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# *Making a submission*

All interested individuals and organisations are encouraged to provide comments on this discussion paper.

Comments in writing should be forwarded to:

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Closing dates for submissions is 31 July 2004.

It should be noted that unless confidentiality for submissions is specifically requested, the contents of submissions may be made publicly available in any subsequent review process. Also, submissions may be subject to Freedom of Information and other laws and this should be taken into account when making submissions.

Further copies of this paper can be obtained by downloading it from the Ministerial Council on Consumer Affairs website

[www.mcca.vic.gov.au](http://www.mcca.vic.gov.au) or Consumer Affairs Victoria website at

[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)



There are various ways of achieving desired levels of consumer protection. The paper presents options ranging from retaining the current mix of consumer protection law, voluntary measures and information strategies to the development of new, mandatory disclosure requirements.

The E-commerce Working Party is not pre-disposed to a particular option. It invites and would welcome the views of interested individuals and organisations on the issues raised.



“

# *Section 1*

## *Introduction*

# “ *Section 2* *SCOCA E-Commerce* *Working Party* ”

# 2

In August 2002, the Ministerial Council on Consumer Affairs (MCCA) agreed to include a consideration of the need for a set of basic, uniform statutory measures to protect consumers engaging in online transactions on its strategic agenda and asked the E-commerce Working Party to give further consideration to the issue.

The E-commerce Working Party comprises representatives from the following agencies:

- Consumer Affairs Victoria (Project Convenor)
- Department of Consumer and Employment Protection, Western Australia
- Competition and Consumer Policy Division, Department of the Treasury, Commonwealth
- Office of Fair Trading, Department of Commerce, NSW
- Office of Consumer Affairs & Fair Trading, Tasmania
- Office of Consumer and Business Affairs, South Australia
- Australian Competition and Consumer Commission
- Department of Tourism, Racing and Fair Trading, Queensland
- Department of Justice & Community Safety, ACT
- Consumer and Business Affairs, Department of Justice, Northern Territory
- Ministry of Consumer Affairs, New Zealand.

This study is one project under consideration by the Working Party. Other areas subject to consideration by the E-commerce Working Party are:

- M-commerce
- The need for a common extra-territorial regime for State/Territory Fair Trading legislation and
- Web seals of approval.



# “ *Section 3* *Terms of Reference* ”

# 3

The Working Party has been asked to consider and report to MCCA on:

- whether there should be a set of basic and uniform statutory measures to protect consumers engaging in on-line transactions and
- if so, to determine what those measures should be.

# “ Section 4 Scope ”

# 4

Direct marketing and distance selling involves the marketing of goods and services to consumers using a means of communication at a distance. Contracts of sale are also negotiated at a distance.

Distance marketing and selling includes mail order and catalogue sales, telemarketing and Internet sales. Distance selling has many characteristics which make it different from shop front retailing. These differences include uncertainty about the identity and address of the seller, inability to inspect goods prior to purchase, payment in advance of receipt of goods, uncertain delivery, and redress difficulties where purchases are made across borders.

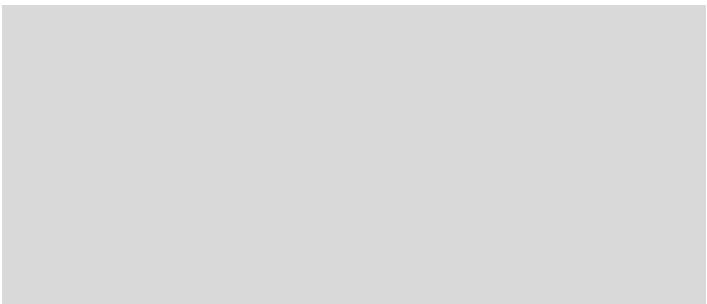
Governments have recognised that these differences present risks to consumers and so have developed rules and best practice guidance for businesses operating direct marketing. Examples include the Direct Marketing Model Code of Practice, new rules for direct commerce made pursuant to the *Fair Trading Amendment Act 2003* (NSW) and new telemarketing provisions within the *Victorian Fair Trading Act 1999*.

Online sales is a form of distance selling which gives rise to the risks already noted. However, there is evidence to suggest that consumers see online sales as more risky than traditional distance selling. The United Kingdom National Consumer Council<sup>4</sup> (UK NCC) in its consideration of consumer needs in a virtual world noted the following perceptions of risk when shopping:

SHOPPING TYPE	SAFEST %	RISKIEST %
High Street/shopping centre	86	3
Mail order from catalogue	6	5
Mail order from adverts	–	15
Catalogue agent visiting	–	2
Ordering and paying over telephone	2	22
Internet	1	35
Digital TV	1	4

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<sup>4</sup> UK National Consumer Council *E-commerce and Consumer protection, Consumers – real needs in a virtual world*, 2000 page 3



E-commerce has the potential to benefit businesses and consumers and the economy generally. Despite the benefits of convenience and greater choice, the UK NCC noted that "shopping is one of the least popular online activities".<sup>7</sup>

This picture is repeated in Australia and New Zealand – only 14 percent of Australians and New Zealanders with Internet access bought something online in the six months to September 2001<sup>8</sup>. Indeed, Australia is ranked 13th and has a below average proportion of Internet users who are online shoppers compared with other nations surveyed for Taylor Nelson Sofres Interactive's third annual global e-commerce report.

Online shopping ranks well below other e-commerce activities – Internet banking, subscription gaming and searching for a job<sup>9</sup>.

Several international and Australian opinion surveys and research studies have sought to explain what is preventing online shopping taking off. Examples of these studies include the following.

The UK NCC research into consumer needs in the virtual world

In November 2000<sup>11</sup>, online shoppers in Australia named the



# “ Section 6 Consumer Complaints ”

# 6

Complaints to government agencies nationally and internationally present a diverse picture.

The Drugs and Crime Prevention Committee<sup>18</sup> provided the following data on electronic commerce consumer complaints.

- During 2001, the Internet Fraud Complaint Centre (a joint initiative of the Federal Bureau of Investigation and US Department of Justice) received 49,711 complaints relating to Internet fraud of which 16,775 were referred to authorities for action. Of the referred complaints, 43 percent related to online auctions, approximately 20 percent related to undelivered merchandise and 10 percent to credit/debit card fraud. 2001 was the first year in which the data was reported. Australia accounted for 0.5 percent of complaints registered by the Internet Fraud Complaint Centre in 2001, behind the US (93.4 percent), Canada (2.2 percent), and the United Kingdom (1.0 percent).
- The US Federal Trade Commission's Consumer Sentinel recorded over 200,000 complaints in 2001 as compared with 18,600 in 1999 and 8,000 in 1998. In 2002, 47 percent of the 218,284 complaints lodged on the Sentinel database were Internet related. Internet related complaints represented 47 percent of all fraud related complaints up from 42 percent in 2001 and 31 percent in 2000. Where consumers reported the method of initial contact, 54 percent said the fraudster contacted them using either the Web site advertising, Internet software or e-mail. Only 23 percent were contacted by telephone and 13 percent by mail.
- In a telephone survey of online consumers conducted for the National Consumers League in the US between April and May 1999, 24 percent said they had purchased goods and services online but 7 percent which represented six million people, said they had experienced fraud or unauthorised use of credit card or personal information online.
- The top 10 types of Internet fraud recorded by the US Internet Fraud Watch between 1999 and 2001 were:
  - online auctions
  - general merchandise sales
  - Nigerian money offers
  - computer equipment and software
  - internet access services
  - information adult services
  - work-at-home schemes
  - advance fee loans
  - credit card offers, and
  - business opportunities/franchises.

<sup>18</sup> Parliament of Victoria Drugs and Crime Prevention Committee, op.cit.

- In 2002 the total amount reported lost to Internet-related fraud in the US was \$122.36 million. That figure is based on 94,502 complainants who reported an amount lost. The top complaint categories in 2002 were Internet auctions (50 percent), shop-at-home/catalogue sales (13 percent), Internet access services (11 percent), foreign money offers (5 percent), Internet information services (including adult services) (5 percent).

Econsumer.gov, a joint service of consumer protection agencies in 17 nations, listed complaints filed from 27 April 2001 to 30 June 2002. The site has received more than 2,500 complaints since its launch in April 2001. The data showed that the top complaint was "Merchandise or service never received", followed by "Other misrepresentations", "Cannot contact merchant", "Failure to honour refund policy" and "Billed for unordered merchandise or service." Fifteen percent of consumer complaints are now about Internet auction services.

During the 01/02 financial year, the Australian Competition and Consumer Commission received 3,317 complaints relating to online trading. Of these, there were 638 consumer complaints dealing directly with online shopping issues such as misleading advertising, warranty and refund problems, receiving unsolicited goods or services, unauthorised billing and failure to receive purchased goods.

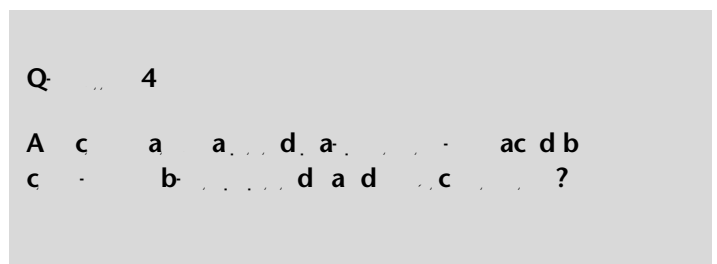
In the financial year ending June 2003, 2,899 complaints related to online conduct. This represented 5.4 percent of total complaints received. The seven most common issues complained about were as follows:

Issue	%
Misleading advertising or prices	23
Domain name renewals	20
Pyramid selling and other scams	7
Unsolicited goods or services	4
Warranty matters	4
Anticompetitive arrangements	2
Unconscionable conduct	1

At the State and Territory level e-commerce, including Internet sales complaints are not always recorded separately, for example, if a product purchased online is faulty, it will be recorded as a faulty product. Where complaints are captured, they are generally a very small percentage of total complaints received. For example during 2002, Consumer Affairs Victoria received 183 e-commerce complaints – up on the 57 received the previous year. Of these, 41 percent related to Internet sales – mainly the purchase of computers, computer accessories and software; 35 related to domain name services and 24 percent to Internet Service Providers.

The NSW Office of Fair Trading currently receives approximately 250 e-commerce-related complaints per year. This is a very small proportion of the total number received by the Office.

It is difficult to draw conclusions from complaints data. First, it is indicative of the range of issues experienced by consumers in relation to the Internet including those which would be handled by consumer affairs agencies, some which would go to the Police and some which would go to regulators like the Privacy Commissioner. Second, while the level of complaints represents a very small percentage of online transactions<sup>19</sup>, the data is likely to underestimate particular problem areas, for example non-delivery of low cost goods, where consumers may decide to "put it down to experience". One of the particular findings of the Parliament of Victoria Drugs and Crime Prevention Committee in its Final Report into Fraud and Electronic Commerce<sup>20</sup> is that people are very reluctant to report electronic fraud. Third, it is not clear that consumers who experience online difficulties will know who to turn for assistance – the Pulse survey cited earlier noted that of the people surveyed, at least half said they were unsure where to go with online shopping issues.



<sup>19</sup> ABS report op.cit.

<sup>20</sup> Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into Fraud and Electronic Commerce – Final Report (2004)*.



In section 5, consumer issues were summarised under four categories, security of payment, privacy, fair trading matters and issues intrinsic to the online medium. Of these, only security of payment, privacy and fair trading issues give rise to potential consumer detriment and are considered further in this section.

Payment cards including credit cards are currently the main method of paying for goods and services online. Like most forms of distance selling, payment is in advance of receipt of the goods or services. The OECD Report on *Consumer Protections for Payment Cardholders*<sup>21</sup> provides a useful summary of the types of problems consumers encounter paying for online transactions. It divides the problems into three groups:

- ***I didn't do it*** – unauthorised transactions which are the result either of fraud or error. The OECD Report suggests that the incidence of payment card fraud online is higher than other forms of commerce and is growing<sup>22</sup>. The National Office for the Information Economy has suggested however, that consumer concerns about online payment security are disproportionate to the actual risks<sup>23</sup>.

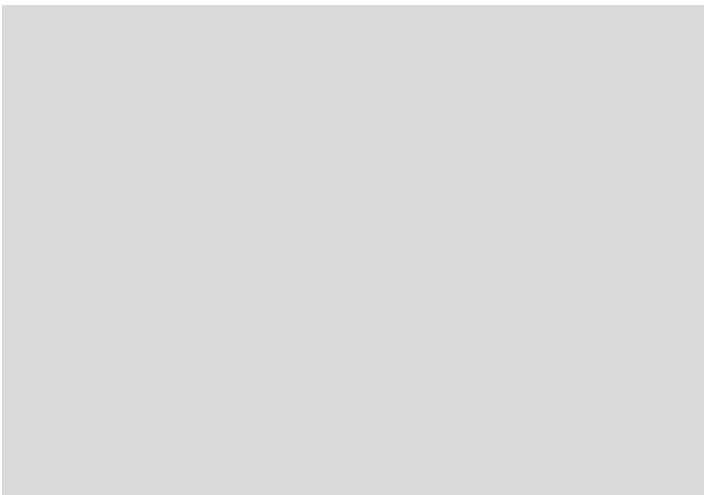
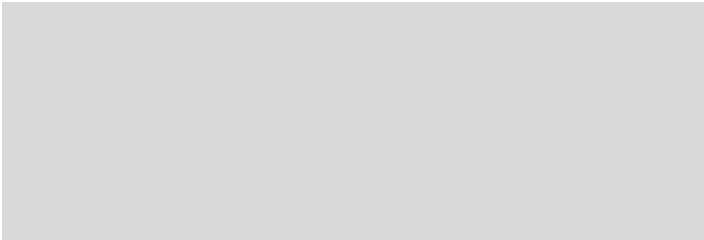
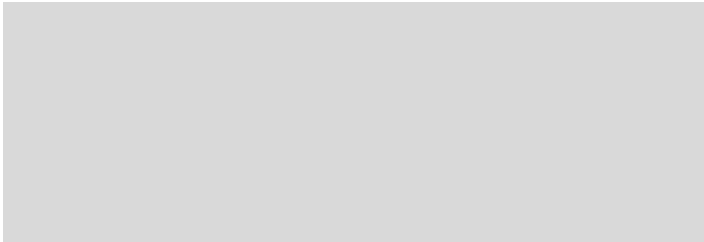
- ***I didn't receive it*** – where the consumer has not received goods or services paid for after a reasonable time. The OECD report also suggests that this includes complaints where goods do match the description of what was ordered though such complaints may equally be included in the following and final category.

- ***I don't want it*** – includes goods which are not fit for purpose or are defective, or where a trader does not honour a cooling off right which has been exercised by a consumer.

Various organisations and mechanisms are involved in addressing the consumer risks arising from online payments. ((18 TTJ-2.12552ri4c keyo thPayment Cfour)keyoi9103 0 TD-0.05148ne that94.2653 Tm-491.3.01 3.0.8 T93

While chargeback arrangements provide quite effective consumer protection, it is arguable whether consumers are aware of them or have any understanding of their operation.

The Review of the Code of Banking Practice (CBP) considered the issue of chargebacks in both its Issues Paper and Final Report. As a result, the Australian Bankers Association has agreed to include a clause on chargeback disclosure in the revised CBP<sup>26</sup>



While the control of liability arising from unauthorised use of credit cards is governed by non-legislative and contractual means<sup>28</sup>, the OECD Report<sup>29</sup> notes that some OECD members have regulatory regimes protecting consumers against unauthorised use of cards, non-delivery of goods and services and non-conforming goods and services. For example, the UK Distance Selling Regulations<sup>30</sup> provide that if fraudulent use is made of a consumer's credit, debit or stored value card for distance selling, the consumer is entitled to cancel payment and be reimbursed in full by the card issuer. Under the Distance Selling Regulations, the onus to show that a debit was authorised is placed on the card issuer.

The Canadian fair trading legislation requires a card issuer to cancel or reverse any credit card payment (and associated interest or charges) on request by the consumer if the consumer



The Privacy Act sets base line standards which apply equally online and offline. However, the regulatory model established is essentially co-regulatory<sup>40</sup> with organisations encouraged to develop their own response to the NPP through codes of conduct. These codes can then be approved by the Privacy Commissioner. The Working Party notes that the Internet Industry Privacy Code is currently one of the few codes under consideration by the Privacy Commissioner<sup>41</sup>.

In addition to legislation and codes, the Privacy Commissioner provides detailed consumer information about online privacy issues and ways to enhance information privacy online, for example *5 steps to better on-line privacy*<sup>42</sup>.

Responsibility for regulation of information privacy particularly as regards the private sector rests with the Federal Attorney-General and the independent Office of the Federal Privacy Commissioner. The Working Party understands that the effectiveness of the *Privacy Amendment (Private Sector) Act 2000* will be reviewed in 2004.

At this time, the Working Party makes the following observations:

- The scope of Australia's privacy legislation is limited by the exemption of many Australian businesses from its application. Under section 6D of the Act, Small Business Operators are exempt from the application of the Privacy Act. An organisation is deemed to be a Small Business Operator if during a financial year its annual turnover for the previous financial year was \$3 million or less. Small Business Operators which trade in personal information or are associated with a larger organisation or providing health services are not exempt. Arguably, many online traders would be exempt from the Privacy Act.

- Many Australian websites do not publish privacy policies. An 'Internet Sweep' was conducted by the Australian Competition and Consumer Commission on 14 and 15 February 2001. The sweep of 250 Australian sites was part of a wider, international 48-hour sweep by 48 agencies in conjunction with the International Consumer Protection and Enforcement Network. Twenty-seven per cent of Australian e-tailers had posted privacy notices<sup>43</sup>. In May 2003, a Consumer Affairs Victoria survey of 380 Australian websites found that 27 percent had posted a privacy policy.
- The BPM states businesses should provide consumers with clear and easily accessible information about the way in which they handle personal information.
- In the US, legislation improved disclosure of data collection practices. The US Federal Trade Commission's April 2001 Children's Online Privacy Protection Act (COPPA)<sup>44</sup> compliance survey found that the vast majority – nearly 90 percent – of 144 sites that collected personal information from children had privacy policies as opposed to only 24 percent in 1998, before passage of the legislation<sup>45</sup>.
- It is also important that privacy policies are accessible<sup>46</sup>. Some e-traders have been criticised for designing privacy policies that are almost inaccessible to everyday site users through lengthy policies with no summary and no plain English<sup>47</sup>.

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<sup>40</sup> According to a news report, Privacy complaints soar in Australian IT on 2 September 2003, the Office of the Privacy Commissioner has been "deluged" by complaints about business misuse of personal information. While businesses were expected to self-regulate by establishing and administering industry specific codes, self-regulation has yet to emerge. Mr Crompton is quoted as saying "In the end, the office is the primary enforcer of privacy



**O a**

Some overseas jurisdictions have developed mandatory information disclosure requirements.

On 25 May 2001, Canadian Federal, Provincial and Territorial Ministers responsible for consumer affairs approved a new

The United Kingdom has implemented this Directive on 31 October 2000 via the Consumer Protection (Distance Selling) Regulations 2000. The Regulations require traders to disclose:

- their identity and street address
- their 'commercial purpose'
- the main characteristics of the product
- the (tax inclusive) price
- any delivery costs
- the payment, delivery and performance arrangements
- the statutory cooling-off right and process
- any contractual right to cancel
- the period the offer remains valid
- any minimum duration of a contract for services
- any substitute for unavailable product
- any after-sales service
- any guarantees, and
- any inability to cancel after the commencement of services.

The BPM, the EU E-commerce and Distance Selling Directives all identify similar sorts of information which should be disclosed to consumers – see following. The question is, should disclosure be mandatory or be left, as is the case now, to voluntary instruments and market forces.

### 7.3.1.1 Identity and address E-T trader

A common concern voiced by consumers is the difficulty determining who they are dealing with online<sup>56</sup>. When a consumer walks into a physical store, they automatically derive from their surroundings the store's trading name, its location or address, and a means by which to contact someone in case of any problems.

In the online world, that information is not obtained in the same way. It needs to be explicitly made available for the online consumer to have the same level of knowledge as the same customer in a physical store. Without that information, the online consumer is at a disadvantage

The key information relates to the identity of the business and a means to contact them either via mail, telephone or electronically in case of any problems.

These are positive disclosure requirements that place only a small or insignificant burden on the e-trader.

Clear disclosure of such information could provide consumers with a greater 'safety net' when problems arise with online traders, by enabling consumers to easily contact traders to resolve disputes. This may lead to more effective resolution of minor service difficulties and more serious contractual disputes.

It should be noted that the majority of Australian websites disclose this sort of information. It needs to be determined whether this information is important enough that it should be on every site.

Some identity information can currently be obtained through mechanisms like *WHOIS*. The public *WHOIS* service is a standard feature of Internet domain name systems around the world. It allows Internet users to query a website's domain name to find out the identity of the registrant.

For Australian domain names, the publicly available information is limited to the registrant's name and a contact e-mail address. The street or registered address of the trader and its telephone number is not disclosed<sup>57</sup>, according to Australian *WHOIS* policy.

<sup>56</sup> Eighty-one per cent of U.S. users polled said it is "very important" sites should list their e-mail address, street address or telephone number where they can be contacted, Consumer WebWatch Transparency Survey.

<sup>57</sup> The full data record is only available to law enforcement in the event of an official investigation.



The data available to the public on WHOIS can, on occasions, provide some valuable information to consumers to help in their initial assessment of the trustworthiness of a particular website. However, the technical competence to look up publicly available WHOIS data is arguably limited to a very small proportion of Internet users. Without specific consumer education strategies, this is unlikely to change.

A requirement to disclose name, address, telephone number and e-mail address is contained in the Victorian<sup>58</sup>, European, UK, US<sup>59</sup>, and Canadian legislation, as well as in the BPM, the ADMA code and proposed Australian national anti-spam legislation.

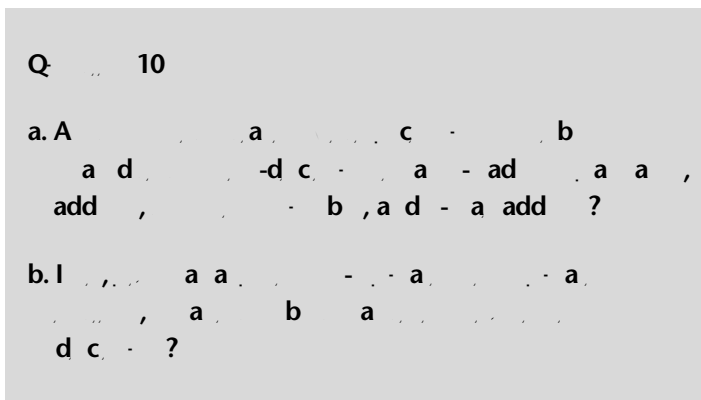
Costs should always be stated in the applicable currency. A standard format for disclosure of cost information could assist e-traders and reduce disputes with customers.

It should be noted that there are current prohibitions on false representations about price. Stating total cost, however, would constitute positive disclosure on the part of online traders and total price transparency.

A further issue that should be considered is in circumstances where full details of postal and delivery costs are not known at the time of the transaction. In these circumstances, the means of arriving at the total cost may need to be disclosed. A standard approach, when the price is not known at the time the contract is entered, is to state how the price will be determined<sup>61</sup>.

Customs charges in international orders, may not be known by a particular online business. Further it may be too onerous to expect businesses to obtain this information. In this case, it may be adequate for the trader to state that the customer is responsible for any customs charges.

A requirement is present in the Victorian, UK, and Canadian legislation, as well as in the BPM and the ADMA code.

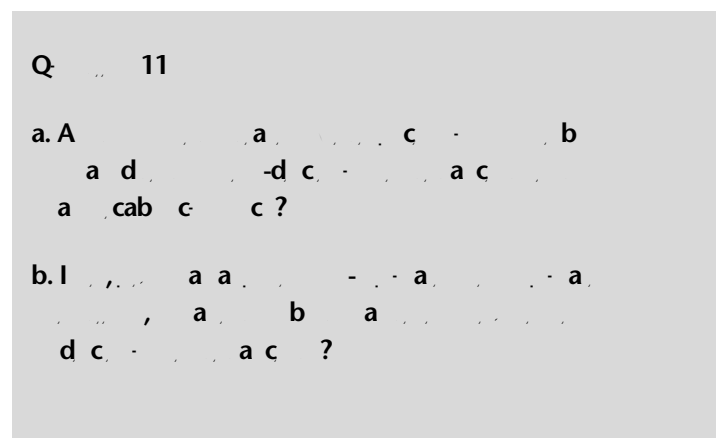


### 7.3.1.2 Total cost at the time of purchase

Another complaint common in surveys of consumers' attitudes to online shopping is that purchasers may incur extra costs which they were not expecting. Those costs could include delivery charges, handling fees, taxes, customs duties, or broker fees.

This is a very serious issue for those consumers who can feel they have been misled when they receive higher bills than expected<sup>60</sup>.

In a store, a label or tag usually states the total cost clearly. Online, the consumer may become confused when the total cost is not displayed clearly at the time of ordering. Having this information is even more important when paying before delivery and receipt of goods.



<sup>58</sup> The Victorian legislation only requires business name or contact telephone number.

<sup>59</sup> For all organisations subject to COPPA.

<sup>60</sup> When asked what information they thought websites should provide, 95 per cent of survey respondents said it is "very important" for e-commerce sites to specifically disclose all fees, Princeton Survey Research Associates (January 2002), A Matter of Trust: What Users Want from Web Sites, [http://www.consumerwebwatch.org/news/1\\_abstract.htm](http://www.consumerwebwatch.org/news/1_abstract.htm).

<sup>61</sup> See for example, the Fair Trading Act 1999 (Vic) section 61.

### 7.3.1.3 R - d /E c a . / Ca c a . P . c

Consumers should know what will happen if something goes wrong, such as the goods not arriving or arriving damaged. They are familiar with returning faulty goods to stores. Policies are usually posted or are available on demand and a customer service desk or manager can usually be located.

However, when traders are not close to the buyer or when they do not have a physical store that customers can visit, the process is complicated and uncertain. In these situations, consumers need clear information about return, refund, exchange, and cancellation policies in order to make an informed decision at the time of purchase and in the event of post-sales issues<sup>62</sup>.

Most businesses already have these policies. They would be available to a customer in a store and they arguably should be available to a customer online. Such information is fairly easily provided and may reduce disputes and service calls from customers.

A requirement is present in the UK, European, and Canadian legislation, as well as in the BPM and the ADMA code.

### 7.3.1.4 D . . . a a . /

Linked to concerns about identity and reliability are consumer fears about the delivery (or non-delivery) of their goods. These fears are exacerbated in distance sales such as B2C e-commerce when the consumer is not certain with whom they are dealing.

While the protection afforded consumers through chargebacks (see section 7.1) is significant, confidence could be improved by clear disclosure of when and how consumers could expect to receive the goods.

A requirement is present in the UK, and Canadian legislation, as well as in the BPM and the ADMA code.

Q . . . 12

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b. I . . . a a . . . - . . a . . . a .  
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. . . / - d / c a . /ca c a . . . c ?

Q . . . 13

a. A . . . a . . . c . . . b  
a d . . . -d c . . . d . . .  
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b. I . . . a a . . . - . . a . . . a .  
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<sup>62</sup> Eighty-eight percent of U.S. Internet users polled said it is very important e-commerce sites have a statement of policies for returning unwanted items or cancelling reservations, Consumer WebWatch Transparency Survey.

### 7.3.1.5 C a /D -

In the case of problems with a purchase from a local store, a consumer can talk face-to-face with someone who may be able to resolve their complaint.

Online, the process may not be so transparent and personal and consumers may feel more secure knowing how their complaint will be dealt with and what the process is should they have a problem. This information should also contain details of any dispute resolution service of which the e-trader is a member.

The May 2003 study of 380 Australian trader websites by CAV found 4 percent had clear information about complaints handling procedures. However, such disclosure may not provide to consumers any guidance on the standard of dispute resolution mechanisms to be provided.

A requirement is present in the BPM and the ADMA Code.

### 7.3.1.6 P d c - ab

It may be desirable for an e-trader to give the consumer the opportunity to detail the purpose for which they are acquiring the product or the result desired. Offline consumers have the opportunity to see and examine products before purchase. They can also seek the advice of the merchant. In B2C e-commerce the consumer is often relying on standard or generic information provided by the e-trader.

Allowing consumers to indicate the purpose for which the goods are to be used would enable section 74B of the Trade Practices Act – 'Actions in respect of unsuitable goods' – to apply.

This may be a cumbersome approach, which will not assist inarticulate consumers. The Canadian and UK legislation address this problem from a different angle, instead requiring provision of: 'a fair and accurate description of the product, including any technical or system specifications'.

Q 14

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Q 15

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 d c ?

### 7.3.1.7 Privacy and Consumer Protection

Exemptions from the privacy regulatory regime and the general low level of disclosure of privacy policies were noted in section 7.2.

While it is appropriate that national privacy legislation set out the obligations of traders with respect to information privacy, disclosure of such policies would be within the scope of state and territory Fair Trading legislation.

Requirements are present in the Canadian and US legislation<sup>63</sup>, elsewhere in European legislation, in the BPM and the ADMA code.

The UK Distance Selling Regulations give the consumer the right to cancel a contract and obtain a refund (minus costs for delivery) for whatever reason within seven working days from the date that the consumer received the goods. There are exceptions for perishable goods, custom-made goods and dated goods such as magazines.

There are advantages and disadvantages regarding a cooling-off right in online sales. There is not the same rationale for applying cooling-off rights online as there are with door-to-door sales – consumers are not likely to be subject to high pressure selling, if they do not wish to proceed with a sale, they can stop and compare other possibilities. A cooling-off right might place an e-trader at a competitive and cost disadvantage vis-à-vis a local trader where a cooling-off right does not apply.

On the other hand, online shopping is qualitatively different from offline shopping and even from other forms of distance selling like mail order. The speed of transacting can often deny consumers time to appropriately reflect on their intended purchase.

The ADMA Code of Practice<sup>65</sup> provides for a cooling-off period of seven business days from the receipt of goods, or for services, on the date the contract to supply services is made. ADMA members must ensure this right to cancel a contract is specifically mentioned or prominently displayed in contractual documentation.

There are exclusions from the above cooling-off. For example, the cooling off does not apply to contracts for made-to-measure goods or personalised goods, for goods which can be easily copied like books, computer software, videos or compact discs or goods which deteriorate rapidly. As many of the goods Australian consumers have tended to purchase online have been books and CD's, the cooling-off under the ADMA Code would not have applied.

Q 16

a. A a c b  
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 a a ?

b. I a a - a a  
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 a d ad c a a ?"

### 7.3.2 Cooling-off

Cooling-off rights have traditionally been used where a consumer is likely to be subjected to high pressure sales methods from which they can not easily walk away, for example door-to-door sales. A further rationale for cooling-off rights has been the consumer's inability to shop around and compare products and prices. The cooling-off gives the consumer time to re-consider and compare the purchase.

Legislative cooling-off rights in Australia currently generally only apply in the case of door-to-door selling. The non-contact sales provisions within the Victorian Fair Trading Act require an e-trader to disclose cooling-off (and other cancellation rights) where such rights are provided by the e-trader. Where a cooling-off right is provided as a condition of the contract, the Victorian legislation deems this to be 10 days<sup>64</sup>.

Q 17

S d b a a da c a  
 c c ac ?

Q 18



The CMC has proposed the following rules to deal with choice of forum in consumer contracts:

1. In circumstances where:

- the consumer contract resulted from a solicitation of business in the consumer's jurisdiction by or on behalf of the vendor and the consumer took all necessary steps for the formation of the contract in the consumer's jurisdiction, or
- the consumer's order was received by the vendor in the consumer's jurisdiction, or
- the consumer was induced by the vendor to travel to a foreign jurisdiction for the purpose of forming the contract and the consumer's travel was assisted by the vendor,
- the consumer has the option of proceeding against the vendor in either the consumer or the vendor's jurisdiction.

2. If a vendor took reasonable steps to avoid concluding contracts with consumers in a particular jurisdiction, it is

A comprehensive review of online ADR mechanisms was undertaken by the International Conflict Resolution Centre at the University of Melbourne on behalf of the Victorian Department of Justice<sup>69</sup>. The review, which is part of a broader project focusing on strengthening ADR, comprised a literature review of online ADR including 128 books, articles and online resources; analysis of 76 past and current online ADR sites; an analysis of five illustrative cases and liaison with researchers and experts in online ADR.

Notwithstanding the effort both locally and internationally in investigating and promoting the use of online ADR, and the current uncertainty surrounding questions of the applicable fora and law, several questions arise:

Q ... 20

W a b c a a cab a  
 d c a c ac a d d b  
 d c a d c a "a  
 a b a c ac  
 b "70

Q ... 21

S d b ca d A a a c a  
 c ac a d A a a b d  
 c d c a c ac a d  
 d b a d.

Q ... 22

G d b a a d  
 d a c a A a a  
 d a B2C c ac a  
 a ?

<sup>69</sup> See the Department of Justice website at: [http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Online\\_ADR/\\$file/Reseach\\_ADR\\_Exploration\\_Report\\_03.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Online_ADR/$file/Reseach_ADR_Exploration_Report_03.pdf)

<sup>70</sup> BPM section 50.

# “ Section 8 Options ”

# 8

The previous sections of this paper have looked at the issues and risks that face consumers making online purchases. Some of these like privacy concerns, and to a lesser extent, security of payment issues fall outside the jurisdiction of the Ministerial Council on Consumer Affairs. While the Council may have input into developments in these areas, it cannot set the agenda.

## 8.1 S a - Q

This envisages retention of the existing regulatory mix of consumer protection law – including enforcement; the voluntary BPM; education and information strategies.

### Ad a a

Current consumer protection legislation at the Commonwealth, State and Territory level applies equally online as offline. Rigorously enforced, current law is sufficiently robust to address many of the issues that consumers complain about, for example misleading representations and scams.

The TPA and mirror state and territory fair trading legislation have been on the statute books for many years and their general requirements are generally understood. This simplifies administration and compliance costs.

In addition to the existing law, the special aspects of e-commerce have been addressed by the development of best practice standards within the BPM. This incorporates standards on all the matters identified in section 7 of the paper.

In a developing market, it is appropriate to rely on "light-touch" regulation in the first instance. This will enable the market to develop without placing additional regulatory costs on e-traders. Further, where the nature and extent of the consumer detriment is not known, it is inappropriate to introduce new laws.

### D ad a a

Current law, while robust and effective, is essentially negative in that it prohibits unethical and undesirable behaviour but does not impose positive requirements on online traders. Consumers may need a range of additional information (as outlined in section 7.3) to enter the online market and to make informed purchasing choices.

The BPM has been in existence for three years and while its effectiveness has not been formally assessed, available evidence suggests the take up rate has not been significant.

Where the market does not address consumer concerns, it is appropriate for government to act and require adherence to specified standards. This can be criticised as adding to the regulatory burden, however the current approach has not seen online shopping emerge to the extent expected or envisaged. The additional regulation may, in fact, have only a small cost impact on business when overseas jurisdictions have implemented similar regulations. It might also be argued that clarity and certainty would assist the development of the market for online shopping.



Other jurisdictions, particularly the European Union and Canada have determined that governments, and especially ministers responsible for consumer protection need to take a more pro-active approach and have pioneered mandatory disclosure requirements.

Q 25

W a a a d d?

Q 23

I c a a d a a c add c c ?

## 8.2 O - a a

### 8.2.1 Ed- ca a d a

Consumer affairs agencies currently produce and provide reasonably extensive fact sheets on various e-commerce issues. Newer methods to guide consumers have also been developed, for example Consumer PING<sup>71</sup> and ShopSafe<sup>TM</sup><sup>72</sup>. These efforts could be increased.

#### Ad a a

Informed consumers know their rights and know what to look for when trading online. They are more likely to be able to assess the risks involved in a particular transaction.

#### D ad a a

There is already a plethora of information on online issues available online and offline. The issue is not that there is inadequate information available, but that it does not get to the consumers who need it when they need it.

Q 24

I a d c d- ca a d a a d ?

### 8.2.2 C - d a d c a c

As noted by the Parliament of Victoria Drugs and Crime Prevention Committee<sup>73</sup>, the ease with which fraud transcends domestic and international borders necessitates a high degree of co-operation between law enforcement and regulatory agencies. The OECD

*Recognising that fraudulent and deceptive commercial practices against consumers undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets, and*

*Recognising that most existing laws and enforcement systems designed to address fraudulent and deceptive commercial practices against consumers were developed at a time when such practices were predominately domestic, and that such laws and systems are therefore not always adequate to address the emerging problem of cross-border fraudulent and deceptive commercial practices, and*

*Recognising that, despite differing national systems and laws for the protection of consumers, a consensus exists on the need for a common framework to enable the further development of close co-operation among consumer protection enforcement agencies, to tackle cross-border fraudulent and deceptive commercial practices<sup>74</sup>,*

has recently released Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders. The Guidelines suggest some principles for co-operation and areas where closer co-operation is needed, for example, in regard to information sharing

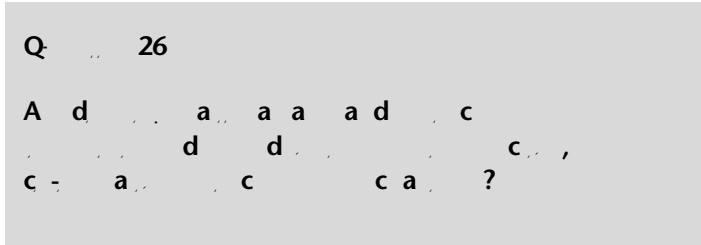
<sup>71</sup> Consumer PING is a free piece of software designed to assist consumer shopping on the Internet. See <http://www.consumerping.gov.au/content/what.asp>

<sup>72</sup> See section 7.1.

<sup>73</sup> Parliament of Victoria Drugs and Crime Prevention Committee, op.Cit page 166.

<sup>74</sup> OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders, 11 June 2003, page 7.

The concept of better co-operation and co-ordination in compliance work is unlikely to be countered. The challenge however is to put in place mechanisms to achieve co-operation. For example, consumer affairs agencies operating within Australia currently lack, agreed, formal protocols for handling of cross-jurisdictional complaints and alleged breaches of consumer legislation<sup>75</sup>.



### 8.2.3 W b a a a

The Web Seals of Approval Options Paper<sup>76</sup> released by the Working Party on 15 September 2003 looked at the role web seals or trustmarks could play in enhancing consumer confidence in the online world. Web seals are accreditation schemes established to promote good online practices and/or target specific problems perceived to hinder consumer confidence.

Current evidence suggests that within Australia web seal accreditation schemes have not contributed greatly to consumer confidence in online transactions. However, with further action – the Options paper canvasses various options including the development of a guide to web seals and the establishment of a national seal accreditation body similar to the TrustUK scheme, – web seals may provide a non-regulatory means of addressing the range of consumer concerns described in section 7.

New government regulations are generally only proposed where there is clear market failure and voluntary measures have failed to address the problems adequately.

The online sales market presents several risks for consumers which have been identified in this paper as those relating to payment security, risks to the privacy of personal information and fair trading concerns. Of this group, only fair trading concerns fall squarely within the jurisdiction of MCCA.

There is some evidence that consumers buying online do not get the information necessary to make informed purchasing decisions. Shopping offline, this information would be gauged directly, for example the location of the trader and the cost of the product. Online, this information may be missing or may not be presented in adequate detail.

One option is the development of an Internet Sales template,

A common Australian template might include the following:

### Information Disclosure Requirements

Suppliers would be required to disclose:

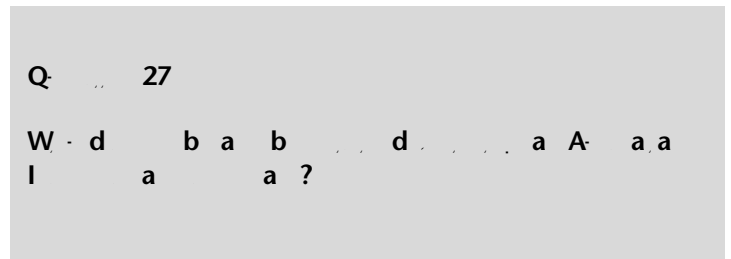
- their name, and if different, their business or trading name
- their business address (a physical address), telephone number and email address
- all costs, in the applicable currency
- a fair description of the goods or services including any relevant technical or systems specifications
- the terms, conditions and method of payment and any payment security measures exercised by the supplier
- the supplier's delivery arrangements including a delivery date
- the supplier's refund, exchange or cancellation policies
- the supplier's privacy arrangements.

The above information would need to be disclosed in a clear and comprehensive manner. It would also need to be easily accessible from the traders home page.

Cancellation rights would only apply where there was a failure to disclose the required information.

Additional government regulation would have advantages and disadvantages. The disadvantages are immediately apparent and relate to additional costs that would be imposed on e-traders and the cost and difficulty of enforcing any new law particularly beyond Australian borders<sup>78</sup>

The benefits are not so readily quantifiable. However, an information disclosure regime may lead to greater certainty about transactions thereby increasing consumer confidence in online transactions.



<sup>78</sup> In regard to enforcing rules beyond Australia's borders, it is interesting to note that while Australian consumers have in the past purchased more goods from









Consumer Affairs Victoria

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**W b** [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)