



DLA PIPER

# ACL REVIEW TO CONSIDER THE ADEQUACY OF CONSUMER LAWS FOR COMPARATOR WEBSITES

*Consumer Affairs Australia and New Zealand (CAANZ) will be conducting a review of the Australian Consumer Law (ACL) in 2016. This is the first review of the ACL since it came into force in January 2011 and follows a review of Australia's competition laws, policy and frameworks by the Harper Panel over the last few years. CAANZ will consider a range of issues, including some of specific relevance to the private health insurance sector.*

## THE REVIEW

The ACL is a national set of consumer protection laws that has operated in Australia since 1 January 2011. The ACL is a schedule to the *Competition and Consumer Act 2010 (Cth)*.

CAANZ will conduct a comprehensive review of the ACL, including considering the effectiveness of each of its provisions, the flexibility of the ACL in responding to new and emerging issues in the market and the extent to which consumer policy frameworks have met specified objectives.

CAANZ recently released an [Issues Paper](#), which highlights particular issues that will be considered in the Review. The Issues Paper covers a wide range of issues, reflecting the broad terms of reference for the ACL Review.

## ISSUES SPECIFIC TO THE PRIVATE HEALTH INSURANCE SECTOR

One issue highlighted by CAANZ in its Issues Paper is whether existing ACL provisions adequately address issues regarding the transparency of comparator websites and online reviews and how this could be improved. At this stage, it is unclear what proposals CAANZ will consider in relation to improving the transparency or disclosures made by comparator websites.

This consideration by CAANZ follows recent attention by the ACCC on comparator websites. In releasing the ACCC's enforcement priorities for 2016, the ACCC Chairman warned that the ACCC will be monitoring for incomplete or inaccurate information being provided by private health insurers and comparison website operators to customers or potential customers in relation to private health insurance policies. For further information, please see our [previous update](#). In 2015, the ACCC released [a guide](#) highlighting key consumer law issues for comparator website operators.



## OTHER ISSUES TO BE CONSIDERED IN THE REVIEW

CAANZ also proposes to consider a wide range of other issues during the Review, including the following:

- whether a new general prohibition on unfair commercial practices is warranted;
- whether parliament should provide greater legislative guidance on the meaning of unconscionable conduct and whether the prohibition should be extended to apply to all businesses including publicly listed companies;
- whether the definition of “consumer” used in the ACL is adequate, including whether the \$40,000 threshold should be increased and whether the definition should cover the circumstance of an individual or business providing information to another business (such as a comparator website) as this may not fit within the current definition of “acquiring goods or services”;
- whether the consumer guarantees provisions are adequate, including whether the meaning of the terms “acceptable quality” and “reasonable durability” are clear enough, whether it is clear what constitutes a “major failure”, whether remedies are appropriate for digital content and whether further information or cooling off periods are required for extended warranties;
- whether the unfair contracts regime should be expanded to prohibit contracts that are unfair as a whole (rather than just individual contract terms) and to allow regulators to seek monetary penalties against businesses that include unfair contract terms;

- whether the ACL can adequately respond to new and emerging issues, including selling away from business premises, online shopping and emerging business models; and
- whether penalties for breaches of the ACL should be increased and whether penalties should be available for breaches of the prohibitions against misleading and deceptive conduct and unfair contract terms. The ACCC have foreshadowed that they will advocate strongly for significantly increased penalties.

## NEXT STEPS

CAANZ will now undertake an extensive public consultation process. Interested parties are invited to make submissions to the Review by 27 May 2016. Submissions may comment on any of the issues raised in the Issues Paper or make general comments on whether the ACL functions effectively and how it could be improved. CAANZ’s final report is currently expected in early 2017.

Please let us know if we can assist your business in understanding how topics raised in the Issues Paper may affect your business or in making a submission to CAANZ.

## KEY CONTACTS

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