

Competition and Consumer Law Compliance Guide

1. Introduction

La Trobe University is committed to compliance with the **Competition and Consumer Act (formerly the Trade Practices Act)** (“the Act”), which includes the relevant consumer protection and unfair business practice provisions of the Act that are contained in part of the Act known as the **Australian Consumer Law (“ACL”)** and all other relevant laws. The Act is designed to promote competition throughout Australia and to ensure that all companies and other entities, including the University, compete freely and fairly. The Act also protects consumers from unfair practices, such as being deceived, misled or bullied.

The Act applies to the University and its dealings with suppliers, research partners, students, users of University services and premises, and other relevant people. Compliance with the Act is an important responsibility of all University executives and employees – all staff are responsible for their own actions. The University, as well as its executives and employees who are involved in a breach of the Act, may be individually liable for substantial penalties, as well as compensation claims. A breach of the Act can also result in damage to reputation and adverse publicity for all involved.

Everyone who engages in trade or commerce in Victoria is also subject to the provisions of the Victorian Fair Trading Act (“the FTA”). The FTA also promotes fair trading and consumer protection at a state level.

2. Outcomes of a breach

There are two ways the University and its staff can be affected if they breach the Act. There are court-imposed sanctions:

- *Fines/monetary penalties* - For each act or omission by the University, up to the greater of \$10 million and 3 times the value of the benefit from the breach (or, if that cannot be determined, 10% of annual Australian turnover) for some parts of the Act and up to \$1.1 million for others. For each act or omission by an individual employee, up to \$500,000 for some parts of the Act and up to \$220,000 for others.
- *Jail terms* – *Individuals involved in cartel conduct may be subject to criminal prosecution and imprisonment for up to 10 years.*
- *Injunctions* - Can be put in place by a court to restrain the University or an individual employee from taking certain actions.
- *Damages* - Can be awarded against the University or an individual employee (or both) for loss or damage suffered by a competitor or consumer.
- *Ancillary Orders* - A court may make orders, for example that a contract should be varied or even terminated.
- *Corrective Orders* - A court may order disclosure of information or corrective advertising in newspapers or other media.

Then there are consequential effects, which can be just as severe:

- *Legal Costs* - May be payable by the University or the individual employee or both.
- *Staff Down-time* - Considerable time may be spent in gathering material for legal proceedings and participating in them.

- *Embarrassment/ Adverse Publicity* - For the University and individual employees, especially if a criminal offence has been committed.
- *Disciplinary Action against staff involved* - Internal disciplinary action will be taken against any staff member who is knowingly or recklessly involved in a contravention of the Act or other relevant trade practices and fair trading laws.

IMPORTANT: You should be aware that the University's insurance does not cover employees for any monetary penalties or fines imposed on them under the Act. It does cover employees for damages awarded against them, but not if they have recklessly or knowingly breached the Act or if they have committed an unauthorised act outside the scope of their employment.

3. Relevant provisions

The Act is a long and complicated piece of legislation. This Guide concentrates only on those parts that are of most relevance to the University and its activities. Short descriptions of the most relevant provisions are set out below.

3.1 Price fixing and cartel conduct

The basic rule is that you cannot agree with a competitor on anything to do with price. The term 'price' includes discounts, rebates and allowances. Price-fixing is a form of cartel conduct. 'Market sharing', 'collusive tendering' arrangements and collective boycotts by competitors are also forms of cartel conduct. Competitors cannot reach agreements on these matters. Be wary of any discussions about price or costs at trade associations (Universities Australia; Council of Australian University Libraries; Heads of Colleges). Cartel conduct is prohibited outright and can attract criminal penalties, as well as substantial fines and monetary penalties.

3.2 Resale price maintenance

Resale price maintenance is conduct by a supplier requiring resellers to sell at or above a specified price. You are not allowed to require resellers of any University products to sell at or above a specified price or force them to stop discounting. Providing recommended retail price lists are OK in some circumstances, but not in others so seek advice before using them. Resale price maintenance is prohibited outright.

3.3 Third line forcing

Third line forcing is the supply of goods or services on condition that the buyer takes other goods or services from some other supplier. You can recommend someone else's product to one of your own customers/students, but you cannot force it on them, even if it is a 'good deal'. Third line forcing is a type of exclusive dealing which is prohibited outright.

3.4 Collective boycotts

It is illegal for competitors to agree to restrict trade with anyone or any group. Agreeing with your competitor not to deal with someone (or to change payment terms) even for ostensibly good reasons (such as the business you both deal with is always late with payments) is an

illegal collective boycott. 'Market sharing' and 'collusive tendering' arrangements can be illegal collective boycotts. Collective boycotts are prohibited outright.

3.5 Other exclusive dealings

There are all sorts of common 'exclusive dealings', for example: sole agencies and distributorships; exclusive publishing licences; arrangements to use one particular brand of product (the University might use one brand of photocopier or only book airline tickets with one airline); imposing trading restrictions of any kind; and refusing to trade. These agreements or decisions are not like the ones described above (which are prohibited outright). These are only prohibited if they are likely to substantially lessen competition in a particular market. Seek advice from Legal Services if you think an agreement may be exclusive in a way that lessens competition.

3.6 'Unconscionable conduct' and abuse of market power

These provisions deal with business strategies aimed at taking advantage of your power over a weaker party. There is a difference between driving a hard bargain and this sort of conduct. The types of behaviour which can be a problem include:

- Predatory pricing (pricing below cost)
- Refusing to supply someone (unless you have a legally justifiable reason)
- Forcing someone into accepting a contract or lease that is 'not negotiable'
- Using 'fine print'
- Dealing with people who are disadvantaged in some way (e.g. their English is poor; or unfair tactics were used)

You should always seek advice from Legal Services in these circumstances.

3.7 Misleading statements and representations

The University creates and distributes a vast amount of information in the form of advertising, brochures, handbooks, prospectuses and other related documents. Some of this material is in hard copy form while other information appears on the University's website. Information is also given in personal and group discussions and other representations can be made in visual forms such as illustrations and logos.

It goes without saying that this information should be accurate and factually correct. But it is not enough for information to be technically or narrowly correct - the representation as a whole must give the correct overall impression. Keeping quiet, not correcting misunderstandings and failing to disclose information can be a breach of the Act. Predictions can also be misleading if you do not have a reasonable basis for making them.

Making misleading statements and representations is a breach of the Act. It doesn't matter if no-one was actually misled, because it is still a problem if the statement was 'likely' to mislead or deceive. Neither does it matter that you had absolutely no intention of creating a misleading impression.

4. Your responsibilities

You must be familiar with the basics of the Act as set out in this Guide and seek advice when you are in doubt about how it affects you. You are responsible for your own actions and ignorance of the law is no excuse. The University also has responsibilities, including the provision of adequate training, assistance and guidance. Remember that most actions taken under the Act are between private parties, so complaints which look like they might involve the Act must be taken seriously.

All University staff are required to report any consumer compliance issues and concerns to the Compliance Officer or the General Counsel, Legal and Governance.

If you are in doubt about any conduct, or proposed conduct, relating to the Act please contact the Compliance Officer or the General Counsel, Legal and Governance before making a decision or taking any action.

You are also encouraged to report to the Compliance Officer or the General Counsel, Legal and Governance any conduct by a competitor of, or a supplier to, the University which you believe might be in breach of the Act.

5. If things go wrong

If you receive or hear an allegation or complaint about any of the above issues, report it immediately to your supervisor, the Compliance Officer or the General Counsel, Legal and Governance.

If you receive a letter or phone call from a solicitor about any of the above issues, report it immediately to your supervisor, the Compliance Officer or the General Counsel, Legal and Governance.

If you know, suspect or have any doubts that any practices engaged in by the University or by any individual associated with the University could amount to a breach, immediately notify the Compliance Officer or the General Counsel, Legal and Governance.

If you are contacted by anyone from the Australian Competition and Consumer Commission (ACCC) or Consumer and Business Affairs Victoria, refer them to the Australian Consumer Law Compliance Officer or the General Counsel, Legal and Governance immediately. You should show a willingness to co-operate with their investigations. However, do not provide any information, documents or answer any questions without first consulting the Compliance Officer or the General Counsel, Legal and Governance. If this sounds contradictory, then how about: 'I'm happy to help, but I should let Legal Services know you're here first' or 'Would you mind if I called you back after I've spoken to Legal Services? then I would be happy to provide all the information I can'.