

AUSTRALIAN CONSUMER LAW - TRAVELLING CON MEN - MEMORANDUM OF UNDERSTANDING

A memorandum of understanding between

- ◆ New South Wales Fair Trading; and
- ◆ Queensland Office of Fair Trading.

This memorandum of understanding sets out a framework for cooperation between the regulators of the Australian Consumer Law so that they may best serve the interests of consumers and promote fair trading in relation to travelling con men.

Australian Consumer Law - Travelling Con Men

Memorandum of Understanding

PART 1 – PRELIMINARIES

1. In October 2008, the Council of Australian Governments (COAG) committed to a reform process that will provide a ‘...uniform and higher level of protection for Australian consumers’¹. The centrepiece of the consumer policy reform agreed to by COAG is the introduction of a single national consumer law for Australia, the ‘Australian Consumer Law’ (ACL). The ACL is based on the consumer protection provisions of the *Trade Practices Act 1974*² and also draws on best practice in existing State and Territory consumer laws.
2. On 2 July 2009, the Commonwealth and all States and Territories ratified the Intergovernmental Agreement (IGA) for the ACL, agreeing to implement and enforce the ACL to ensure a nationally consistent consumer protection regime.
3. In accordance with the IGA, this Memorandum of Understanding (MOU) provides the framework for communication, cooperation and coordination between the Parties in administering and enforcing the ACL and other State or Territory fair trading legislation (including door-to-door selling), in relation to business practices designed to cause consumer detriment and distort goods and services markets by sellers who have a highly transient nature (‘travelling con men’).
4. The Parties agree that, where possible, the governance of this MOU will be guided by the principles of the Charter of the Ministerial Council on Consumer Affairs (MCCA)³.
5. This MOU is not intended to create legally binding obligations on the Parties.

¹ COAG Communiqué (2 August 2008), p2.

² To be renamed the *Competition and Consumer Act 2010*.

³ The Ministerial Council on Consumer Affairs was renamed the COAG Legislative and Governance Fora on Consumer Affairs (CAF) as of 1 July 2011.

6. This cooperative working arrangement and MOU has been set up under section 35 of the ACL MOU which outlines the need to set up separate working arrangements if it is deemed that consumer harm can be most effectively addressed by way of education, mutual investigation, litigation or enforcement. The issue of consumer harm and market distortion inflicted by travelling con men has been agreed by MCCA to be considered once such circumstance.
7. This cooperative working arrangement is subject to any confidentiality obligations and the elements of any such arrangement between the Parties, will be flexible and contingent on the circumstances of the matter concerned, and subject to agreement between the Parties on a case by case basis.
8. With the agreement between States to focus on travelling con men, a need exists for ACL regulators to work cooperatively and cohesively together to:
 - (a) detect unlawful selling practices by travelling con men;
 - (b) alert consumers about the unlawful selling practices of travelling con men;
 - (c) take prompt action against individuals and corporations identified as engaged in these practices;
 - (d) work cooperatively with other regulators and law enforcement agencies dealing with similar or concurrent issues;
 - (e) more effectively gain and enforce significant penalties for unlawful selling;
 - (f) utilise a combination of both the ACL and State and Territory fair trading legislation against such trading.

PART 2 – OBJECTIVES

9. The object of this MOU is to set out a framework for communication, cooperation and coordination between the Parties so that they can, both collectively and within each of their own jurisdictions, most effectively protect and empower consumers and promote fair trading under the ACL in relation to travelling con men.
10. The Parties each recognise that communication, cooperation and coordination are desirable and necessary to:
 - (a) discharge their respective functions;
 - (b) maximise the effective and consistent implementation of their regulatory powers; and
 - (c) promote efficient and streamlined resource allocation.
11. To make use of the powers under the ACL and relevant State laws, to adopt an enforcement approach to eradicate unlawful selling of goods and services by travelling con men.

12. To raise awareness amongst consumers, particularly those who are usually targeted by travelling con men because of socio-economic, geographic and demographic factors, about the identification of unlawful selling practices by travelling con men and the prompt reporting of these practices to the relevant agencies.
13. To investigate, and/or assist law enforcement agencies to investigate, travelling con men engaged in unlawful selling practices, especially where it is identified that such practices are central to the business model adopted by these traders.
14. To alert relevant Commonwealth agencies to travelling con men, with a view to preventing international travelling con men from entering Australia.
15. To establish and sustain formal operational relations between ACL regulators and other relevant law enforcement agencies, such that enforcement responses against unlawful travelling con men continue to occur after the conclusion of the original project.

PART 3 – PARTIES TO THE UNDERSTANDING

New South Wales Fair Trading

16. Fair Trading is responsible for administering laws which promote consumer well being and marketplace integrity across many transactions including general purchases; accommodation; motor vehicles and property. Fair Trading promotes a fair market place in NSW by educating consumers and traders; resolving their disputes; investigating contraventions of the law and taking action to enforce the law.

Queensland Office of Fair Trading

17. The Office of Fair Trading serves Queensland consumers and businesses by:
 - (a) providing information and advice about their rights and responsibilities;
 - (b) helping resolve marketplace disputes;
 - (c) licensing a range of occupations;
 - (d) investigating unfair business practices;
 - (e) prosecuting unscrupulous businesses; and
 - (f) providing information about product safety.

PART 4 – ELEMENTS OF UNDERSTANDING

Element 1: Definition of travelling con men

18. Travelling con men are defined as sellers of goods or services who are transient in nature. In most instances the trader will make misrepresentations

about the services to be provided or the nature of the goods being sold. In most instances the trader will not comply with the Australian Consumer Law, State and Territory fair trading legislation or door to door trading provisions.

19. Travelling con men are highly organised criminals who move across States and international borders, usually operating within family groups. They are highly mobile and regular interstate and international travel is a tactic adopted to avoid detention and to target unsuspecting consumers. They also move across boundaries to coordinate their activities and to share expertise and resources.
20. Categories of trade that travelling con men have traded in include but are not limited to bitumen laying, fixing or painting of roofs and they sell goods such as generators, electrical power tools, portable electrical goods and home entertainment equipment.
21. Travelling con men are often commonly known as itinerant traders.

Element 2: Communication, cooperation and coordination in relation to travelling con men

22. The Parties agree that they will communicate, cooperate and coordinate with each other to:
 - (a) monitor compliance with the ACL and relevant State fair trading legislation;
 - (b) enforce the ACL and State fair trading legislation, including through the exchange of information and intelligence;
 - (c) manage consumer complaints;
 - (d) inform the general public and educate consumers and businesses about travelling con men through an agreed communications strategy; and
 - (e) report on and review compliance and enforcement of the ACL in relation to travelling con men.
23. The Parties also agree that they will each:
 - (a) explore opportunities to communicate, cooperate and coordinate efforts on ancillary or associated activities within the framework of this MOU and consistent with all relevant law;
 - (b) inform one another regularly of their general compliance and enforcement activities and priorities in relation to travelling con men;
 - (c) consult one other in relation to recent judgments, current law reform, policy issues and other matters of mutual interest that relate to travelling con men;
 - (d) consult and collaborate with one another to develop publications and liaise with stakeholder groups on consumer protection matters in relation to travelling con men; and

- (e) consider and implement any appropriate opportunities for collaboration between the Parties in training, staff development and/or staff exchanges.
24. Each Party will appoint a Liaison Contact Officer (LCO) for the purpose of day-to-day liaison in relation to travelling con men as well as communication and information sharing under this MOU.

Element 3: Complaint handling

25. The Parties agree that they will collaborate to promote consistency in complaint management practices and principles in relation to travelling con men to achieve effective outcomes for consumers.
26. The Parties recognise that in some cases it may be appropriate for a Party (the referring Party) to refer a consumer complaint or inquiry to another Party (the receiving Party), for instance, where:
- (a) in the initial contact with the consumer it is clear that the complaint or inquiry relates to issues that would be more appropriately managed by the Party who has responsibility for a particular area of law; or
 - (b) after assessment of a complaint, it becomes apparent that the complaint would be more appropriately managed by the receiving Party.
27. When a Party considers that a consumer complaint or inquiry is appropriate for referral to another Party, the Parties agree that the referring Party will, while having regard to all the circumstances of the particular complaint or inquiry:
- (a) initiate the referral for consideration by the receiving Party as soon as practicable; and
 - (b) provide the receiving Party with any information and documentation held by the referring Party that will assist the efficient management of the complaint or inquiry, subject to any legal restrictions on the disclosure of information.

Element 4: Information sharing and confidentiality

28. The Parties agree to collaborate to ensure that, as far as possible under the relevant State legislation, procedures exist to support the effective sharing of complaint and investigation information. This may include establishing frameworks for:
- (a) providing information to a requesting Party at that Party's request;
 - (b) providing information to another Party in circumstances where the providing Party considers that it is likely to assist the receiving Party to administer or enforce the particular area of law for which that Party is responsible; or
 - (c) promoting legislative amendments, where appropriate, to enable information sharing between the Parties to occur more freely.
29. The Parties will have regard to the statutory privacy and confidentiality obligations governing the permitted disclosure of confidential or protected

information and wherever appropriate seek to obtain information in such a way that can be shared with other Parties.

30. When a Party receives information from another Party it will:
 - (a) observe any express conditions placed upon the release of the information by the providing Party; and
 - (b) take all reasonable steps to ensure that such information is only:
 - (i) used internally by the receiving Party in connection with carrying out its statutory functions or performing its duties;
 - (ii) disclosed where required or permitted by law or as otherwise authorised by the providing Party.
31. If a receiving Party is required by law to disclose information provided to it in confidence it must:
 - (a) where possible, notify the providing Party of the disclosure requirement to allow the providing Party, in its discretion, to take all reasonable steps to maintain the confidentiality of the information required to be disclosed, including, if necessary and appropriate, making a claim for public interest immunity privilege or requiring confidentiality undertakings from the person or body to whom the information is required to be disclosed; and
 - (b) disclose only the confidential information necessary to comply with the legal requirements.

Element 5: Compliance strategies

32. The Parties agree to cooperatively develop strategies to address actual or prospective consumer harm from travelling con men, particularly in circumstances where that harm affects, or is likely to affect, consumers across the jurisdiction of two or more Parties. These strategies may involve, but are not limited to:
 - (a) education campaigns;
 - (b) targeted and general guidance for consumers and businesses; and
 - (c) liaison and consultation involving one or more of the Parties with consumer and business representatives.
33. In developing education and guidance materials the Parties will, to the extent possible, develop consistent materials.
34. Where appropriate, a Party will consider inviting the staff of another Party to participate in compliance visits or other outreach activities.

Element 6: Investigators

35. The Parties agree to co-operate fully to the extent of their respective powers on agreed compliance activities within each State in support of the Objectives in this MOU generally and in particular in relation to clauses 8 and 11 of this MOU.
36. This co-operation includes, but is not limited to:
 - a) assigning investigators with relevant skills and expertise to joint compliance activities as they arise;
 - b) collecting evidence in support of either Party taking enforcement action under ACL and State laws;
 - c) interviewing consumers, traders and persons of interest to joint compliance activities; and
 - d) where it will assist one Party's prosecution or other proceedings against a travelling con man, to appear in those proceedings to provide evidence as a witness or to produce documents or provide information.

PART 5 – ADMINISTRATIVE ARRANGEMENTS

Commencement of this MOU

37. This MOU shall take effect on and from the date that it is signed by all Parties.
38. This MOU will commence upon signing, although preparatory work will commence prior to this date.
39. If the project extends beyond 31 December 2012 this MOU will be extended, upon approval by all parties, until the completion of the joint project.

Amendment of this MOU


40. The MOU may be amended at any time, in writing, by agreement of all the Parties.

Dispute resolution

41. Any Party may give notice to one or all Parties of a dispute concerning the operation of this MOU.
42. Where there is a conflict or disagreement between any of the Parties over any issue relating to or covered by this MOU, the Parties will attempt to resolve the issue by negotiation in the first instance.
43. If a dispute cannot be resolved between the Parties, it will be referred for resolution through the Consumer Affairs Australia and New Zealand framework.

The Parties have confirmed their commitment to this MOU as follows:

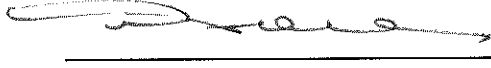
Signed for and on behalf of New South Wales
Fair Trading by



Mr Rod Stowe
Commissioner

Date: 28/6/12.

Signed for and on behalf of the Queensland
Office of Fair Trading by



Mr David Ford
Commissioner

Date: 15.06.12