

# LAWS2022 Competition and Consumer Law Notes

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## Week 1 – Introduction to Competition and Consumer Law

### Overview

Competition and consumer law regulates the way businesses and traders interact with consumers, competitors, suppliers and the market. It is relevant to advertising, pricing, marketing, consumer rights, representations, product safety, contracts, competition and penalties.

The object of the Competition and Consumer Act 2010 (Cth) is to enhance the welfare of Australians through the promotion of competition and fair trading and by providing consumer protection.

- Competition law is mainly concerned with protecting the competitive process, not individual competitors.

- Consumer protection law is mainly concerned with protecting consumers from misleading, unfair, unsafe or exploitative conduct.
- A business can compete hard and still act lawfully; the Act is concerned with conduct that crosses the line into misleading, unfair, unconscionable or anti-competitive behaviour.

### Legislative structure

- Location: CCA Part IV; Main topic: Restrictive trade practices / anti-competitive conduct.
- Location: CCA Part VI; Main topic: Enforcement and remedies for competition provisions.
- Location: ACL Chapter 1; Main topic: Introductory provisions and definitions.
- Location: ACL Chapter 2; Main topic: General protections: misleading conduct, unconscionable conduct, unfair terms.
- Location: ACL Chapter 3; Main topic: Specific protections: unfair practices, consumer guarantees, product safety, manufacturer liability.
- Location: ACL Chapter 4; Main topic: Offences.
- Location: ACL Chapter 5; Main topic: Enforcement and remedies.

### Historical background

- The CCA grew out of the Trade Practices Act 1974 (Cth).
- Many older TPA cases remain relevant because similar concepts and wording continue in the CCA/ACL.
- The shift to the ACL aimed to harmonise consumer law nationally and create universal application across Australia.
- Earlier legislation / source: Australian Industries Preservation Act 1906; Why it matters: Early Australian attempt to regulate anti-competitive conduct.
- Earlier legislation / source: Restrictive Trade Practices Act 1971; Why it matters: Predecessor to later competition law provisions.
- Earlier legislation / source: Trade Practices Act 1974; Why it matters: Important source of older cases that still guide current ACL/CCA interpretation.
- Earlier legislation / source: Competition and Consumer Act 2010; Why it matters: Current main Commonwealth legislation.
- Earlier legislation / source: Australian Consumer Law, Schedule 2; Why it matters: National consumer protection law applied across Australia.

### Constitutional basis

There is no single constitutional head of power for competition and consumer law. The Commonwealth must rely on existing constitutional powers. The course materials identify multiple heads of power, including corporations, trade and commerce, external affairs and territories. This matters because the Commonwealth Parliament can only enact laws where the Constitution empowers it to do so.

### Administration and regulators

The course materials identify the main institutional framework as including the ACCC, Commonwealth Director of Public Prosecutions, National Competition Council, Australian Competition Tribunal and Federal Court of Australia.

- ACCC: national competition, consumer, fair trading and product safety regulator.
- CDPP: relevant to criminal prosecutions, especially serious cartel conduct.
- Federal Court: key court for ACCC enforcement, penalties, injunctions and declarations.
- Australian Competition Tribunal: review/authorisation functions in competition matters.
- State and Territory regulators: also administer the ACL under State/Territory application laws.

### Key term: consumer

ACL s 3 defines when a person acquires goods or services as a consumer. A person may be a consumer if the amount paid or payable does not exceed the prescribed amount, currently \$100,000, or if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, or if the goods are a vehicle or trailer acquired principally for transporting goods on public roads.

- A business can still acquire goods as a consumer if the goods are of a kind ordinarily acquired for personal, domestic or household use.
- Goods will generally not be acquired as a consumer if they are acquired for resupply, or for use/transforming in production or manufacture.
- The course materials note the historical \$40,000 amount, but for this subject use \$100,000 because the prescribed amount has changed.

### Application

- Do not assume only private individuals are consumers. Businesses can be consumers under the ACL.

### Key term: in trade or commerce

Many ACL provisions require conduct to occur “in trade or commerce”. The phrase refers to conduct that has a trading or commercial character. It is not enough that the conduct occurs somewhere within a business context if the conduct itself is internal or incidental rather than part of trading or commercial dealings.

### Concrete Constructions (NSW) Pty Ltd v Nelson

A worker was injured after relying on incorrect instructions from a foreman. The High Court held the conduct was not “in trade or commerce” because it was an internal workplace communication, not conduct forming part of trading or commercial dealings.

### Crown application

The Crown in right of the Commonwealth, States or Territories is generally caught when carrying on a business. Regulatory, licensing or government administrative functions will not usually be enough.

### Summary Points for Review

- CCA objective: competition, fair trading and consumer protection.
- ACL is Schedule 2 to the CCA.
- The ACL applies nationally but cite the Commonwealth version for this subject unless told otherwise.
- TPA cases can still be relevant if the provisions are mirrored or similar.
- Consumer threshold: \$100,000.
- “In trade or commerce” requires trading/commercial character.
- Internal workplace instructions are usually not “in trade or commerce”.
- The Crown is generally caught when carrying on a business.

## Week 2 – General Protections

### Overview

Module 2 covers the ACL’s broad safety-net provisions: misleading or deceptive conduct, unconscionable conduct and unfair contract terms. These provisions are wide and flexible. They often form the starting point for problem questions.