**Table of Contents** 



### **COMPETITION AND REGULATION COVERAGE AS OF NOVEMBER 2022**

Restrictive trade practices	2
Cartel conduct	2
Anti-competitive contracts, arrangements and understandings	3
Boycotts and collective bargaining	4
Misuse of market power	5
Exclusive dealing	6
Resale price maintenance	6
Mergers and acquisitions affecting competition	7
Australian Consumer Law	8
Misleading conduct and false representations	8
Unconscionable conduct	9
Unfair and unjust contracts	10
Unfair practices	10
Consumer transactions and guarantees	11
Product liability, safety and recalls	12
Procedure, enforcement and remedies	13
Authorisation, notification and exemptions	13
Investigations	13
Enforcement and remedies	14
Access regimes	16
Access regimes	16
Franchising	16
Franchising	16
Regulation	17
Dealing with regulators	17
Financial Services Regulation	18
AML and CTF	18

# **Table of Contents**



Regulation of specific sectors	15
Data and digital markets	
Competition and Consumer - General Principles	20
Application of Competition and Consumer Act	20
Compliance and training	22
Markets and market definition	23
Harper Review: law before 6 November 2017	23

### **Restrictive trade practices**

#### Cartel conduct

- Practice note: overview
  - Cartel conduct
- Practice notes
  - Agreements and other dealings that affect competition
  - Anti-competitive contracts, arrangements or understandings and concerted practices
  - Application of competition law to joint ventures
  - Cartel conduct: allocating customers, suppliers or territories
  - Cartel conduct: bid rigging
  - Cartel conduct: price fixing
  - Cartel conduct: restrictions on output and acquisitions
  - Competition and consumer law implications of the COVID-19 pandemic
  - Criminal cartel offence liability
  - Criminal cartel offence procedure and evidence issues
  - Defences to cartel conduct claims in practice
  - Immunity and leniency for competition law contraventions
  - Industry associations and the competition law risk

#### Standard documents

Table of Contents



- Guidelines for meetings involving competitors
- Statement of claim: anti-competitive conduct

#### Checklists

- Application of Criminal Code to Competition and Consumer Act offences
- Avoiding gun jumping in merger transactions
- Cartel conduct provisions renumbered from 6 November 2017
- Collective bargaining quick guide
- Competition law changes from 6 November 2017
- Competition law issues in relation to blockchain projects
- Industry association meetings: competition law red flags
- Prohibited topics for meetings involving competitors
- Quick guide to collusion prohibited by the CCA
- Quick guide to competition law compliance
- What to do in the event of an ACCC search
- When is refusal to deal illegal under competition and consumer law?

#### Toolkits

- Cartel conduct
- Collective bargaining toolkit
- Competition law compliance

Anti-competitive contracts, arrangements and understandings

- Practice note: overview
  - Exemption from the restrictive trade practices prohibitions in the CCA
  - Restraint of trade doctrine and the CCA
  - Restrictive trade practices prohibitions under Part IV of the CCA
- Practice notes
  - Agreements and other dealings that affect competition
  - Anti-competitive contracts, arrangements or understandings and concerted practices

## **Table of Contents**



- Application of competition law to intellectual property rights
- Application of competition law to joint ventures
- Competition and consumer law implications of the COVID-19 pandemic
- Competition law issues with most favoured nations clauses
- Dual listed company arrangements that lessen competition
- Industry associations and the competition law risks
- Refusal to deal under the CCA
- Substantial lessening of competition test

### Standard documents

- Guidelines for meetings involving competitors
- Originating application: anti-competitive conduct
- Statement of claim: anti-competitive conduct

#### Checklists

- Avoiding gun jumping in merger transactions
- Competition law changes from 6 November 2017
- Competition law issues in relation to blockchain projects
- Defining the market
- Industry association meetings: competition law red flags
- Prohibited topics for meetings involving competitors
- Quick guide to collusion prohibited by the CCA
- Quick guide to competition law compliance
- Quick guide to selling below cost
- When is refusal to deal illegal under competition and consumer law?
- Which restraint laws apply?

### Toolkits

- Competition law compliance

### Boycotts and collective bargaining

#### Practice notes

- Application of competition law to joint ventures

## Table of Contents



- Exclusionary provisions
- Refusal to deal under the CCA
- Secondary boycotts and boycotts affecting trade or commerce
- Substantial lessening of competition test
- Standard documents
  - Guidelines for meetings involving competitors
- Checklists
  - Collective bargaining quick guide
  - Competition law changes from 6 November 2017
  - Competition law issues in relation to blockchain projects
  - Quick guide to collusion prohibited by the CCA
  - When is refusal to deal illegal under competition and consumer law?
- Toolkits
  - Collective bargaining toolkit

### Misuse of market power

- Practice notes
  - Anti-dumping and anti-circumvention measures under the Customs Act 1901
  - Bundling and tying
  - Competition law issues with most favoured nations clauses
  - Misuse of market power from 6 November 2017
  - Refusal to deal under the CCA
  - Substantial lessening of competition test
- Standard documents
  - Letter advising on compliance with misuse of market power prohibition
- Checklists

# **Table of Contents**



- Competition law changes from 6 November 2017
- Defining the market
- Quick guide to competition law compliance
- Quick guide to selling below cost
- What is misuse of market power?
- When is refusal to deal illegal under competition and consumer law?

### Exclusive dealing

- Practice notes
  - Exclusive dealing
  - Refusal to deal under the CCA
  - Substantial lessening of competition test
  - Third line forcing
- Checklists
  - Competition law changes from 6 November 2017
  - Quick guide to competition law compliance
  - Quick guide to selling below cost
  - When is refusal to deal illegal under competition and consumer law?
- Toolkit
  - Competition law compliance

### Resale price maintenance

- Practice notes
  - Refusal to deal under the CCA
  - Resale price maintenance
- Checklists
  - Competition law changes from 6 November 2017

# **Table of Contents**



- Quick guide to competition law compliance
- Quick guide to selling below cost
- When is refusal to deal illegal under competition and consumer law?

#### Toolkit

- Competition law compliance

## Mergers and acquisitions affecting competition

#### Practice notes

- Acquisitions affecting competition
- Dual listed company arrangements that lessen competition
- How to conduct a Herfindahl-Hirschman Index (HHI) analysis
- Information exchange and integration planning in mergers and acquisitions
- Managing competition law issues in corporate mergers and acquisitions
- Markets and market definition
- Merger clearance and authorisation
- Merger review where the target is a "failing firm"
- PowerPoint presentation: Competition law issues in M&A transactions
- Substantial lessening of competition test

### Standard documents

Herfindahl-Hirschman index (HHI) calculator

### Checklists

- Avoiding gun jumping in merger transactions
- Competition law changes from 6 November 2017
- Competition law issues in corporate mergers and acquisitions
- Defining the market
- Notifying the ACCC of a proposed merger for informal review
- Preliminary competition analysis for a proposed acquisition
- Quick guide to competition law compliance
- Quick guide to media mergers

**Table of Contents** 



- Toolkit
  - Asset acquisitions
  - Competition law compliance
  - Merger review
  - Share acquisitions

#### **Australian Consumer Law**

Misleading conduct and false representations

- Practice note: overview
  - Misleading conduct and false representations
- Practice notes
  - Ambush marketing
  - Competition and consumer law implications of the COVID-19 pandemic
  - Corrective advertising and adverse publicity orders
  - Country of origin representations
  - Free range egg standard
  - Misleading conduct claims and litigation
  - Price advertising claims under ACL and ASIC Act

#### Standard documents

- Cross claim: misleading conduct based on comparative advertising
- Originating application: misleading conduct in relation to a trade mark
- Originating application: misleading and unconscionable conduct concerning land
- Originating application: passing off and misleading conduct (urgent)
- Originating application: regulatory enforcement proceeding for misleading conduct
- Statement of claim: misleading and unconscionable conduct concerning land
- Statement of claim: misleading conduct in relation to a trade mark
- Statement of claim: search engine advertising misleading conduct

Table of Contents



#### Checklists

- Application of the Australian Consumer Law to the not-for-profit sector
- Comparative table: Australian Consumer Law and Trade Practices Act
- Comparative table: Trade Practices Act to Australian Consumer Law
- Consumer law changes from 6 November 2017
- Financial services and financial products: consumer protection prohibitions
- Quick guide to conduct liable to mislead the public
- Quick guide to consumer law compliance
- Quick guide to online consumer law compliance

### Toolkits

- Consumer law compliance toolkit

### Unconscionable conduct

- Practice note: overview
  - Unconscionable conduct
- Practice notes
  - Competition and consumer law implications of the COVID-19 pandemic
  - Refusal to deal under the CCA
  - Unconscionable conduct claims and litigation
- Standard documents
  - Originating application: unconscionable conduct
  - Statement of claim: ACCC proceedings for unconscionable conduct
  - Statement of claim: misleading and unconscionable conduct concerning land
  - Statement of claim: unconscionable conduct
- Checklists
  - Comparative table: Trade Practices Act to Australian Consumer Law

## Table of Contents



- Financial services to financial products: consumer protection prohibitions
- Quick guide to consumer law compliance
- Quick guide to selling below cost
- When is refusal to deal illegal under competition and consumer law?
- Toolkit
  - Consumer law compliance toolkit

### Unfair and unjust contracts

- Practice notes
  - Unfair contract terms and protections for small businesses
  - Unfair or unjust contract claims
- Checklists
  - Comparative table: Trade Practices Act to Australian Consumer Law
  - Financial services and financial products: consumer protections prohibitions
  - Quick guide to consumer law compliance
- Toolkit
  - Consumer law compliance toolkit
- Legislation Tracker
  - Unfair contract terms regime reforms

### Unfair practices

- Practice notes
  - Bait advertising, rebates, gifts and prizes and wrongly accepting payment
  - Excessive payment surcharges under the CCA
  - Harassment and coercion

**Table of Contents** 



- Price advertising claims under ACL and ASIC Act
- Pyramid schemes
- Referral selling
- Unsolicited consumer agreements
- Unsolicited goods or services

### Standard documents

- Originating application: misleading conduct in relation to a trade mark
- Originating application: misleading and unconscionable conduct concerning land

#### Checklists

- Application of the Australian Consumer Law to the not-for-profit sector
- Comparative table: Trade Practices Act to Australian Consumer Law
- Consumer law changes from 6 November 2017
- Financial services and financial products: consumer protection prohibitions
- Quick guide to consumer law compliance
- Quick guide to online consumer law compliance

#### Toolkit

- Consumer law compliance toolkit

### Consumer transactions and guarantees

#### Practice notes

- Consumer guarantee claims under the ACL
- Consumer guarantees
- Unsolicited consumer agreements
- Unsolicited goods or services

### Standard documents

Table of Contents



- Mandatory text requirements for warranties against defects (goods)
- Mandatory text requirements for warranties against defects (services)
- Standard clauses
  - Limitation of liability for failure to comply with consumer guarantees
- Checklists
  - Comparative table: Trade Practices Act to Australian Consumer Law
  - Quick guide to consumer law compliance
- Legislation Tracker
  - Unfair contract terms regime reforms

### Product liability, safety and recalls

- Practice notes
  - Country of origin representations
  - Free range egg standard
  - Managing a product recall
  - Product liability
  - Product liability risk management
- Standard clauses
  - Product recall
- Checklists
  - Product recall
- Toolkit
  - Supply of goods

**Table of Contents** 



### Procedure, enforcement and remedies

Authorisation, notification and exemptions

- Practice note: overview
  - Exemption from the restrictive trade practices prohibitions in the CCA
- Practice notes
  - Australian Energy Regulator
  - Authorisation of anti-competitive conduct
  - Class exemption from restrictive trade practices prohibitions of the CCA
  - Competition and consumer law implications of the COVID-19 pandemic
  - Criminal cartel offence procedure and evidence issues
  - Defences to cartel conduct claims in practice
  - Defences to competition law claims
  - Defences to consumer law claims
  - Notification of anti-competitive conduct
- Checklists
  - Collective bargaining quick guide
  - Competition law changes from 6 November 2017
- Toolkit
  - CCA and ACL defences, exceptions, exemptions and limitations
  - CCA and ACL enforcement, administrative resolution and court remedies

#### **Investigations**

- Practice notes
  - Immunity and leniency for competition law contraventions
  - Privilege in ACCC investigations and proceedings
  - Section 155 investigations from 6 November 2017

Table of Contents



- Checklists
  - Quick guide to ACCC section 155 investigations
  - What to do in the event of an ACCC search

### Enforcement and remedies

- Practice note: overview
  - Relief in ACCC claims
- Practice notes
  - Accessorial liability
  - Application of the CCA and ACL to corporations and individuals
  - Australian Competition Tribunal
  - Bait advertising, rebates, gifts and prizes and wrongly accepting payment
  - Cartel conduct: allocating customers, suppliers or territories
  - Cartel conduct: bid rigging
  - Cartel conduct: price fixing
  - Cartel conduct: restrictions on output and acquisition
  - Corrective advertising and adverse publicity orders
  - Costs and model litigant obligations in CCA claims
  - Criminal cartel offence liability
  - Criminal cartel offence procedure and evidence issues
  - Damages and other compensatory orders in competition and consumer law claims
  - Declarations and injunctions under the CCA and ACL
  - Defences to competition law claims
  - Defences to consumer law claims
  - Expert economic evidence law in competition and consumer protection matters
  - Expert evidence practice and procedure in competition and consumer protection matters
  - Infringement, substantiation and public warning notices under the CCA and ACL
  - Jurisdiction of courts in competition and consumer protection matters

Table of Contents



- Penalties under the CCA and ACL
- Pleading competition and consumer law claims
- Privilege in ACCC investigations and proceedings
- Representative proceedings under the CCA and ACL
- Section 87B undertakings under the CCA

### Standard documents

- Cross claim: misleading conduct based on comparative advertising
- Originating application: anti-competitive conduct
- Originating application: misleading conduct in relation to a trade mark
- Originating application: misleading and unconscionable conduct concerning land
- Originating application: passing off and misleading conduct (urgent)
- Originating application: regulatory enforcement proceeding for misleading conduct
- Originating application: unconscionable conduct
- Statement of claim: anti-competitive conduct
- Statement of claim: misleading and unconscionable conduct concerning land
- Statement of claim: misleading conduct in relation to a trade mark
- Statement of claim: search engine advertising misleading conduct
- Statement of claim: unconscionable conduct

#### Checklists

- Application of Criminal Code to Competition and Consumer Act offences
- Comparative table: Trade Practices Act to Australian Consumer Law
- Quick guide to competition law compliance
- Quick guide to the Banking Royal Commission
- Time limitations in competition and consumer law claims
- What to do in the event of an ACCC search

### Toolkit

- Cartel conduct
- CCA and ACL enforcement, administrative resolution and court remedies
- Collective bargaining toolkit
- Competition law compliance

Table of Contents



### **Access regimes**

### Access regimes

- Practice notes
  - Access to services under the CCA
  - Application of CCA to telecommunications
  - Australian Energy Regulator
  - Refusal to deal under the CCA
- Checklists
  - Competition law changes from 6 November 2017
- Toolkit
  - CCA and ACL enforcement, administrative resolution and court remedies

### Franchising regulation

## Franchising

- Practice note: overview
  - Regulation of franchising
- Practice notes
  - Application of competition law to intellectual property rights
  - Completing a franchising disclosure document
  - Consumer law issues in franchising
  - Franchise agreements
  - Franchising overview
  - Restrictive trade practices issues in franchising
  - Setting up a franchise operation overseas

Table of Contents



#### Standard documents

- Deed of variation of franchise agreement
- Disclosure document receipt
- Franchise agreement
- Franchisee advice statement
- Franchising disclosure document
- Information statement for a prospective franchisee
- Master franchise agreement

#### Standard clauses

Definition of intellectual property rights

#### Checklists

- Information required to draft a franchising disclosure document
- Information required to draft a franchise agreement
- Preparing an operations manual
- Setting up a franchise
- Setting up a franchise overseas
- Which restraint laws apply?

#### Toolkit

- Franchising
- Restraints of trade

### Regulation

### **Dealing with regulators**

- Practice notes
  - Importance of early detection of risk and robust risk management systems
  - Navigating a compulsory document request from a regulator

Table of Contents



- Navigating a compulsory information request from a regulator
- Navigating a compulsory interview request from a regulator
- Navigating a voluntary request received from a regulator
- Navigating market inquiries conducted by a regulator
- Strategies for conducting internal investigations
- Strategies to bring internal teams together during a regulatory investigation

### **Financial Services Regulation**

- Practice notes
  - ASIC product intervention power
  - Australian Financial Services Licence (AFSL) regulation by the Australian Securities and Investments Commission (ASIC)
  - Australian credit licensee obligations
  - Design and distribution obligations under the Corporations Act 2001 (Cth)
  - Introduction to Australian Financial Services Licences (AFSL)
  - Introduction to Managed Investment Schemes (MIS)
  - Introduction to superannuation
  - Introduction to consumer credit regulation and credit licences in Australia
  - Mergers and acquisitions involving financial services entities
  - Overview of the regulatory framework of the Australian payments system
  - Prudential risk management
  - Regulation of securitisation in Australia
  - Step-by-step guide to APRA investigations and enforcement
  - Step-by-step guide to ASIC enforcement
  - Step-by-step guide to ASIC investigations
- Standard documents
  - Target market determination

### **AML and CTF**

- Practice notes
  - Anti-money laundering and counter-terrorism financing (AML/CTF) program

Table of Contents



- Anti-money laundering and counter-terrorism financing (AML/CTF) customer and transaction reporting obligations
- Anti-money laundering and counter-terrorism financing (AML/CTF) risk awareness training
- Enrolling and registering with the Australian Transaction Reports and Analysis Centre (AUSTRAC) (NEW)
- Submitting a compliance report to the Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Undertaking a money laundering and terrorism financing risk assessment

#### Standard documents

- Anti-money laundering and counter-terrorism financing (AML/CTF) policy
- Anti-money laundering and counter-terrorism financing (AML/CTF) board and senior management report
- Standard anti-money laundering and counter-terrorism financing (AML/CTF) program

### Checklists

 Independent reviews of anti-money laundering and counter-terrorism financing (AML/CTF) programs

### Regulation of specific sectors

- Practice note: overview
  - Application of the Competition and Consumer Act 2010
  - Industry codes under the CCA

### Practice notes

- ACCC draft news media and digital platforms mandatory bargaining code
- Application of CCA to international liner cargo shipping
- Application of CCA to telecommunications
- Australian Energy Regulator
- Australia: Advertising therapeutic goods medical devices
- Consumer law issues in franchising

**Table of Contents** 



- Country of origin representations
- Free range egg standard

## Data and digital markets

- Practice note: overview
  - Application of the Competition and Consumer Act 2010
- Practice notes
  - ACCC draft news media and digital platforms mandatory bargaining code
  - ACCC's Final Report of the Digital Platforms Inquiry
  - Application of CCA to telecommunications
  - Blockchain and smart contracts
  - Competition and consumer law issues with big data, algorithms and online digital platforms
  - The Consumer Data Right
- Checklists
  - Competition law issues in relation to blockchain projects

## **Competition and Consumer - General Principles**

Application of Competition and Consumer Act

- Practice note: overview
  - Application of the Competition and Consumer Act 2010
  - Exemption from the restrictive trade practices prohibitions in the CCA
- Practice notes
  - Accessorial liability
  - Application of ACL and CCA as Commonwealth law and in states and territories

Table of Contents



- Application of CCA and ACL outside Australia
- Application of CCA and ACL to acquisition and supply of goods and services
- Application of CCA and ACL to consumers
- Application of CCA and ACL to governments and governmental authorities
- Application of CCA and ACL to real property leases and licences
- Application of CCA to international liner cargo shipping
- Application of competition law to intellectual property rights
- Application of the CCA and ACL to corporations and individuals
- Application of the CCA to markets
- Class exemption from restrictive trade practices prohibitions of the CCA
- Competition and consumer law implications of the COVID-19 pandemic
- Competition and consumer law issues with big data, algorithms and online digital platforms
- Construction of the Competition and Consumer Act 2010
- Defences to competition law claims
- Defences to consumer law claims
- Economic concepts in competition law
- Getting started in competition and consumer law
- "In trade or commerce" requirement for application of CCA and ACL
- National competition and consumer protection laws
- Refusal to deal under the CCA
- Transitional provisions for 6 November 2017 CCA changes

#### Checklists

- Application of the Australian Consumer Law to the not-for-profit sector
- Comparative table: Australian Consumer Law and Trade Practices Act
- Competition law changes from 6 November 2017
- Destination table for 6 November 2017 changes to CCA: where did that section go?
- Harper competition law changes: improvements and challenges
- Quick guide to online consumer law compliance
- Time limitations in competition and consumer law claims

### Toolkit

- Does the Competition and Consumer Act 2010 apply?
- Help and information notes

**Table of Contents** 



- Evolution of competition law in Australia

## Compliance and training

- Practice notes
  - Advantages of implementing a legal compliance program
  - Developing a legal compliance system
  - Implementing a competition law compliance program
- Standard documents
  - Competition and consumer compliance program
  - Compliance policy statement (Competition and Consumer Act)
  - Letter advising on compliance with misuse of market power prohibition
- Checklists
  - Collective bargaining quick guide
  - Competition compliance: quick audit
  - Competition law changes from 6 November 2017
  - Consumer law changes from 6 November 2017
  - Developing a legal compliance program
  - Harper competition law changes: improvements and challenges
  - Quick guide to collusion prohibited by the CCA
  - Quick guide to competition law compliance
  - Quick guide to consumer law compliance
  - Quick guide to online consumer law compliance
- Toolkit
  - Competition law compliance
  - Consumer law compliance toolkit
- Help and information notes
  - Evolution of competition law in Australia

**Table of Contents** 



## Markets and market definition

- Practice notes
  - Agreements and other dealings that affect competition
  - Application of the CCA to markets
  - How to conduct a Herfindahl-Hirschman Index (HHI) analysis
  - Markets and market definition
- Checklists
  - Defining the market

Harper Review: law before 6 November 2017

- Practice notes
  - Arrangements affecting competition up to 5 November 2017
  - Authorisation of anti-competitive conduct up to 5 November 2017
  - Cartel conduct: overview and output restrictions up to 5 November 2017
  - Cartel conduct: price fixing up to 5 November 2017
  - Criminal cartel offence liability up to 5 November 2017
  - Criminal cartel offence procedure and evidence issues up to 5 November 2017
  - Defences to cartel conduct claims in practice up to 5 November 2017
  - Defences to competition law claims up to 5 November 2017
  - Exclusive dealing up to 5 November 2017
  - Merger clearance and authorisation up to 5 November 2017
  - Misuse of market power up to 5 November 2017
  - Notification of anti-competitive conduct up to 5 November 2017
  - Resale price maintenance up to 5 November 2017
  - Section 155 investigations up to 5 November 2017
  - Third line forcing up to 5 November 2017
  - Transitional provisions for 6 November 2017 CCA changes

Checklists

**Table of Contents** 



- Application of Criminal Code to Competition and Consumer Act offences up to 5 November 2017
- Cartel conduct provisions renumbered from 6 November 2017
- Competition law changes from 6 November 2017
- Consumer law changes from 6 November 2017
- Destination table for 6 November 2017 changes to CCA: where did that section go?
- Harper competition law changes: improvements and challenges