



A new ACL

By Ben Zipser

Over the last four decades the Commonwealth, states and territories have enacted a growing number of consumer protection laws. The most well-known was the *Trade Practices Act 1974* (Cth) (the TPA). Each jurisdiction then enacted a *Fair Trading Act*, as well as other legislation containing consumer protection provisions. There were differences and inconsistencies between the different laws. There was also growing concern and complaints that the different laws in different jurisdictions led to uncertainty and unjustified compliance costs for businesses, and confusion for consumers as to their rights and remedies. The Productivity Commission, in a 2008 report titled *Review of Australia's Consumer Policy Framework*, recommended that a single national generic consumer law, to be called the Australian Consumer Law (the ACL), be implemented and apply equally in all jurisdictions in Australia, and replace the existing inconsistent laws.

In accordance with this recommendation the ACL came into effect on 1 January 2011. Each state and territory adopted the ACL with effect from 1 January 2011, and the consumer protection provisions in the TPA and state and territory *Fair Trading Acts* in force up until 31 December 2010 were repealed.

The ACL is contained in schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the CCA), which is the new name for the TPA. A number of divisions of the ACL are principally the same as divisions of the (now repealed) consumer protection provisions in the TPA. Other divisions of the ACL contain modified versions of divisions of the (now repealed) consumer protection provisions in the TPA. Other divisions of the ACL provide new protections for consumers, which were not in the TPA.

This edition of *Precedent* is intended to introduce readers to the ACL. Part 2-1 of the ACL, titled 'Misleading and deceptive conduct', contains provisions that are largely the same as the provisions prohibiting misleading and deceptive conduct in the TPA and state and territory *Fair Trading Acts*. Eileen Webb's article, 'The new s52 – s18 ACL, provides an informative introduction to the new provisions. Part 2-2 of the ACL, titled 'Unconscionable conduct', contains provisions that are principally the same as the provisions prohibiting unconscionable conduct in the TPA and some state and territory *Fair Trading Acts*. Julie Clarke's article, 'Unconscionable conduct: an evolving moral judgement', provides an informative introduction to the new provisions.

Part 2-3 of the ACL, titled 'Unfair contract terms', provides new protections for consumers that were not in the TPA. The unfair contract terms provisions render void unfair terms in standard form consumer contracts, and are based on similar regimes regulating unfair contract terms in the UK and Victoria. Dr Jeannie Marie Paterson's article, 'The unfair contract terms law', introduces readers to the new provisions. Part 3-2 of the ACL, titled 'Consumer guarantees', contains

a new consumer guarantees regime that replaces the regime of implied conditions and warranties in consumer contracts in the TPA and state and territory *Fair Trading Acts*. The new regime is based on similar provisions in New Zealand's *Consumer Guarantees Act 1993*. Jenny Stathis's article, 'Consumer guarantees under the ACL', introduces readers to the new regime.

Part 3-3 of the ACL, 'Safety of consumer goods and product-related services', contains divisions concerning safety standards, bans on consumer goods, recall of consumer goods, safety warning notices, and notification requirements concerning consumer goods or services associated with death or serious injury. Madeleine Kearney and Larissa Cook's article, 'When too much is never enough: the notification requirement of the ACL, introduces readers to the last of these divisions.

Chapter 5 of the ACL, 'Enforcement and remedies', contains divisions concerning various matters relating to enforcement and remedies, including pecuniary penalties, injunctions, damages, and compensation orders.

One of the many issues that arise in considering enforcement and remedies is limitation periods. This is the subject of Alex Bruce's article, 'Time's up? Limitation of actions provisions in the Australian Consumer Law'.

This edition of *Precedent* also contains general articles by Ramina Kamar and Greg Walsh on pre-litigation protocols; and by the Honourable Peggy Hora, former judge of the Superior Court of California, on drug treatment courts. ■

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