

# MISLEADING OR DECEPTIVE CONDUCT

\*ENTIRE CONTENT OF THIS TOPIC LOOKS AT **s 18 ACL** CONTRAVENTION  
FORMERLY KNOWN AS **s 52 TPA**

- Legislative approach to the regulation of consumer protection in Australia is to provide for 3 general protections and to supplement these with more prescriptive protections in relation to specific conduct.
- **Chapter 2 ACL** establishes the general standards of business conduct.
- **Chapter 2, Part 2-1** contains first general protection: misleading or deceptive conduct
  - o **S 18(1) ACL**: liability provision.
- Almost identical wording to former **s 52 TPA**.
  - o Main difference: **s 52** referred to conduct of a 'corp' whereas **s 18** refers to conduct of a 'person.'

## 18. Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

## 52. Misleading or deceptive conduct

(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive.

## Policy objectives of both s 18(1) ACL and s 52(1) TPA

- o **S 52** was to operate as a 'catch all provision' that could apply to objectionable conduct that might otherwise escape liability, on technical grounds, under more specific provisions of the Act.
- Senator Murphy (AG responsible for TPA) said that its role was to ensure that the law was not 'continually one step behind businessmen who resort to smart practices.'
- **S 52** is a 'comprehensive provision of wide impact' that 'does not purport to create liability at all,' rather it establishes a 'norm of conduct' – Fox J in **Brown v The Jam Factory Pty Ltd**.
  - o Can be used not only to protect the 'weak' from the 'strong' but it may also be used by a large and powerful company to restrain the activities of a smaller competitor – Gibbs J in **Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd 1982**.
  - o Should be construed to give the 'fullest relief, which the fair meaning of its language will allow' – **Accounting Systems 2000 (Developments) Pty Ltd v CCH Australia Ltd**.
- Most heavily litigated statutory provisions in Aus law.
  - o In **Miller & Associates Insurance Broking Pty Ltd v BMW Aus Finance Ltd** (French CJ and Keifel J at 357) it was said that it had become 'a staple of civil litigation in Australia.' However, there are limits in that the object is not to protect the unusually stupid or obtuse, or those who did not take reasonable steps to protect their own interests.