; and it would cause financial or non-financial detriment to a party. The unfair contract terms provisions commenced on 1 July 2010 at the Commonwealth level, and mirror provisions have applied in Victoria and NSW since 1 July 2010.

CHAPTER 3 — SPECIFIC PROTECTIONS

Chapter 3 creates specific protections for consumers against unfair business practices.

Unfair practices

Unlike the general protections in Chapter 2 of the ACL, Chapter 3 is targeted at specific kinds of activities that can be particularly detrimental, such as:

- specific false or misleading representations or conduct in trade or commerce, in relation to goods or services, land transactions or employment;
- failing to supply gifts and prizes or not supplying them as offered;
- wrongly accepting payment for goods and services not supplied;
- pyramid selling schemes;
- bait advertising;
- certain pricing practices; and
- harassment and coercion.

These prohibitions apply generally to all businesses, rather than to specific industry sectors.

Consumer transactions

Consumer guarantees

The ACL creates a single set of statutory consumer guarantees to replace the existing system of implied conditions and warranties in the TPA. This changes the form, but not the intent, of the law that applies to consumer purchases of goods and services.

The guarantees modernise and clarify the operation of the law on consumer rights in relation to goods and services, and align Australia's law with the New Zealand *Consumer Guarantees Act 1993*.

New requirements will also apply to the types of representations that businesses may make about consumer guarantees, ensuring that consumers receive accurate information and can make effective choices.

What are consumer guarantees?

When a consumer buys goods or services, the ACL provides that they will have guaranteed rights that:

- the supplier has the right to sell the goods;
- the goods are of acceptable quality;
- the goods match their description;
- the goods are fit for any purpose that the consumer makes known to the supplier;
- the repairs and spare parts are reasonably available;
- the services are carried out with reasonable care and skill; and
- the services are completed within a reasonable time.

Unsolicited consumer agreements

All States and Territories currently have specific laws dealing with unsolicited sales. The ACL unsolicited consumer agreements provisions harmonise these diverse approaches into a single national law.

The ACL regulates unsolicited sales practices and the formation of unsolicited selling agreements. It covers door-to-door selling, telephone sales and other forms of direct selling which do not take place in a retail context.

The ACL provisions on calling hours do not apply to telephone sales that are regulated by the *Do Not Call Register Act 2006* and associated legislation.

The new unsolicited consumer agreements rules

The new rules include:

- supplier obligations about the way in which consumers are approached and about the making of agreements;
- supplier disclosure obligations about the making of agreements, consumer rights and obligations; and
- supplier obligations about post-contractual behaviour.

Lay-by agreements

The ACL includes basic rules that apply to lay-by agreements. These new rules cover the basic elements of lay-by agreement transactions in a non-prescriptive way.

The new rules replace lay-by sales laws in NSW, Victoria and the ACT and provide simple national rules to assist business and consumers.

Other provisions

Under the ACL, consumers will be entitled to receive evidence of their transactions.

Businesses must provide consumers with a proof of transaction for transactions over \$75 or upon request for lesser amounts. Information to be included in a proof of transaction is the same as that needed to comply with the 'tax invoice' requirements for the GST.

If a consumer requests it, a business must also provide an itemised bill for services.

Safety of consumer goods and product-related services

The ACL introduces a national law on safety of consumer goods and product-related services.

Under the national consumer safety law, there is a consistent national approach to safety standards, safety bans, product recalls and reporting and notification requirements. There is also a new, national enforcement framework, with a greater national coordination role for the ACCC.

Safety standards

The new product safety law in the ACL creates a single national approach to making safety standards for consumer goods and product-related services. New standards can be made by the Commonwealth Minister.

A business must not supply particular kinds of consumer goods and product-related services unless they comply with any relevant safety standard in force for those kinds of consumer goods or services.

Safety bans

The new product safety law in the ACL creates a single national approach to making interim bans and permanent bans on certain consumer goods or product-related services where through reasonably foreseeable use or misuse they pose a safety risk. New permanent safety

bans may be made by the Commonwealth Minister. Interim bans may be made by State and Territory Ministers subject to certain conditions.

A business must not supply consumer goods and particular kinds of product-related services if they are subject to an interim or permanent ban.

Recall of consumer goods

The new product safety law in the ACL creates a single national approach to issuing and enforcing recalls of consumer goods where their reasonably foreseeable use or misuse poses a safety risk. Suppliers must also comply with notification requirements where the goods have been exported.

Suppliers who undertake a voluntary recall must notify the Commonwealth Minister. Suppliers who have recalled goods which have been exported must notify those overseas to whom the goods were supplied and also notify the Commonwealth Minister that they have done so.

Safety warning notices

The new product safety law in the ACL creates a single national approach to publishing safety warning notices about certain consumer goods or product-related services, where their reasonably foreseeable use or misuse poses a safety risk.

Accidents involving consumer goods or product-related services

Under the ACL, a suppliers of certain goods and services must notify the Commonwealth Minister about a death, serious injury or illness that was caused or may have been caused by a consumer good or product-related service it supplied.

Information standards

The ACL creates a new, national approach to the creation of information standards for goods and services. New information standards can be created by the Commonwealth Minister.

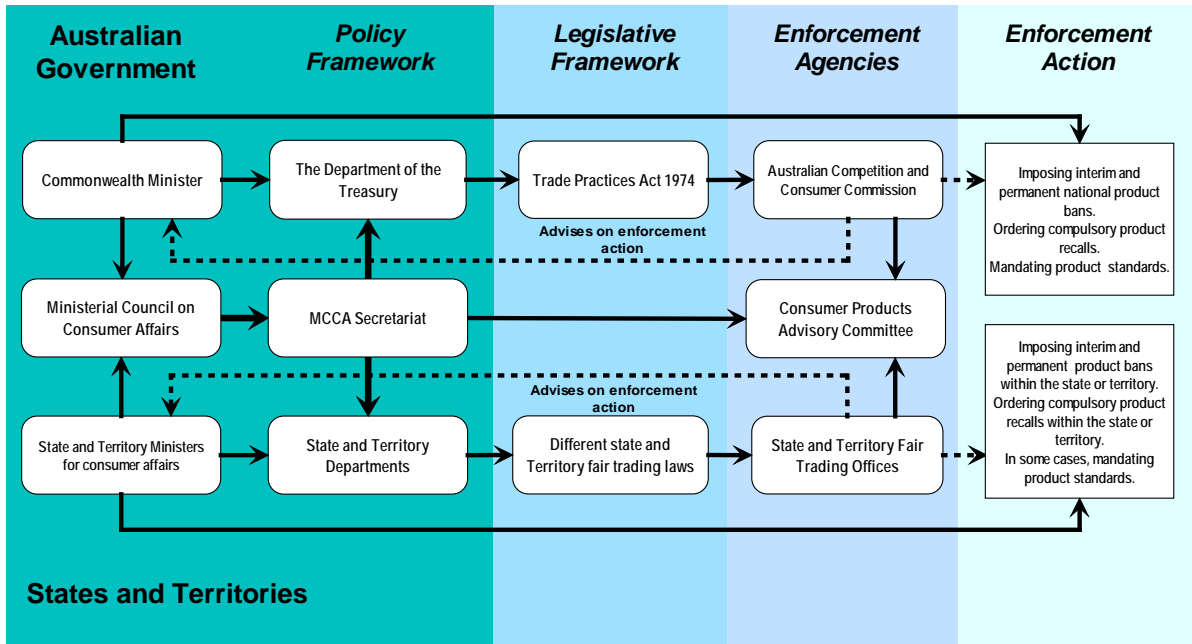
Information standards require suppliers to provide certain information or present information in a certain manner, when supplying particular kinds of goods and services.

Liability of manufacturers for goods with safety defects

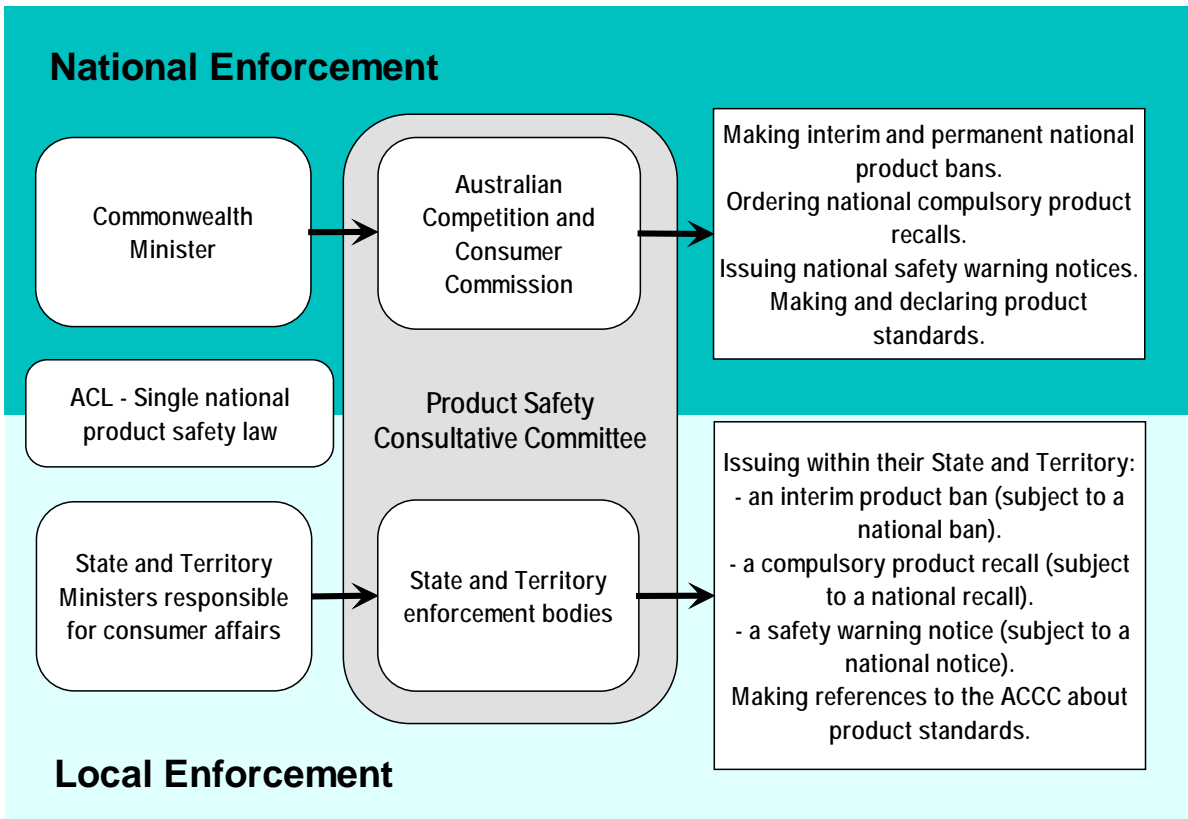
The ACL sets out the circumstances when manufacturers of goods are liable for a safety defect. These rules are based on Part VA of the TPA ('Liability of manufacturers and importers for defective goods').

Manufacturers are liable to compensate for loss or damage suffered as a result of supplying defective goods. Enforcement agencies may also bring a defective goods action on behalf of a person.

The Australian consumer product safety framework



The new Australian consumer product safety enforcement framework under the ACL



CHAPTER 4 — OFFENCES

The ACL creates a criminal offence regime for certain provisions of Chapter 3 and includes rules on:

- defences to offences under the ACL; and
- prosecution timeframes, compensation for those harmed and penalties for offences of the same nature.

Under the ACL, a corporation convicted of an offence could be liable to having a criminal conviction recorded and paying a fine of up to \$1.1 million. An individual could face having a criminal conviction recorded and paying a fine of up to \$220,000.

CHAPTER 5 — ENFORCEMENT AND REMEDIES

The ACL includes enforcement powers, penalties and remedies that can apply for breaches or suspected breaches of the ACL.

New, national enforcement powers

- **Enforceable undertakings:** if a person thinks they might have breached the ACL, the person can offer a regulator an undertaking that they will not do it again and take steps to improve compliance. If accepted by the regulator, the undertakings are court-enforceable.
- **Substantiation notices:** regulators can issue a notice to a business seeking information about claims made in the marketplace to determine if they are genuine and whether further investigation is necessary.
- **Public warning notices:** regulators can issue a public warning notice about traders where the regulator has reasonable grounds to suspect that the trader may have breached the ACL, or has refused or failed to respond to a substantiation notice.

New, national consumer law remedies

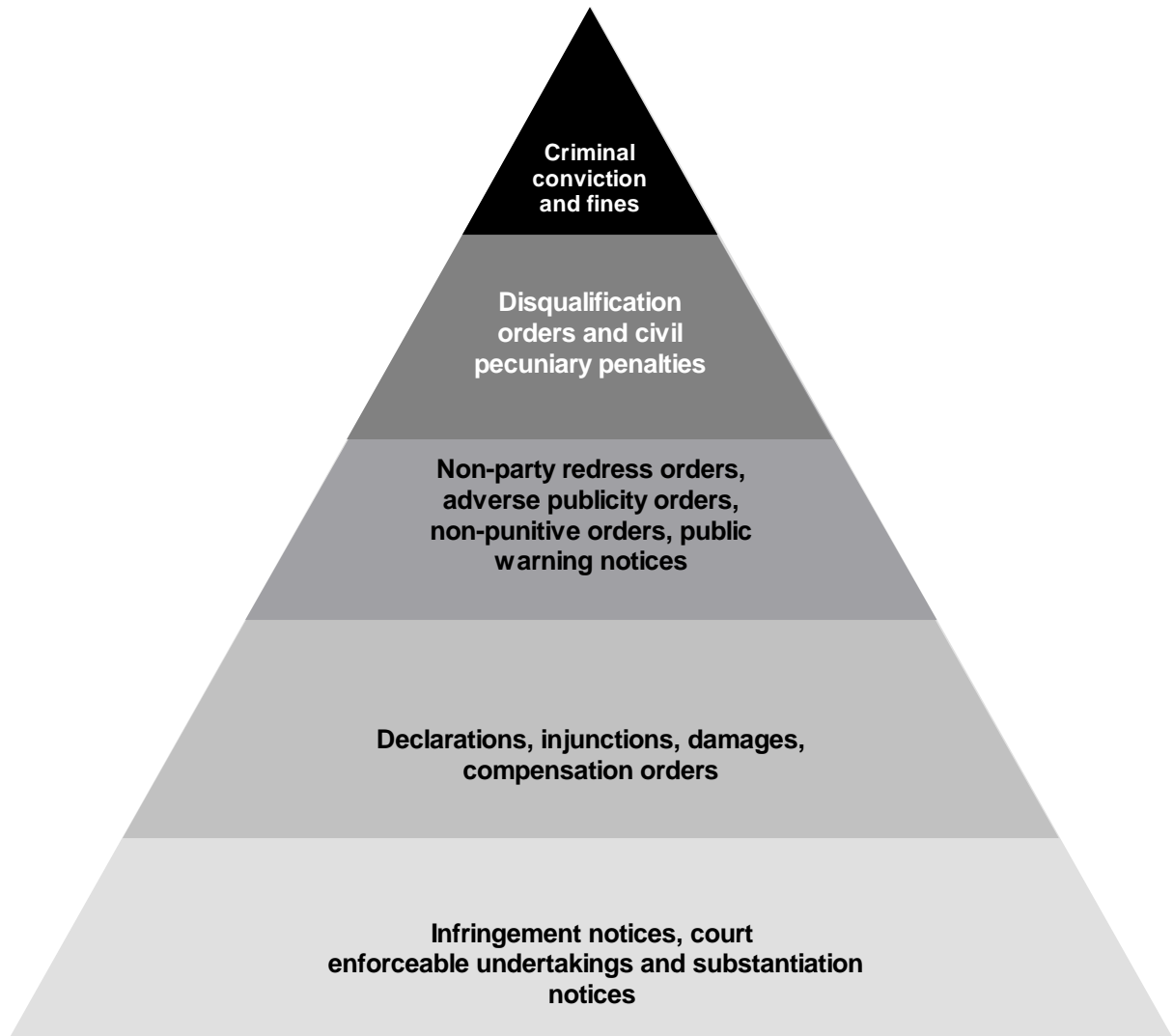
- **Civil pecuniary penalties:** regulators can seek monetary penalties for contraventions of the ACL. These penalties may be imposed if the contravention is proved to the civil standard – that is, on the balance of probabilities.
- **Disqualification orders:** regulators may apply to a court for an order disqualifying a person from managing a corporation for a contravention of the ACL.
- **Non-punitive orders:** regulators may apply to a court for a non-punitive order for a contravention of the ACL. The court may impose a remedy to redress harm suffered in the community from a contravention. Such orders will help those in breach to comply with the ACL in the future.
- **Adverse publicity orders:** regulators may apply to a court for an adverse publicity order in respect of a contravention of the ACL.
- **Declarations:** the ACL provides that a declaration may be made that a term in a standard-form consumer contract is unfair.

- **Injunctions:** regulators or an affected person may seek an injunction to stop a business from engaging in conduct in breach of the ACL, or to require the business to do certain things.
- **Damages:** if a contravention of the ACL causes loss or damage to a person, they can apply to recover damages in that amount.
- **Compensatory orders:** people affected by a breach of the ACL can seek compensatory orders for loss or damage suffered or likely to be suffered as a result. Regulators can also seek compensation on behalf of named parties.
- **Redress for non-parties:** regulators may seek particular remedies such as refunds or contract variations to remedy a breach of the ACL in certain circumstances without first establishing the identity of exactly whom the breach affected.

Defences

There will be certain defences to breaches of the ACL, including specific defences concerning country of origin representations, and representations concerning the cost of production or manufacture of goods.

Enforcement and remedies under the ACL



THE DEVELOPMENT OF THE ACL

Australia's national, State and Territory consumer protection and fair trading laws – which apply to all industries and activities – have, over time, diverged in their form and scope.

In May 2008, the PC recommended the development and implementation of a single national consumer law after an extensive consultation process. MCCA also recommended the implementation of a national consumer product safety system.

The ACL delivers on this recommendation.

A cooperative process

On 24 May 2008, MCCA agreed to commence work on a national consumer law for Australia. Since then, MCCA has developed the ACL and agreed to its final form on 4 December 2009.

The ACL — a timeline

2006	
December 2006	Commencement of the PC's <i>Review of Australia's consumer policy framework</i> .
2007	
December 2007	Publication of PC's draft <i>Review of Australia's consumer policy framework</i> .
2008	
April 2008	Publication of the PC's <i>Review of Australia's consumer policy framework</i> .
May 2008	MCCA agreed to commence work on a national consumer law for Australia. MCCA recommended a national consumer product safety system for Australia to COAG.
July 2008	COAG agrees to a national consumer product safety system for Australia.
August 2008	MCCA recommended the broad framework for the development of the ACL to COAG.
October 2008	COAG agreed to the development of the ACL.
November 2008	COAG agreed to the <i>National Partnership Agreement to Deliver a Seamless National Economy</i> .
2009	
February 2009	SCOCA published <i>An Australian Consumer Law: Fair markets — Confident consumers</i> .
May 2009	MCCA recommended the <i>Inter-Governmental Agreement for the ACL</i> to COAG.
June 2009	The Australian Government introduced the Trade Practices Amendment (Australian Consumer Law) Bill 2009 into Parliament to create the ACL and to implement key elements of the ACL, including unfair contract terms provisions.
July 2009	COAG agreed to the <i>Inter-Governmental Agreement for the ACL</i> .
December 2009	MCCA agreed to the final form of the ACL.
2010	
March 2010	Both houses of the Australian Parliament passed the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010</i> . The Australian Government introduced the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 into Parliament, to complete the implementation of the ACL.
April 2010	The <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010</i> received the Royal Assent on 14 April 2010. New enforcement powers, penalties and consumer redress options for the ACCC and ASIC commenced on 15 April 2010.
June 2010	Both Houses of the Australian Parliament passed the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 on 24 June 2010.
July 2010	The national unfair contract terms law commenced as a law of the Commonwealth on 1 July 2010. The UCT provisions have also been mirrored in Victoria and NSW Fair Trading Acts, and commenced on 1 July 2010. The <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> received the Royal Assent on 13 July 2010.
September 2010	Draft Trade Practices (Australian Consumer Law) Amendment Regulations 2010 released for public consultation on 24 September 2010.
November 2010	Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No.1) were made by the Federal Executive Council on 16 November 2010.
December 2010	Under the <i>National Partnership Agreement to Deliver a Seamless National Economy</i> , the States and Territories are required to complete the application of the ACL as a law of each of their jurisdictions.
2011	
January 2011	The ACL commences on 1 January 2011.

Uniform protection

The ACL gives all Australian consumers the same protections wherever they are.

The ACL simplifies the law and makes it clearer to understand for both consumers and businesses. More informed consumers make better choices, driving competition and innovation in markets and the development of a seamless national economy.

In 2008, the PC estimated that the implementation of these reforms would provide benefits to the Australian community of between \$1.5 billion and \$4.5 billion per year.¹

Reduced compliance burdens for business

The ACL will simplify business compliance across Australia, by reducing the number of laws and the number of requirements with which they must comply.

In its 2005 *Review of National Competition Policy Reforms*², the PC identified consumer protection legislation as one of four priority areas for further reform. The PC found that although the benefits and costs of consumer protection legislation are much less tangible, it seemed clear that ineffective national coordination mechanisms have led to regulatory inefficiencies and inconsistencies, to the detriment of both consumers and businesses. The PC recommended that the Australian and State and Territory governments should establish a national review into consumer protection policy and administration.

The January 2006 report of the Taskforce on Reducing Regulatory Burdens on Business³ reiterated this finding, based on submissions received from a wide range of stakeholders.

1 Productivity Commission 2008 *Review of Australia's Consumer Policy Framework Inquiry Report No. 45* Canberra, page 323.

2 Recommendation 10.2, Productivity Commission 2005, *Review of National Competition Policy Reforms*, Inquiry Report No. 33, Canberra.

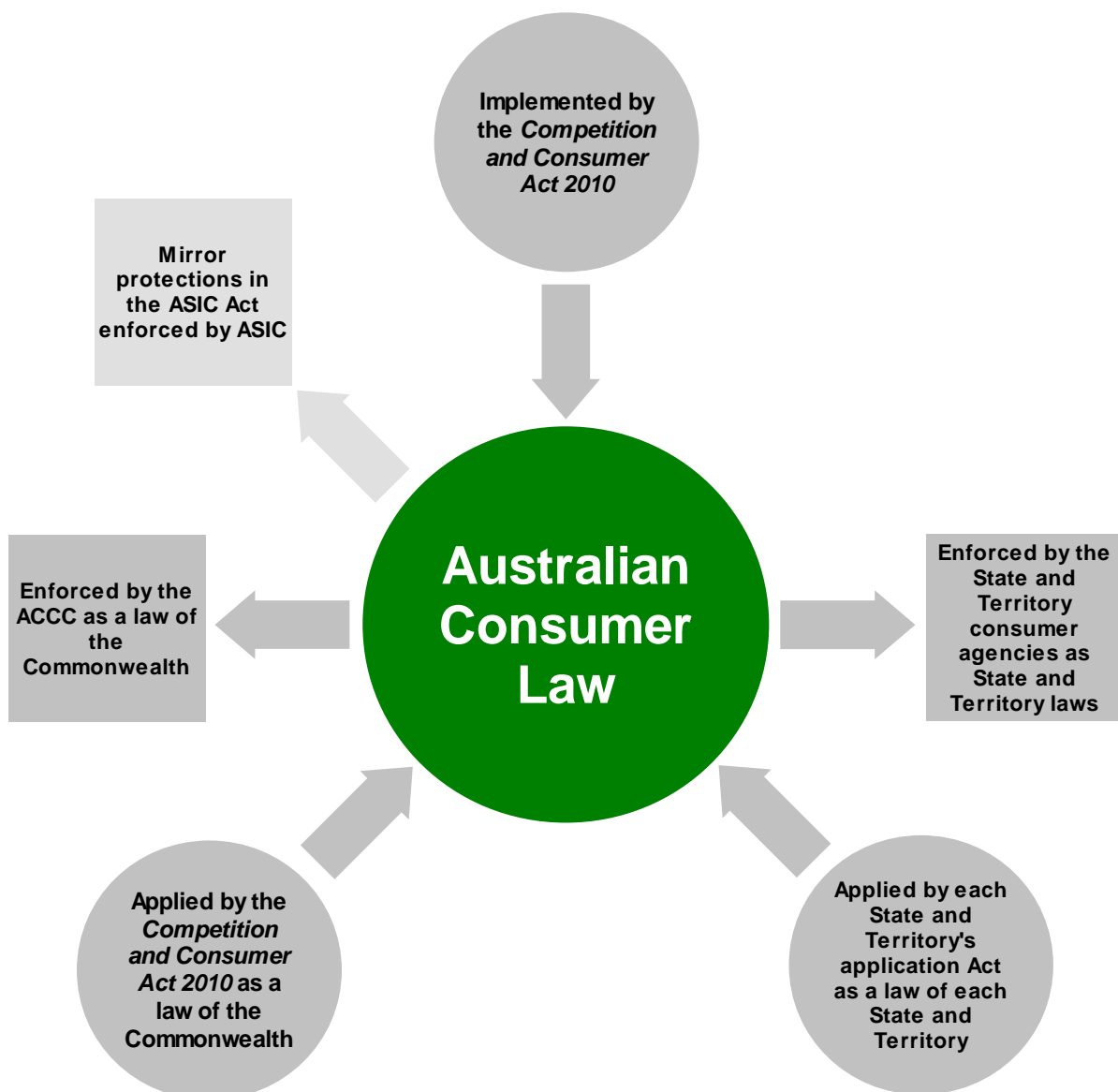
3 Recommendation 4.44, Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra.

THE ACL AS AN APPLICATION LAW

The ACL is an application law, which is applied and enforced as a law of each jurisdiction in Australia.

The Australian Parliament has applied the ACL as a law of the Commonwealth, and it applies to the conduct of corporations and those associated with them.

Each State and Territory parliament has applied the ACL as a law of its own jurisdiction, and it will apply to the conduct of corporations and individuals.



The constitutional basis of the ACL

The States have a general power to make laws in respect of consumer protection matters, as do the Territories within the scope of the territories power in section 122 of the *Australian Constitution*.

Under the *Australian Constitution*, the Commonwealth does not have constitutional power to make consumer protection laws generally but may make laws with respect to the conduct of corporations and with respect to interstate trade. On this basis, the current TPA consumer protection provisions apply to the conduct of corporations as suppliers of goods and services and to all transactions which occur across State borders.

The Commonwealth may also make consumer protection laws in respect of financial products and services, through a referral of legislative competence from the States set out in the *Corporations Agreement 2002*. In 2009, the States also referred their specific powers concerning consumer credit.

How does the ACL regulate the conduct of 'persons' and 'corporations'?

As an application law, the ACL is drafted to reflect that it will be a law of the Commonwealth and of each State and Territory. Consequently, all of the provisions are drafted to apply to the conduct of 'persons' rather than 'corporations', as is currently the case in the consumer protection provisions of the TPA.

This drafting does not alter the scope of effect of any law of the Commonwealth or a State or Territory under the *Australian Constitution*.

Part XI of the *Competition and Consumer Act 2010* (CCA) will apply the ACL as a law of the Commonwealth and will mean that references to 'persons' will apply, for the purposes of the ACL, to 'corporations' as a law of the Commonwealth.

How will the ACL interact with existing State and Territory dispute resolution systems?

The CCA and a State or Territory's application Act will specify that the ACL is a law of the relevant jurisdiction.

The CCA and the State and Territory application Act will:

- govern the way in which consumers can access national, State and Territory courts and tribunals;
- deal with administrative and judicial review procedures in respect of the actions of regulators under the ACL; and
- deal with specific enforcement issues and procedures, which reflect different policy approaches to the administration and enforcement of the law around Australia.

Will the ACL regulate financial services and consumer credit?

The *Australian Securities and Investments Commission Act 2001* (ASIC Act) will continue to apply to financial products and services.

This reflects the current referral of power by the States and Territories set out in the *Corporations Agreement 2002* and administered by the Ministerial Council for Corporations (MINCO). Where appropriate, the consumer protection provisions of the ASIC Act will be amended to maintain consistency with the ACL. Relevant amendments to the ASIC Act are included in Schedule 3 of the Act.

Consumer credit regulation was referred to the Commonwealth by the States and Territories in 2009. The *Uniform Consumer Credit Code* was replaced by the *National Consumer Credit Protection Code* on 1 July 2010.

Who will enforce the ACL?

National, State and Territory consumer agencies will jointly administer and enforce the ACL. The relevant agencies are:

- the ACCC;
- NSW Fair Trading;
- Consumer Affairs Victoria;
- Queensland Office of Fair Trading;
- WA Department of Commerce – Consumer Protection;
- SA Office of Consumer and Business Affairs;
- Consumer Affairs and Fair Trading Tasmania;
- ACT Office of Regulatory Services; and
- NT Consumer Affairs.

ASIC will continue to enforce the consumer protection provisions of the ASIC Act.

Enforcement of the ACL and the related ASIC Act provisions will be supported at an operational level by a Memorandum of Understanding (MOU) between the ACCC, ASIC and State and Territory consumer agencies.

When will the ACL commence?

The COAG *National Partnership Agreement to Deliver a Seamless National Economy* requires the application legislation scheme is to be in place in all jurisdictions by 31 December 2010, to allow the ACL to commence fully on 1 January 2011.

THE DRAFTING OF THE ACL

The ACL has been drafted in accordance with the requirements of plain language drafting.

Existing TPA provisions included in the ACL have, in most cases, been modified and reordered to make the law clearer and also to reflect changes in drafting conventions since they were initially inserted into the TPA. With the exception of those areas where there have been policy changes, these drafting changes are not intended to alter the legal effect of these provisions.

Plain language drafting

For an explanation of plain language drafting, please refer to the Office of Parliamentary Counsel webpage, www.opc.gov.au.

AMENDING THE ACL

The Australian, State and Territory governments agreed to the *Inter-Governmental Agreement for the Australian Consumer Law* on 2 July 2009.

The IGA provides for the administration of the IGA over time, and sets out the procedures for the amendment of the ACL.

What is the procedure for amending the ACL?⁴

- The Australian Government, a State or a Territory may submit a proposal to amend the ACL, and provide this to all other jurisdictions.
- The Australian Government will commence a consultation process within four weeks of receiving a proposed amendment, which involves:
 - the Commonwealth Minister writing to all States and Territories notifying them of the amendment and providing three months from the date of that notice to consider and respond to the proposal in writing;
 - after three months the Commonwealth Minister will call a vote. States and Territories will have 35 days to vote, and if they do not vote or abstain within that period, then they will be taken to have supported the proposed amendment; and
 - to be successful, the proposed amendment must be supported by the Australian Government and at least four other jurisdictions, of which three must be States.
- The Australian Government may make minor or inconsequential amendments to the ACL, provided it notifies the States and Territories of its intention to do so. It may not proceed with such amendments, if a State or Territory objects within 21 days of their receiving notice. In this situation, the Commonwealth Minister must call a vote.
- After an amendment has been agreed by the Australian Government and the States and Territories, the Australian Government will then introduce legislation to amend the ACL into the Australian Parliament.

4 See clauses 8-19 of the IGA.

INDUSTRY-SPECIFIC CONSUMER LAWS

The ACL is a generic law, designed to apply consistently to conduct across all sectors. The ACL will be supported by industry-specific consumer laws at the Commonwealth and State and Territory level, where appropriate.

The IGA provides that, after enacting the ACL, all jurisdictions will repeal, amend or modify any legislation that is inconsistent with or alters the effect of the ACL. This will be done as part of the legislation to enact application Acts in each jurisdiction.

MCCA is developing a process for all jurisdictions to review other consumer legislation to identify any inconsistencies with the ACL, following its enactment.

OTHER MATTERS DEALT WITH IN THE *TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) ACT (No. 2) 2010*

The Act contains additional amendments, which complement, but are not part of, the ACL:

- Where appropriate, the Act makes amendments corresponding to the ACL changes in the consumer protection provisions of the ASIC Act, which cover financial products and services.
- The Act makes amendments to change the enforcement powers that apply to industry codes of conduct prescribed under Part IVB of the TPA.
- The Act makes minor and technical amendments to the TPA, including changing its short title to the '*Competition and Consumer Act 2010*'.

