

Unfair trading

Your rights in Australia

Misleading or deceptive behaviour

Misleading or deceptive behaviour is when a shop owner or trader presents an incorrect view about the price, value or quality of goods or services to you. A shop owner can break the law even if they didn't mean to mislead or deceive.

Shop owners can sometimes mislead or deceive, through:

- > advertisements
- > promotions
- > quotes
- > statements
- > any representation made by a person.

Silence

In some cases, a shop owner can break the law if they don't give you all the information about a good or service.

For example, you live in a regional area and are buying a mobile phone. The salesperson knows where you live but doesn't tell you that the coverage is poor and the phone may be of no use.

Disclaimers and fine print

Shop owners can't use disclaimers or fine print to excuse misleading or deceiving you – ie. the fine print cannot say the opposite of what is said in the main part of the advertisement. However, you shouldn't ignore disclaimers clearly displayed in store. These disclaimers may be enough to protect the shop owner if they don't undermine the offer being made.

For example, a shop advertised '25 percent off all clothing' but the fine print excluded some items of clothing. It is misleading to suggest all clothing is 25 percent off.

Predictions and opinions

Promises, opinions or predictions made by a shop owner can be considered misleading or deceptive if they:

- > knew it was untrue or incorrect
- > didn't take the time to check whether it was true or not
- > had no reasonable grounds for making it.

For example, a real estate agent promises you that your view of the ocean from the unit you are thinking of buying will be unrestricted while knowing that a development next door will block the view.

False or misleading representations

A false or misleading representation is where a shop owner will claim that a good or service is something it is not.

For example, a manufacturer sells socks labelled as 'pure cotton' when they are made of polyester.

A shop owner must not make false or misleading representations about goods or services concerning:

- > the price or value, standard, age, where the goods were made, quality or grade
- > the style, model, previous use or what the goods are made from
- > praise from people buying or using them
- > the availability of spare parts
- > the sponsorship, approval, performance characteristics, accessories or benefits of use
- > your need for them
- > any guarantee, warranty or condition on them.

Unconscionable behaviour

Deciding on whether certain behaviour is unconscionable depends on the situation, but it can be generally described as serious misconduct that goes against good conscience.

In some circumstances, statements or actions where a salesperson tricks, cheats or pressures you into buying something may amount to unconscionable behaviour.

Examples of unconscionable behaviour could involve a shop owner:

- > not explaining a contract properly to a consumer that they know doesn't have high literacy skills, can't speak English or has a learning disability
- > using a friend or relative to influence your decision
- > persuading or convincing you to sign a blank or unfavourable contract

- > taking advantage of you by making false statements about the real cost of a loan
- > failing to disclose key contractual terms
- > using high pressure tactics, such as refusing to take no for an answer.

Harassment and coercion

It is illegal for a shop owner or salesperson to use physical force, coerce or unduly harass you about the supply of, or payment for, goods or services.

Undue harassment means needless or unnecessary contact or communication with you that makes you feel intimidated, tired or demoralised.

Coercion involves force that restricts your choice or freedom to act.

If things go wrong

If you think a salesperson is not dealing fairly with you, you should contact your local consumer protection agency.

Where can I get more information?

For general information, contact your local consumer protection agency.

Australian Capital Territory

Office of Regulatory Services T. (02) 6207 3000
ors.act.gov.au

New South Wales

NSW Fair Trading T. 13 32 20
fairtrading.nsw.gov.au

Northern Territory

Consumer Affairs T. 1800 019 319
consumeraffairs.nt.gov.au

Queensland

Office of Fair Trading T. 13 74 68
fairtrading.qld.gov.au

South Australia

Consumer and Business Services T. 131 882
cbs.sa.gov.au

Tasmania

Consumer Affairs and Fair Trading T. 1300 65 44 99
consumer.tas.gov.au

Victoria

Consumer Affairs Victoria T. 1300 55 81 81
consumer.vic.gov.au

Western Australia

Consumer Protection T. 1300 30 40 54
commerce.wa.gov.au/consumerprotection

The Australian Competition and Consumer Commission has national responsibilities for competition, fair trading and consumer protection and can be contacted on 1300 302 502 or visit acc.gov.au