

# Trade Practices Act - review

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# Trade Practice Act

The objective of the Act is to enhance the welfare of Australians by promoting competition and fair trading and providing consumer protection.



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# Review and what's new

Key elements of today's review:

- Anti-competitive practices
- Unfair practices
- Unconscionable conduct
- Authorisations and notifications

What's new:

- Cartel conduct
- Collective bargaining notifications



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# Anti-competitive practices

## The Act prohibits:

- Anti-competitive agreements and exclusionary provisions between competitors
- Misuse of market power
- Exclusive dealing
- Resale price maintenance



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# Anti-competitive agreements

1. Agreements which involve market sharing or which restrict the supply of goods or services if they have the effect or purpose of substantially lessening competition;
2. Agreements between competitors which exclude or limit dealings with a particular supplier, customer or class of customer;
3. Agreements between competitors that fix prices
4. Secondary boycotts



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# Misuse of Market Power

A business that has a substantial degree of market power is prohibited from taking advantage of that power for the purpose of:

- Eliminating or substantially damaging a competitor
- Preventing the entry of a competitor
- Deterring competitors from engaging in competitive conduct in any market.



# Exclusive dealing

Agreements by a business restricting with whom or in what another business deals. One form is 'third line forcing' which involves the supply of goods or services on the condition that the purchaser acquire goods or services from a particular third party.



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# Resale price maintenance

Suppliers, manufacturers or wholesalers are prohibited from specifying a minimum price below which goods or services may not be resold or advertised for resale.



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# Unfair practices

Misleading or deceptive conduct

False or misleading representations

Not specifying the full cash price

Harassment or coercion

Unsolicited goods or services



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# Unconscionable conduct

The Act prohibits unconscionable conduct in both commercial dealings and consumer transactions.

Consumer transactions:

- Special disability or disadvantage
- The disability was sufficiently evident
- The stronger party took unfair or unconscionable advantage to obtain a benefit for itself.



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# Unconscionable conduct

## Commercial transactions:

- Imbalance of power between parties
- Unnecessary commercial conditions
- Documentation
- Undue influence or tactics
- Circumstances; costs and conditions elsewhere
- Singled out for a doing over
- With-holding future intentions
- Willingness to negotiate
- Acting in good faith and applying industry Codes



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# Authorisations and notifications

The ACCC can grant immunity from legal proceedings for some arrangements or conduct that might otherwise breach the anti-competitive practices of the Act.

Examples:

Australian Dairy Farmers Authorisation

Victorian Chicken Growers Authorisation

Bob Jane Franchising Notification



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# What's new

ACCC concentrating on Cartel conduct  
Prison sentences for cartel participants  
Immunity Policy for Cartel conduct whistle blower

New legislation allowing Collective bargaining to assist small business



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# Cartel conduct

- Price fixing
- Market sharing
- Collusive tendering (bid rigging)
  
- Penalties:
- Heavy fines
- Jail up to 2 years (soon to be enacted) and the ACCC is funded and geared to pursue criminal cases



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# Cartel Conduct

A cartel exists when two or more businesses that should be competing with each other agree to cooperate rather than act independently. The agreement does not have to be in writing and may involve:

- Agreements about price
- Agreements to divide up a market
- Agreements that they will not compete genuinely for particular tenders



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# Cartel conduct

Harm caused to you:

- Consumers and businesses pay higher prices for goods and services
- Government agencies pay higher prices for goods and services which effects tax and rates
- Innovation and efficiency are stifled
- Average cartel lasts 6 years and the price of affected commodities rises by 10%



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# Cartel indicators

## Industry factors

- Suppliers
- Buyers
- Products
- Market characteristics



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# Cartel indicators

## Behavioural signs

- Pricing
- Tendering
- Statements by suppliers



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# Cartel indicators

If you suspect you have been a victim of cartel conduct:

1. Record the details of events or conversations
2. Note the date, time and relevant names
3. Keep records of dealings with suppliers
4. Do not discuss your suspicions with suppliers
5. Continue to act normally
6. Contact the ACCC



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# Immunity policy

- Available in detail on ACCC web site which includes the terms and conditions.

Conditions apply but in general terms:

- Only applies to the first to register
- Must give **full co-operation**
- You can register a marker
- Will include a “stay out of jail” card and immunity from personal penalties



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