



## A newsletter for consumers and consumer organisations

Want to request an ACCC publication or make a complaint? Contact the ACCC Infocentre on **1300 302 502**. To receive a free electronic copy of consumer express each month, email the ACCC consumer express team at [express@accg.gov.au](mailto:express@accg.gov.au). ACCC consumer express is published by the Australian Competition and Consumer Commission for the general information of consumers and consumer organisations. It may be freely reproduced subject to acknowledgment of the source.

### Future Telstra price controls

In April 2004, the Minister for Communications, Information Technology and the Arts directed the ACCC to hold a public inquiry on the current price control arrangements that apply to Telstra and the nature of price control arrangements that should apply in future. (The current arrangements end on 30 June 2005)

After consulting a wide range of interested parties through written submissions and in public meetings across Australia, the ACCC has made the following recommendations to promote the long-term interests of consumers.

#### Price cap regulation

The ACCC recommends:

- price cap regulation should continue on the services to which it currently applies. However, services to businesses with more than five lines should no longer be subject to price controls
- a basket containing line rental, local calls, domestic and international long-distance calls and fixed-to-mobile calls should decrease in price by 4 per cent per year in real terms
- the price of connection services should not increase by more than the CPI.

#### Line rental prices

The ACCC recommends that:

- the price of line rental in Telstra's most basic local access products should not increase by more than the CPI
- the ACCC assess proposed line rental increases before implementation to ensure Telstra complies with the price controls.

As a result, any increases in line rental prices for residential and small business consumers should be more modest than those experienced in recent years.

#### General

The ACCC recommends:

- the current cap of 22 cents on the price of a local call should remain
- the current cap of 40 cents on the price of a local call from payphones should remain
- dial-up internet calls to ISPs should be subject to the 22 cent local call cap
- ministerial consideration of directory assistance charges should remain but not be extended to other ancillary charges

- while the current non-metropolitan local call relativity provisions should be retained, direct government assistance should be considered as a better way to improve access for regional and rural consumers
- the current provisions relating to extended zones should be retained
- the next price control arrangements apply for three years

The ACCC believes that two possible changes to the current system could more effectively provide benefits to low-income consumers of telephone services:

- extend the current pensioner rebate system to other low-income consumers or
- provide a safety net plan to low-income consumers such that they will pay no more than other users.

The report can be obtained from the ACCC Infocentre on 1300 302 502 or the ACCC website at [Final report—2004 review of Telstra price control arrangements - http://www.accg.gov.au/content/index.php/html/itemId/599799/](http://www.accg.gov.au/content/index.php/html/itemId/599799/)

### Fair trading compliance conference—Victoria

#### Changed Fair Trading Laws in Victoria: What you don't know can hurt you

On 13 May Consumer Affairs Victoria will host the 2005 Fair Trading Compliance Conference. The one-day event in Melbourne will help prepare businesses for operation in light of recent changes to the Fair Trading Act.

With new and enhanced powers, Consumer Affairs Victoria will be actively monitoring a number of industry sectors. The clear message for executives, compliance managers, in-house legal advisers, and marketing managers in this sector is 'don't leave your business open to risk'.

A range of experts from government, business, the media and the judiciary will be on hand to provide a valuable insight into the law, and advice on what will be necessary to show good compliance.

With consumer law now to be enforced mainly through the civil court, there will be new lessons in compliance. Organisations found to be in breach of the law will potentially face:

- injunctions to cease trading
- being forced to honour promises made in misleading, false or deceptive representations
- compensation orders
- asset-freezing orders
- having unfair contract terms declared void

- being forced to publish corrective advertisements for breaches

Where: Zinc, Federation Square, Melbourne

When: 9.00am Friday 13 May 2005

For information phone Consumer Affairs Victoria on 03 9627 7022 or email [cav.communications@justice.vic.gov.au](mailto:cav.communications@justice.vic.gov.au). More information will be available on the CAV website [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) soon.

## When it just doesn't 'ad' up

Classified ads are a part of the way many Australian consumers buy and sell goods. From ads selling cars to lounge suites, classifieds are a regular feature in most newspapers.

With the arrival of online classifieds, this popular way of selling has attracted not only a wider audience of buyers and sellers but also the scammer.

Ever alert at finding ways of tricking people out of their money, scammers have been targeting some of the sellers using online classifieds.

The scam works in a few different ways but the end result is that after negotiating the final price the seller receives a cheque from an overseas buyer for an amount considerably higher than the agreed price with instructions that the balance is to be paid to the 'shipping company'. A representative from the 'shipping company' makes contact and asks for the money to be transferred via an electronic cash transfer.

Although the cheques look genuine they are fake and sellers that pay the money end up being out of pocket.

### How to protect yourself

If you become involved in such an arrangement never transfer or refund money until you have received confirmation from your bank that the cheque has been cleared and that the money available for withdrawal.

When dealing with a potential buyer, be wary of any unusual arrangements including complicated instructions, arrangements that keep changing, poorly spelt emails and in particular any requests for you to transfer money.

The seller has to be as sure about receiving payment as the buyer has to be about receiving the goods—work out a method that suits both of you to ensure a smooth transaction.

## Termite protection

The ACCC received a complaint that Termimesh, a TMA Corporation termite protection product, degraded to the extent that termites were able to breach the barrier. The ACCC investigated the complaint but did not find evidence of widespread degradation or that consumers were left unprotected.

However, the ACCC was concerned that the use of the term *permanent protection* on the Termimesh website since 2002, may have misled consumers as to the level of protection offered by the product or the term of the warranty offered.

TMA Corporation has agreed to stop using the term *permanent* in its publications and advertising. It will also extend its material warranty from 10 years to 20 years for buyers of Termimesh since July 2002 who remain the

owners of the property, and who request the warranty extension.

**Consumer advice:** to register for this extended warranty, or for more details, contact TMA Corporation by Friday 24 June, 2005 on 1800 632 111.

## Consumer refunds—oil

Thanks to complaints from astute consumers, the ACCC has accepted court enforceable undertakings from Guthy-Renker Australia Pty Ltd, in relation to an infomercial advertising engine oil.

Guthy-Renker conducted a trial television advertising campaign in May 2004 for Motor Up 'No Oil Change' Engine Oil. The ACCC received several complaints from consumers who said a check of the internet showed that the United States Federal Trade Commission had, in May 2000, made orders against Motor Up Corporation Inc in relation to unsubstantiated claims concerning the effectiveness of Motor Up 'No Oil Change' Engine Oil.

Guthy-Renker was the exclusive distributor and marketer of the oil in Australia when the advertising was undertaken. At the time of broadcasting the infomercial, Guthy-Renker was unaware of the FTC's action.

The infomercial included representations that the oil:

- prevents corrosion in engines
- reduces engine wear and tear by up to 50 per cent
- protects against engine wear even without motor oil.

The ACCC contacted Guthy-Renker with its concerns that representations contained in the infomercial may have been misleading or deceptive. Guthy-Renker has provided undertakings not to make the representations and to implement a compliance program to ensure that similar issues do not arise in the future.

Guthy-Renker will write to 130 consumers who bought the oil as a result of the infomercial offering to refund the full purchase price. If you were one of these consumers and have not received a letter, contact the ACCC on 1300 302 502 and contact Guthy-Renker on 1800 500 903.

## Catalogue pricing

Sports chain Rowe and Jarman Pty Ltd has made changes to its advertising after concerns that its catalogue pricing may be misleading consumers.

The company, with stores in South Australia, Victoria, Northern Territory, Tasmania and Western Australia, was approached by the ACCC after it received complaints that Rowe and Jarman had advertised gym equipment at prices reduced from a higher 'WAS' price, when in fact those items had not been sold at the higher 'WAS' price immediately prior to the sale.

Some items also claimed savings compared to the recommended retail price RRP, but it was alleged that the items were not regularly priced at the RRP anywhere in the marketplace and therefore created a false impression as to the extent of the discount.

Rowe and Jarman immediately stopped using the RRP representation in advertising and will introduce an advertising compliance plan to ensure that the savings claimed in future advertising can be substantiated.

The conduct may have been in breach of the Trade Practices Act which prohibits misleading conduct and false representations being made in relation to pricing.

The ACCC aims to protect consumers from exaggerated savings in catalogue sales to ensure consumers are able to make fair and informed decisions before they buy goods. A [guide to comparison price advertising](#) for retailers has been released by the ACCC and will help protect consumers from misleading advertising. The guide is available at [www.accc.gov.au](http://www.accc.gov.au).

**Did you know?** If you see a similar situation while out shopping, you can report it to the ACCC Infocentre on 1300 302 502 for the cost of a local call.

## Car need a service?

It's time to service your car. Where do you turn? Someone has told you that if you don't return to either the business where you bought the car or an authorised agent of that business, your warranty will be void. Is that true?

Can you get your car serviced by someone other than the business or an authorised agent of the business that sold the car without voiding the warranty? The short answer is 'yes'. Though there are some conditions:

### New vehicle warranty

Where a problem arises with the vehicle that is covered under the warranty, the vehicle should be taken to the dealer for repair. These repairs should be done free of charge under the warranty.

### New and used vehicle servicing

In relation to general servicing, motor vehicle dealers are entitled to insist that any servicing performed on cars they sell is carried out by qualified staff, according to the manufacturer's specifications, and using *genuine or appropriate quality* parts where required. Provided these conditions are met, regardless of where you choose to get your car serviced, your warranty will remain intact. So shop smart and shop around.

### Qualified staff

Qualified staff is a party or parties, other than an 'authorised dealer', who is capable of performing car servicing. Some servicing venues display qualification certificates, but if you're not sure the staff are qualified, just ask.

### Manufacturer's specifications

If an independent agent implies that it can perform general car servicing to manufacturers' specifications and does not perform that function satisfactorily, then you have rights and remedies against the agent regardless of whether the agent has factory qualifications or not.

### Genuine or appropriate quality parts

The issue here is not who manufactured the part/s, it is whether the part/s are fit or appropriate for the purpose intended. If a part is non-genuine, but is interchangeable with the genuine part, it could be seen as being fit or appropriate for the purpose and would therefore not void the manufacturer's warranty. However, it must also be noted that should the part/s installed fail or not perform satisfactorily, the consumer then has rights against the fitter and/or manufacturer of those replacement parts. If the non-genuine part fails, and causes some other damage to the

vehicle, the dealer and vehicle manufacturer will not be liable for damage caused by the failure of that part.

Thus, provided consumers do research and ensure that wherever they take a vehicle for servicing, the staff are qualified and all other provisions above are met, the warranty will be safely intact for the warranty period.

*I negotiated an express warranty when I got my new car. Does this cover me further?*

Express warranties are usually specified under the agreement with the dealer; it might state a specific time period, maximum liability and limitations. Express warranties operate in addition to statutory warranties, and cannot restrict the provisions of the statutory warranty which is implied in every single consumer sale.

Under a statutory warranty, goods must meet a basic level of quality and do their job properly, bearing in mind their price and the way they are described. Goods, and services performed, must last for a reasonable time regardless of any extended warranty period, remembering that what is reasonable depends on the price paid and the type of product.

You should expect your new car to run smoothly for some time without requiring any repairs. If, however, your new car has a manufacturing fault, then under your statutory warranty, you should expect the problem to be fixed by the supplier or manufacturer free of charge regardless of any express warranty. Statutory rights apply whether the goods are new, 'seconds' or second-hand.

For example, the dealer may provide an express warranty for one year or 20 000 kilometres, which includes free scheduled servicing and parts. The free servicing and parts is an added extra and it is up to you to decide if it is worth paying extra for.

Generally dealers will be able to place certain conditions on the express warranty given to buyers. A consumer **may** void their expressed warranty if, for example, the car is fitted with non-genuine parts. However, the statutory warranties will continue to apply unless the service of the independent mechanic or the fitting of the non-authorised part caused the fault.

Dealers are not permitted to limit their obligations under the warranty and refund provisions of the TPA or fair trading legislation, or make any representations to this effect, e.g. that the warranty is void if the vehicle is not serviced by the dealer or its agent.

You are effectively covered by both warranties. The express warranty may offer you some further cover above and beyond the cover you have under the statutory warranty. Make sure you do your research and ask exactly what the express warranty will cover. If it doesn't cover anything that isn't already covered in your statutory warranty, there is no point handing over the extra cash. For further information, see *Warranties and Refunds*.

## International

### Canada and US form alliance to stop cross border fraud

Law enforcement and government agencies from Canada and the US have formed an alliance, known as the Atlantic Partnership, in an attempt to combine resources to combat cross border fraud. The partnership aims to reduce, identify,

investigate and prosecute deceptive marketing practices and fraudulent criminal activities.

Participants in the partnership include:

- Canada Post Corporation
- Charlottetown Police Department
- Competition Bureau Canada
- Halifax Regional Police
- Office of the Attorney General of New Brunswick
- Royal Newfoundland Constabulary
- Saint John Police Force
- Service Nova Scotia and Municipal Relations
- US Federal Trade Commission
- United States Postal Inspection Service

Participants will combine their resources to combat deceptive and fraudulent activities originating from and targeting consumers in both the US and Atlantic Canada.

- For information about cross border scams and how to report cross border scams please visit the [e.consumer.gov](http://e.consumer.gov) website.
- Please visit the ACCC website for [information on scams](#).
- For a comprehensive guide to scams please visit the [Scamwatch](#) website.

### EU and US sign agreement to increase product safety cooperation

The United States (US) and the European Union (EU) have recently signed an information sharing agreement designed to enhance cooperation involving product safety issues in the two regions. The signing of the agreement follows consumer product safety cooperation being highlighted as an important element of the Roadmap for US–EU Regulatory Cooperation.

The cooperation agreement will help consumer protection authorities in the US and the EU to implement better product safety policies. The agreement will allow for the exchange of information on product recalls, emerging health and safety issues and standardisation activities.

The agreement, made between the US Consumer Product Safety Commission and the Directorate-General Health and Consumer Protection of the European Commission, is intended to create a framework for voluntary information exchange and is not intended to create binding obligations under international law.

ACCC publications about product safety in Australia:

- [Product safety and you](#)
- [Safe toys for kids](#)
- [Product safety in Australia—ACCC update 14](#)

## Protecting man's best friend

The ACCC has accepted a court-enforceable undertaking from Snooza Pet Products Pty Ltd in relation to its pet futon (a mattress for pets, primarily dogs and cats).

The label on the Snooza futon calico cover stated the filling was '100% Australian Wool' and 'All Natural Product'. However, testing showed the actual wool content of the filling was on average 30 per cent between July 1998 and December 2004, and since then 50 per cent of the total content. The rest of the filling was, and is, polyester.

The futon was therefore not an 'All Natural Product' and the composition of the filling of the product was not '100% Australian Wool'. Snooza Pet Products has stopped supplying the incorrectly labelled futon and will offer a full refund of the price of the futon to consumers who believe they have been misled. If you believe you have been misled, contact Snooza direct or through the store where you bought your pet's futon.

## News releases — April edition

8 April ACCC issues second electricity regulatory report on transmission networks

8 April LG corrects misleading washing machine claims

7 April RM Hall required to pay penalties totalling \$95,000 for resale price maintenance

5 April Grab It, Groove Accessories cosmetics fail mandatory standard

5 April Henry Kaye drops Full Federal Court appeal against ACCC

1 April ACCC considers options to ensure enhanced telco competition

31 March ACCC issues Telstra accounting separation report for December quarter 2004

30 March ACCC not to intervene in China Light & Power's proposed energy acquisition

30 March ACCC issues final view on future Telstra price controls

29 March ACCC begins monitoring internet interconnection

29 March ACCC proposes to allow collective negotiation of motor vehicle area hire charges at ports

29 March ACCC not to intervene in Basell Australia proposed acquisition of the polypropylene business of Qenos

23 March Court finds Australian Communications Network scheme is a pyramid selling scheme

23 March Termite protection warranty extended after ACCC action

22 March Dubbo taxi settlement: reminder to whole industry

18 March Tribunal sets a value for the Moomba to Sydney pipeline

18 March Telecommunications access dispute

17 March Federal Court orders \$23.3 million in penalties for petrol price-fixing

17 March ACCC issues report on Telstra's compliance with its price controls

17 March ACCC rebuts criticism of infrastructure role

17 March ACCC institutes against garnet firms over alleged market sharing agreement

16 March Australian government issues second ACCC medical indemnity report

16 March ACCC alleges safety misrepresentations in solarium advertising

15 March Hydroponic company admits attempt to prevent discounts

15 March Telstra commits to ADSL transfer process

14 March Guthy-Renker offers refunds to infomercial consumers over oil claims

14 March ACCC freezes bank account of alleged international office supply scam

