

COMPETITION LAW NEWS NEW POWERS TO THE ACCC

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The Trade Practices Amendment (Australian Consumer Law (Bill 2009) (Cth) was passed on 17 March 2010 and the first part of it has received Royal Assent taking effect on 15 April 2010.

These reforms provide for new investigatory and enforcement powers in favour of the ACCC in respect of misleading or deceptive conduct. These additional powers include the following:

1. **Civil Pecuniary Penalties:** The ACCC may now seek monetary penalties for contraventions of the consumer laws. The maximum penalties are \$1,100,000 for corporations and \$220,000 for individuals. These penalties are in addition to the current non-monetary penalties for which the ACCC can now apply.
2. **Infringement notices** which contain a financial penalty for suspected contraventions of the Trade Practices Act Consumer protection laws. If payment of the infringement notice is not made, the ACCC will be in a position to issue court proceedings in relation to the conduct alleged;
3. **Substantiation Orders** – these will be issued by the ACCC requiring the recipient to provide information or documents in support of the substantiation of representations made by that recipient. Failure to provide substantiation of a representation may result in further action being taken by the ACCC;
4. **Disqualification Orders** – in the event of prosecution or civil penalty proceedings being brought by the ACCC one of the reliefs that may be sought by the ACCC is the disqualification by the Court of a person from managing corporations as a result of certain contraventions of the Consumer Protection provisions;
5. **Public Warning Notices** – in circumstances where the ACCC considers it is important for consumer protection, it may issue a public warning notice with respect to a good or service in the marketplace;
6. The ACCC may seek a Court order in proceedings to obtain compensation for loss or damage suffered by consumers as a result of a contravention of the consumer protection provisions.

The second part of the amendments will take place on 1 July 2010. These will provide for the avoidance of unfair terms in standard form contracts between businesses and consumers. Guidelines will be provided by the ACCC prior to the new terms coming into force.

It will be important for businesses to consider these new enforcement and investigatory powers and be in a position to respond promptly should they become the subject of any one or more of them.

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