

CHC42608

Certificate IV Celebrancy

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Legislative Handbook

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Other sources of Legislation required to complete CHC42608

The Marriage Act 1961 please find at www.ag.gov.au

Marriage regulations please find at www.ag.gov.au

Explanatory material on the Marriage Act please find at

www.ag.gov.au

The migration Act of Australia

The Dvd “When words are not Enough”

CODE OF PRACTICE FOR MARRIAGE CELEBRANTS ¹

(regulation 37L)

1 Application of this Code of Practice

This Code of Practice applies to Marriage Celebrants (being persons registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*).

Note Under paragraph 39I(1)(b) of the *Marriage Act 1961*, if the Registrar of Marriage Celebrants is satisfied that a Marriage Celebrant has not complied with an obligation under section 39G of that Act, including this Code of Practice, the Registrar may take disciplinary measures against the Marriage Celebrant.

2 High standard of service

A Marriage Celebrant must maintain a high standard of service in his or her professional conduct and practice.

3 Recognition of significance of marriage

A Marriage Celebrant must recognise the social, cultural and legal significance of marriage and the marriage ceremony in the Australian community, and the importance of strong and respectful family relationships.

4 Compliance with the Marriage Act and other laws

A Marriage Celebrant must:

- (a) solemnise marriages according to the legal requirements of the *Marriage Act 1961* (Cth); and
- (b) observe the laws of the Commonwealth and of the State or Territory where the marriage is to be solemnised; and
- (c) prevent and avoid unlawful discrimination in the provision of marriage celebrancy services.

5 General requirements for marriage ceremonies

A Marriage Celebrant must respect the importance of the marriage ceremony to the parties and the other persons organising the ceremony. To that end, the Marriage Celebrant must do the following:

¹ Source: <http://www.ag.gov.au>

(a) give the parties information and guidance to enable them to choose or compose a marriage ceremony that will meet their needs and expectations;

(b) respect the privacy and confidentiality of the parties;

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(regulation 37L)

(c) maintain appropriate facilities to interview parties and provide office facilities, including facilities for the secure storage of records;

(d) within a reasonable time before the marriage ceremony:

(i) confirm all details with the parties; and

(ii) ensure the return of all personal documents belonging to the parties (unless it is necessary to keep the documents for the ceremony); and

(iii) sign any necessary declarations;

(e) if requested by the parties, conduct a marriage ceremony rehearsal;

(f) ensure that his or her personal presentation is of an appropriate standard for the marriage ceremony, and respect the expectations of the parties in relation to the ceremony;

(g) make efforts to ensure that the marriage ceremony is audible to all those present (using audio equipment, if required);

(h) ensure accuracy in the preparation of documents, and in the conduct of the marriage ceremony;

(i) arrive at the venue for the marriage ceremony no later than the time agreed with the parties;

(j) if the Marriage Celebrant has agreed to perform more than one marriage ceremony on the same day:

(i) ensure that the parties to each marriage receive a level of service that meets their separate and special requirements; and

(ii) be available at the venue for each marriage ceremony at least 20 minutes before the agreed commencement of each ceremony (unless, in the case of consecutive ceremonies, the ceremonies are to be held at the same venue);

(k) ensure that all relevant documents are completed and sent to the appropriate registering authority within 14 days after the marriage ceremony, as required by section 50 of the *Marriage Act 1961*;

(l) in relation to the provision of marriage services, accept evaluative comment from the parties, and use any comments to improve performance;

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(regulation 37L)

(m) give the parties information about how to notify the Commonwealth Attorney-General's Department of any concerns or complaints they may have regarding the marriage services provided by the Marriage Celebrant.

6 Knowledge and understanding of family relationships services

A Marriage Celebrant must:

- (a) maintain an up-to-date knowledge about appropriate family relationships services in the community; and
- (b) inform parties about the range of information and services available to them to enhance, and sustain them throughout, their relationship.

PRIVACY ACT 2

Below is a sample from the Privacy Act in relation to training which is the same underlying legislation relating to Marriage Celebrants. As a Marriage Celebrant, ensuring privacy of your client data is not only federal law, but part of the celebrant Code of Practice. It is your responsibility to maintain your client records in a secure and private location. It is against the law to resell or pass on your couple's information to other providers. You also have to ensure that the data is backed up regularly and is safe from hackers/viruses or other threats.

53. Obligations Under the Privacy Act 1988

Providers must comply with the information privacy principles (IPPs), set out in section 14 of the *Privacy Act 1988*, when they handle personal information obtained for the purposes of Chapter 3 (assistance to students) and Chapter 4 (repayment of loans) of HESA.

Providers and their officers, employees and those who perform services by or on behalf of the provider, must ensure that:

- ❖ personal information is collected in accordance with IPPs 1-3;
- ❖ suitable storage arrangements, including appropriate filing procedures, are in place;
- ❖ suitable security arrangements exist for all records containing personal information;
- ❖ access to a student's own personal information held by the provider is made available to the student at no charge;
- ❖ records are accurate, up-to-date, complete and not misleading;
- ❖ where a record is found to be inaccurate, the correction is made;
- ❖ where a student requests that a record be amended because it is inaccurate but the record is found to be accurate, the details of the request for amendment are noted on the record;

² Source: <http://www.dest.gov.au>

- ❖ the personal information is only to be used for the purposes for which it was collected, or for other purposes where expressly allowed by IPP 10; and
- ❖ personal information is only disclosed in accordance with IPP 11.

Providers must also have a procedure under which a student may apply to receive a copy of the personal information held by the provider in relation to that student [HESA – s19-60(2)].

More information can be found in the Privacy Act 1988. Links to this material is on the *Resources Required* section of this learner guide. Read through the Information Privacy Principles on the next few pages.

INFORMATION PRIVACY PRINCIPLES

Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

- (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
- (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 2 - Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

- (c) the purpose for which the information is being collected;
- (d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
- (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first mentioned person, body or agency to pass on that information.

Principle 3 - Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector:

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4 - Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

(a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and

(b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

Principle 5 - Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

(a) whether the record-keeper has possession or control of any records that contain personal information; and

(b) if the record-keeper has possession or control of a record that contains such information:

(i) the nature of that information;

(ii) the main purposes for which that information is used; and

(iii) the steps that the person should take if the person wishes to obtain access to the record.

2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

3. A record-keeper shall maintain a record setting out:

(a) the nature of the records of personal information kept by or on behalf of the record-keeper;

(b) the purpose for which each type of record is kept;

(c) the classes of individuals about whom records are kept;

(d) the period for which each type of record is kept;

(e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and

(f) the steps that should be taken by persons wishing to obtain access to that information.

4. A record-keeper shall:

(a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and

(b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6 - Access to records containing personal information

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

Principle 7 - Alteration of records containing personal information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:

(a) is accurate; and

(b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.

3. Where:

(a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and

(b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8 - Record-keeper to check accuracy etc of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9 - Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
 - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - (c) use of the information for that other purpose is required or authorised by or under law;
 - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
 - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

Principle 11 - Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
- (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law; or
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

DISCRIMINATION LAWS

In performing your role as Marriage Celebrant, you need to ensure you give fair and equal treatment to all people. Please review the Age Discrimination Act, Disability Discrimination Act, Human Rights and Equal Opportunity Commission Act, Racial Discrimination Act, Sex Discrimination Act and your relevant State/Territory Discrimination Act. Links to this material is on the *Resources Required* section of this learner guide. Also, please review the below overview of each act.

What does the Sex Discrimination Act do?

The Sex Discrimination Act 1984 makes it against the law to treat you unfairly because of your sex, marital status or because you are pregnant or might become pregnant. It is also against the law to dismiss a person from their employment because of their family responsibilities.

The Sex Discrimination Act also makes sexual harassment against the law.

The Sex Discrimination Act covers all Australia. There are also anti-discrimination laws in all states and territories. The Sex Discrimination Act does not cover all unfair treatment.

When can the law be used?

You can use the Sex Discrimination Act to get fair treatment in:

- ❖ Employment - getting a job, equal pay, training, promotion, fair conditions of employment, being dismissed
- ❖ Education - at school, TAFE, private training providers and at universities
- ❖ Accommodation and housing - renting or buying a house or flat
- ❖ Goods and services - when buying something, applying for a loan or credit, seeking assistance from government departments, lawyers, doctors and hospitals or going to restaurants, shops or entertainment venues.

What is sex discrimination?

Direct sex discrimination happens when a man or a woman is treated less favourably than a person of the opposite sex would be treated in the same or similar circumstances. It would be direct sex discrimination if a company paid men more than women who are doing the same work. It would also be sex discrimination if a bank refused to approve a loan because the person applying for it was a woman.

Discrimination also happens when there is a condition, requirement or practice that is the same for everyone but has an unfair effect on a particular group of people. This is known as indirect discrimination. For example, a policy that says only full-time workers will be promoted might disadvantage women who are more likely to work part-time because of caring responsibilities.

What is sexual harassment?

Sexual harassment is any unwanted or unwelcome sexual behaviour. It has nothing to do with mutual attraction or friendship. Examples include:

- ❖ unwelcome physical touching
- ❖ staring or leering
- ❖ suggestive comments or jokes
- ❖ unwanted requests to go out on dates
- ❖ requests for sex

- ❖ intrusive questions about your private life or body
- ❖ displaying posters, magazines or screen savers of a sexual nature
- ❖ emailing pornography or rude jokes

Everyone has the right to be safe and free from harassment while at work. The Sex Discrimination Act also covers you if you are sexually harassed when you are purchasing a good or a service or when you are going to school or studying at TAFE or universities.

What is pregnancy discrimination?

Pregnancy discrimination occurs when a woman is treated less favourably than another person simply because she is pregnant or because she may become pregnant. Indirect pregnancy discrimination occurs when there is a requirement or practice that disadvantages pregnant women.

Pregnancy discrimination can occur if you are treated in any of the following ways because you are pregnant or might become pregnant:

- ❖ refusing to employ you or promote you
- ❖ dismissing or retrenching you
- ❖ excluding you from a training course
- ❖ reducing your hours of work
- ❖ transferring you to another position when there are no valid safety or medical reasons for this
- ❖ demoting you or reducing your seniority
- ❖ refusing you accommodation or goods or services
- ❖ excluding you from an educational institution

What can I do if someone discriminates against me or sexually harasses me?

You may want to deal with the harassment or discrimination yourself by raising it directly with the people concerned. If this does not resolve the situation, you or someone else on your behalf, such as a solicitor or trade union, can make a complaint to the Human Rights and Equal Opportunity Commission.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. If you are not able to put your complaint in writing, the Commission can help you with this. The Commission also has a complaint form to help you make a complaint. A complaint can be made in any language. The Commission can arrange an interpreter in your language if this is needed. You can also lodge your complaint electronically through the website.

What will happen to your complaint?

The Human Rights and Equal Opportunity Commission has to decide if your complaint is covered by the Sex Discrimination Act. If it is, the Commission will investigate the complaint.

If the Commission cannot deal with your complaint we will write to you and explain why. Investigation may include writing to the other people involved to get their side of the story. Then the Commission will work with both of you to try and find a solution that everyone can agree with. This is called conciliation. If conciliation does not work, you can decide whether to take your complaint further by taking your complaint to the Federal Court or the Federal Magistrates Service.

Where can I find out more?

For further information on how to make a complaint please refer to the Commission's Complaint Guide or contact the Commission at:

Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Complaints Info line: 1300 656 419 (cost of a local call)
Email: complaintsinfo@humanrights.gov.au
Or visit our website at www.humanrights.gov.au

If you are deaf or hearing impaired, the Commission can arrange for an Auslan interpreter if this is needed. You can also communicate with us by TTY by calling 1800 620 241.

If you are blind or visually impaired the Commission can provide on request information in alternative formats. If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment.

What is the Disability Discrimination Act?

The Disability Discrimination Act 1992 is a federal law which can be used to address discrimination in many areas of public life.

Who is this law for?

The Disability Discrimination Act makes it against the law to treat you unfairly because of your disability. The Disability Discrimination Act is for anyone with a disability, whatever the disability is. You are also covered if you had a disability, or people think you have a disability and discriminate against you because of it. People who are relatives, friends, and carers of people with a disability are also protected by this law.

When can this law be used?

You can use the Disability Discrimination Act to get fair treatment in:

- ❖ Work - getting a job, equal pay, training, promotion, being dismissed, getting 'reasonable adjustment' for your disability
- ❖ Education - at school or enrolling in a course at TAFE, university or other colleges
- ❖ Where You Live - renting or buying a house or flat

- ❖ Getting or Using Services - using shops, restaurants, banks, theatres, sports and social clubs, swimming pools, public transport, dentists and doctors, insurance and superannuation, government services, and getting access to these and other public places.
- ❖ You can also use the Disability Discrimination Act if you are harassed (like being called names or put down) because of your disability.

Direct disability discrimination happens when a person with a disability is treated less favourably than a person without the disability would be treated in the same or similar circumstances. It would be direct disability discrimination if you were refused entry to a nightclub because you have a disability and use a wheelchair but people who did not use a wheelchair were still being allowed into the club.

Discrimination also happens when there is a requirement or condition or practice that is the same for everyone but has an unfair effect on a particular group of people. This is known as indirect discrimination. For example, requiring a deaf employee to attend meetings where no Auslan interpreter is provided to enable them to understand what is being said could be indirect discrimination. Or requiring a person to be able to climb stairs to enter a theatre or restaurant could be indirect discrimination as a person who uses a wheelchair can not climb stairs.

The Disability Discrimination Act states that in some circumstances it is not unlawful for a person to discriminate against a person with a disability. For example, where a person can not perform the inherent requirements of a job it is not unlawful for an employer to not employ the person or to dismiss the person. However, the employer has to have considered whether the person could perform the requirements of the job with 'reasonable adjustment' for the disability. For example could a person with a vision impairment perform a clerical job with voice activated software. If it would impose an 'unjustifiable hardship' on the employer to provide the reasonable adjustment, it may not be unlawful discrimination. For example if the employer was a small business and had to put a lift in to make the workplace accessible, it might impose an unjustifiable hardship on it.

'Reasonable adjustment' and 'unjustifiable hardship' also apply in other areas covered by the Disability Discrimination Act such as education, access to premises and the provision of goods, services and facilities.

What can I do if someone discriminates against me?

If you think you have been discriminated against because of your disability, you or someone else on your behalf (like a friend, an advocate or union) can complain to the Human Rights and Equal Opportunity Commission. It does not cost anything to make a complaint. Your complaint needs to be put in writing. If you cannot write your complaint down you can send it to us by email, you can get someone else to write down your complaint or you can ask us to help you write it down. You can also lodge a complaint electronically through the website.

The complaint should say what happened, when, where, who was involved, and give the names of anyone else who can say what happened.

What will happen with my complaint?

The Human Rights and Equal Opportunity Commission has to decide if your complaint comes under the Disability Discrimination Act. If it does, the Commission will investigate the complaint. If the Commission cannot deal with your complaint we will write to you and explain why.

Investigation may include writing to the other people involved to get their side of the story. Then the Commission will work with both of you to try to find a solution which everyone can agree with. This is called conciliation. If conciliation does not work, you can decide whether to take it further by taking your complaint to the Federal Court or the Federal Magistrates Service

Where can I find out more?

If you want more information about the Disability Discrimination Act or the complaint handling process you can contact the Commission.

Human Rights and Equal Opportunity
Commission GPO Box 5218
Sydney NSW 2001

Complaints Info line: 1300 656 419 (local call)
TTY: 1800 620 241 (toll free)
Fax: (02) 9284 9611
E-mail: complaintsinfo@humanrights.gov.au
Web site: www.humanrights.gov.au

If you are deaf or hearing impaired, the Commission can arrange for an Auslan interpreter if this is needed. You can also communicate with us by TTY by calling 1800 620 241.

If you are blind or visually impaired the Commission can provide on request information in alternative formats.

If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment.

Disability discrimination legal services

There are also legal services which provide free advice about discrimination to people with disabilities.

NSW Disability Discrimination Legal Centre

Phone: (02) 93107722
Toll Free: 1800 800 708
Fax: (02) 9310 7788
TTY: (02) 93104320
Toll Free TTY: 1800 644 419

Welfare Rights Legal Centre (ACT)

Ph: (02) 6257 2931
Fax: 02 6257 4801

Darwin Community Legal Service (NT)

Ph: 08 8982 1111
Fax: 08 8982 1112

Disability Discrimination Law Advocacy Service (VIC)

Phone: 03 9654 8644
Toll free 1300882872
TTY 03 9654 6817

Sussex St Legal Centre (WA)

Phone: 08 9470 2676
Fax: 08 9470 1805

Disability Discrimination Act Legal Service (SA)

Phone: 08 8342 1800

Fax: 08 8342 0899

Welfare Rights Legal Centre (QLD)

Phone: 07 3847 5532

Fax: 07 3847 5538

TTY: 07 3847 5533

Cairns Community Legal Centre (QLD)

Phone: 07 4031 7688

Toll free: 1800 650 197

TTY: 07 4031 7179

Launceston Community Legal Centre (TAS)

Ph: 03 6334 1577

Toll free: 1800 066 019

TTY: 03 6334 1949

What is the Racial Discrimination Act?

The Racial Discrimination Act 1975 (the RDA) makes racial discrimination against the law.

It aims to ensure that everyone is treated equally, regardless of their race, colour, descent, or national or ethnic origin. This legislation covers all of Australia. Further provisions against offensive behaviour based on racial hatred were added to the Racial Discrimination Act 1975 on 13 October 1995.

What Is Racial Discrimination?

Racial discrimination happens when someone is treated less fairly than someone else in a similar situation because of their race, colour, descent or national or ethnic origin. It would be discrimination if a real estate agent would not rent you a house because you are an Aborigine.

Racial discrimination can also happen when a policy or rule appears to treat everyone in the same way, but actually has an unfair effect on more people of a particular race, colour, descent or national or ethnic origin than others. For example it may be discrimination if there is a policy that says you have to be a particular height or weight to be employed in the defence forces.

When can the law be used?

You can use the Racial Discrimination Act to get fair treatment in:

- ❖ Employment - when seeking employment, training, promotion, equal pay or conditions of employment.
- ❖ Land, Housing and Accommodation - when buying a house or land, or when renting a flat or a house.
- ❖ Provision of Goods and Services - when buying something, applying for credit, using banks, seeking assistance from government departments, lawyers, doctors and hospitals, or attending restaurants, pubs, entertainment venues, and so on.
- ❖ Access to Places and Facilities for use by the Public - when trying to get into parks, libraries, government offices, hotels, places of worship or entertainment centres.

- ❖ Advertising - an advertisement for a job which states that people from a certain ethnic group cannot apply.

What is Racial Hatred?

Unlawful racially offensive behaviour can include public acts based on the race, colour, national or ethnic origin of a person or group of people which are likely to offend, insult, humiliate or intimidate.

Unlawful offensive behaviour might include:

- ❖ writing racist graffiti in a public place
- ❖ making racist speeches at a public rally
- ❖ placing racist posters or stickers in a public place
- ❖ making a racially abusive comment in a public place eg shops, workplaces, parks, public transport
- ❖ offensive racist comments in a newspaper or other publication

If you feel that you have been insulted or abused because of your race, it is important to check the following before making a complaint:

Did it happen publicly?

The act must have occurred within sight and hearing of other people, (although other people do not have to be present) or in a place to which the general public is invited or has access. If the act happened in a private telephone conversation or in a private place such as someone's home, it is **not** unlawful.

How serious was it?

The act must have, when considering all the circumstances, caused you or a group of people to feel offended, insulted, humiliated or intimidated. If the act was relatively trivial, it is probably not unlawful.

Is it an acceptable type of free speech and therefore legal?

The racial hatred provisions state that the following things are not unlawful if "**done reasonably and in good faith**":

- ❖ **an artistic work or performance** - for example, a play in which racist attitudes are expressed by a character.
- ❖ **an academic publication, discussion or debate** - for example, discussing and debating public policy such as immigration, multiculturalism, or special measures for particular groups.
- ❖ **a fair and accurate report on a matter of public interest** - for example, a fair report in the media of an act of racial incitement or racially offensive conduct.
- ❖ **a fair comment** if the comment is an expression of a person's genuine belief.

Taking action against racial hatred

If you have been the target of racially offensive behaviour there are a number of things you can do about it:

- ❖ talk directly to the person or organisation responsible for the behaviour;
- ❖ seek the assistance of an organisation which represents your racial, ethnic or national group eg: a Migrant Resource Centre or an Aboriginal Legal Centre;
- ❖ for complaints about media stories or broadcasts, complain to the Australian Broadcasting Authority; the Advertising Standards Council for advertisements; or the Press Council for newspaper stories. You can also complain to the Editor or Manager of the media organisation.
- ❖ for complaints about neighbours, you may approach the Community Justice Centres to assist in resolving the problem or if you live in public housing then advise the Department of Housing;
- ❖ if threatened with violence or violently attacked go to the police.

What can I do if someone discriminates against me or vilifies me because of my race?

If the above processes do not resolve the situation, you or someone else on your behalf, such as a solicitor or trade union, can make a complaint to the Human Rights and Equal Opportunity Commission.

A complaint must generally be made by a person who has been **personally affected** by the alleged unlawful discrimination.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. If you are not able to put your complaint in writing, the Commission can help you with this. The Commission also has a complaint form to help you make a complaint. A complaint can be made in any language. The Commission can arrange an interpreter in your language if this is needed. You can also lodge your complaint electronically through the website.

What will happen to your complaint?

The Human Rights and Equal Opportunity Commission has to decide if your complaint is covered by the Racial Discrimination Act. If it is, the Commission will investigate the complaint.

If the Commission cannot deal with your complaint we will write to you and explain why.

Investigation may include writing to the other people involved to get their side of the story. Then the Commission will work with both of you to try and find a solution that everyone can agree with. This is called conciliation. If conciliation does not work, you can decide whether to take your complaint further by taking your complaint to the Federal Court or the Federal Magistrates Service.

Where can I find out more?

For further information on how to make a complaint please refer to the Commission's Complaint Guide or contact the Commission at:

Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Complaints Info line: 1300 656 419 (cost of a local call)
Email: complaintsinfo@humanrights.gov.au
Or visit our website at www.humanrights.gov.au

If you are deaf or hearing impaired, the Commission can arrange for an Auslan interpreter if this is needed. You can also communicate with us by TTY by calling 1800 620 241.

If you are blind or visually impaired the Commission can provide on request information in alternative formats. If you are thinking about making a complaint, you might also want to consider obtaining legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment.

What is the Age Discrimination Act?

The Age Discrimination Act 2004 ("the ADA") is a federal law which can be used to address discrimination in many areas of public life.

Who is this law for?

The ADA makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians.

When can this law be used?

The ADA is useful in ensuring a person is treated fairly in areas such as:

- ❖ **Work** - getting a job, terms and conditions of a job, training, promotion, being dismissed (voluntary work and domestic duties in private households are not covered under the law)
- ❖ **Education** - at school or enrolling in a course at TAFE, university, other colleges or other educational institutions
- ❖ **Where You Live** - renting or buying a house or flat
- ❖ **Getting or Using Services** - using shops, restaurants, banks, theatres, sports and social clubs, public transport, dentists, doctors, superannuation, insurance, credit and government services,
- ❖ **Administration of Commonwealth laws and programs**
- ❖ **Asking for particular information** - asking your age during interviews

Direct age discrimination happens when a person is treated less favourably because of their age than a person of another age group would be treated in the same or similar circumstances. It could be direct age discrimination if a person is not employed simply because of their age. Another example could be where an older person is not employed because it is assumed that an older person would not have adequate computer skills

Discrimination also happens when there is a requirement or condition or practice that is the same for everyone but has an unfair effect on a person of a particular age.

This is known as indirect discrimination. It could be indirect discrimination if an employer requires an older person meet a physical fitness test which more young people can to meet, if the fitness standard is not reasonable for the job in question.

The ADA however states that it is not unlawful for a person to discriminate against a person because of their age where a person can not perform the inherent requirements of a job.

Exemptions:

Like other anti- discrimination laws, the ADA provides for exemptions to its application. These include:

- ❖ Commonwealth laws that govern taxation, social security, migration and superannuation
- ❖ State laws
- ❖ Certain health programmes
- ❖ Youth Wages or direct compliance with Industrial agreements and awards

Positive Discrimination:

The ADA also provides it is not unlawful to provide a benefit to a particular age group and the action was intended to meet a need that arises from that age group. For example discounts and concessions provided to older Australians for services and/or facilities or special assistance provided to homeless teenagers for accommodation.

What can I do if someone discriminates against me?

If you think you have been discriminated against because of your age, you or someone else on your behalf (like a friend, an advocate or union) can complain to the Human Rights and Equal Opportunity Commission. It does not cost anything to make a complaint.

Your complaint needs to be put in writing. You can also lodge your complaint electronically through our website. If you cannot write your complaint down you can get someone else to write down your complaint or you can ask us to help you write it down. The complaint should say what happened, when, where, who was involved.

What will happen with my complaint?

The Human Rights and Equal Opportunity Commission has to decide if your complaint comes under the ADA. If it does, the Commission will investigate the complaint. If the Commission cannot deal with your complaint we will write to you and explain why.

Investigation usually means writing to the other people involved to get their side of the story.

The Commission also tries to work with both parties to the complaint to find a solution which everyone can agree with. This is called conciliation. If conciliation does not work, you can decide whether to take it further by taking your complaint to the Federal Court of Australia or the Federal Magistrates Court.

Where can I find out more?

If you want more information about the Age Discrimination Act or the complaint handling process you can contact the Commission.

Human Rights and Equal Opportunity Commission

GPO Box 5218
Sydney NSW 2001

Complaints Info line: 1300 656 419 (local call)

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

E-mail: complaintsinfo@humanrights.gov.au

Web site: www.humanrights.gov.au

If you are deaf or hearing impaired, the Commission can arrange for an Auslan interpreter if this is needed. You can also communicate with us by TTY by calling 1800 620 241.

If you are blind or visually impaired the Commission can provide on request information in alternative formats.

What are human rights?

The concept of human rights is very broad. It includes rights to adequate food and shelter, free speech and a fair trial. In the Australian community human rights are generally understood to mean the right to be treated fairly and not to be discriminated against. Everyone has human rights regardless of sex, race, disability or religion or whether a person is lawfully within the territory of Australia. Human rights allow people to live a life that they choose free from discrimination and harassment.

Human rights are usually divided into two groups

- ❖ civil and political rights and
- ❖ economic, social and cultural rights.

Civil and political rights protect people from any unfair exercise of power by the government. Economic and social rights include such rights as adequate health care, education, a clean environment and welfare assistance.

In the last 50 years, under the authority of the United Nations, the international community has developed a number of international declarations and conventions that cover human rights. Australia has become a party to many of these. That means it has promised to protect and promote these rights for everyone in Australia. International human rights instruments provide the Australian community with standards by which it can measure equality and fairness. The human rights contained in these instruments are brought into Australia law through the enactment of domestic legislation.

Legislation by state and federal parliaments provides legal protection for many fundamental human rights. The *Sex Discrimination Act 1984* (the SDA), the *Racial Discrimination Act 1975* (the RDA) and the *Disability Discrimination Act 1992* (the DDA) have been enacted to implement international human rights instruments which protect people from discrimination on the basis of sex, race or disability in certain areas of public life. The various Crimes Acts, welfare legislation, health and education legislation and Acts which govern fair court procedures also provide an important means of protecting

people's human rights and often reflect the principles contained in international declarations and conventions.

What human rights are covered by the *Human Rights and Equal Opportunity Commission Act 1986*?

The Commission administers the SDA, RDA and DDA. It also administers the *Human Rights and Equal Opportunity Commission Act 1986*. This piece of federal legislation brings into Australian law the rights contained in certain international human rights instruments. The Act provides people with a mechanism to lodge a complaint about breaches of these human rights. It also provides a conciliation process to attempt to resolve the alleged breach. If conciliation is not successful or not appropriate and the Commission finds that there has been a breach of human rights the Commission must report on the matter to the Federal Attorney-General. The report must be tabled in parliament.

This fact sheet focuses on what human rights are covered by this Act, including the limitations on the Commission's powers to protect these rights. Not all international human rights are included.

Under the Act human rights are defined in a very specific way. If an action does not come within this strict definition, it is not covered by the Act.

For an action to constitute a breach of a person's human rights under the Act two requirements must be met

- ❖ the organisation against which you are complaining must be the Commonwealth or one of its agencies
- ❖ the action you are complaining about must breach a right or infringe a freedom recognised in the international human rights instruments scheduled to or declared under the Act.

The following international instruments are scheduled to or declared under the Act: the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CROC), Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief, Declaration on the Rights of Mentally Retarded Persons and Declaration on the Rights of Disabled Persons. The following international human rights instruments are **not** included: the International Covenant on Economic, Cultural and Social Rights, the Convention relating to the Status of Refugees, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Prevention and Punishment of the Crime of Genocide.

The ICCPR recognises a number of very important civil and political human rights and freedoms including

- ❖ the right to life
- ❖ freedom from torture or cruel, inhuman, or degrading treatment or punishment
- ❖ the right not to be held in slavery or servitude
- ❖ the right not to be subjected to arbitrary arrest or exile
- ❖ the right to humane conditions and treatment while in detention
- ❖ the right to a fair and public hearing
- ❖ freedom of thought and religion

- ❖ freedom of opinion and expression
- ❖ freedom of association and assembly
- ❖ the right to vote.

CROC provides a detailed set of civil, political, economic, social and cultural rights that apply to all people under the age of 18.

The Act does not apply to unfair treatment or human rights violations by territory, state or local governments or by private individuals. Even if you believe you have been treated unfairly by the Commonwealth, you are only able to make a complaint under the Act if the treatment could breach a human right that is recognised by the Act. Additionally, the Act does not cover complaints where the events complained of are the result of the direct operation of legislation, for example, decisions to detain a person that are in direct compliance with the *Migration Act 1958*.

For the purposes of the Act the following would not constitute a breach of human rights

- ❖ negligence by a medical practitioner or a hospital
- ❖ harsh conditions of detention in relation to, or unfair treatment or punishment of, a person who is a State or Territory prisoner
- ❖ unfair treatment by primary/secondary school teachers or education providers
- ❖ actions taken under State or Territory mental health legislation
- ❖ decisions not to grant or to end social security or other welfare payments.

The following may constitute a breach of human rights under the Act

- ❖ unfair conditions in relation to or treatment of a person who is a federal prisoner or immigration detainee, for example, refusing to facilitate requests for legal assistance, incommunicado detention, unreasonable use of force or instruments of restraint by a custodial officer, refusing to provide medical assistance
- ❖ unfair treatment of a child in immigration detention that does not take into account the needs of a person of his or her age
- ❖ unreasonable restrictions by the Commonwealth on the ability of people who are lawfully within Australia to move freely within Australia.

Can I make a complaint?

If you are thinking about making a complaint about a violation of human rights under the Act, you need to consider two things:

- ❖ Are your concerns about an action or policy of the Commonwealth?
- ❖ Does the action or policy breach a human right recognised in the Act?

If your answer is no to one or both of these questions it is most likely that the Commission will not have the legal authority to inquire into your concerns.

If your answer is yes to both of these questions you may be able to make a complaint under the Act.

You can contact the Complaint Information Line to find out more about the Act and/or to obtain information about how to make a complaint to the Commission. The Complaint Information Line can be contacted by calling 1300 656 419 or e-mailing complaintsinfo@hreoc.gov.au. You may also want to visit http://www.hreoc.gov.au/complaints_information/lodge/index.html.

Complaints must be in writing. If you cannot write in English, the Commission can organise for your complaint to be translated. The complaint should describe what happened, when and where it happened and who was involved.

For more information please review the acts listed in the *Resources Required* section.

TRADE PRACTICES ACT 1974 (TPA)

The Trade Practices Act 1974 (TPA) is a legislation first enacted in 1974 that aims to promote competition, fair trading and consumer protection. Marriage Celebrants, along with every other business in Australia are obliged to conduct their business in line with the TPA regulations. The TPA comes in 3 volumes and is quite a lengthy publication. The Australian Competition and Consumer Commission who administers the TPA also have simplified consolidated fact sheets available which summarise key areas.

There are some areas which are of particular interest to Marriage Celebrants as your clients are still consumers, and you are providing a professional service. Read the below summarised information³ we consider relevant to celebrants. It includes information on handling of services, advertising, pricing and possible legal outcomes.

Consumer Rights - Guarantees, warranties and refunds

What are my rights?

Under the Trade Practices Act, when a consumer purchases goods or services certain conditions and warranties are implied into the transaction. You will find a definition of consumer in the Warranties publication.

These statutory conditions and warranties provide consumers with a basic level of protection for goods and services they purchase.

You will find more detailed information and a sample letter of demand in the Warranties and refunds publication.

How am I protected?

Services

- ❖ Under the statutory warranty provisions of the Trade Practices Act, services must be carried out with due care and skill. There is also an implied warranty that any materials used in connection with the services will be fit for the purpose for which they are supplied. If you make known to the service provider the purpose or result that you want the services to achieve, there is an implied warranty that the services will be fit for that purpose. But as a consumer you also have a responsibility to ensure that you have made it clear to the service provider what it is you want done.

Goods

- ❖ Under the Act the consumer is entitled to expect to enjoy quiet possession of the goods and to own the goods outright, subject to lawful restrictions made known to the consumer before purchase.

As a consumer, goods that you purchase must:

- ❖ be of merchantable quality—goods have to meet a basic level of quality and performance given the price and description of the goods

³ Source: www.accc.gov.au

- ❖ be fit for the purpose—goods must do the job you made clear to the supplier you wanted them to do or that are implied from the circumstances in which you purchased the goods
- ❖ match the description or sample given to you before purchase, whether through a catalogue, labelling, packaging, on a website or in person.

Remedy or appropriate action

If you believe that one of these conditions or warranties has not been met, you have a choice of possible actions that may be available depending on the circumstances.

If you find you have a problem with goods or services, you should stop using the goods and approach the seller or the service provider as soon as possible to explain the fault or problem. You can also explain your preferred remedy to the situation or problem, taking into account that the Act is not designed to protect consumers who are careless or unreasonable in their demands.

You may want to ask the service provider to repeat the service, or pay for the service to be repeated. You may want to ask that the goods be repaired or replaced or pursue a refund. Sellers are not required to provide you with a refund if you have simply changed your mind or you find a similar or the same item more cheaply elsewhere.

Voluntary warranties

Sometimes businesses provide a voluntary warranty. As examples, you may be offered a three-year warranty for a car, or a one-year one for a blender.

These are provided voluntarily by the seller and generally provide a higher level of customer service when problems arise after the sale.

The Trade Practices Act does not require any business to provide a voluntary warranty. However, sellers are legally obliged to stand-by their voluntary warranties, once put in place.

The general rule is that if promises are made, they must be kept.

What the ACCC can and can't do about warranties and refunds

The ACCC cannot bring an action against any corporation for a breach of the conditions and warranties implied into consumer transactions by the Trade Practices Act. This means that you, as the consumer, must negotiate with the seller or service provider or, when necessary, pursue legal action on your own behalf.

The ACCC can provide you with information to help you negotiate. See our brochure, Warranties and refunds.

Who can help me?

Try to resolve the issue with the trader yourself.

Put your complaint in writing. Outline the date of purchase, your problem and your preferred remedy. Page 15 of Warranties and refunds has a sample letter of demand you can follow.

If this doesn't produce a satisfactory result, and your complaint involves a local business, you can contact the office or ministry of fair trading in your state or territory. These are government agencies

responsible for state and territory consumer protection and they may be able to provide you with further help.

If this fails, you may lodge a claim at the Small Claims Tribunal.

Misleading advertising

Businesses need to be particularly careful about what they say and do when they are advertising, because of the wide audience that their promotional messages may reach. The laws that prohibit misleading advertising apply to businesses advertising through all kinds of media, including television, radio, the internet, telemarketing, door-to-door selling, billboards, brochures, pamphlets and fliers.

Companies engaged in advertising goods or services must be careful not to send a message that creates, or could create, a wrong picture in the minds of those who receive the message. Failing to disclose important information in advertising may also sometimes be misleading.

Some examples of advertising which may be misleading include:

- ❖ a transport company giving the impression that it takes freight by air, when it actually sends it by road
- ❖ a seller of mobile phones offering free weekend calls, but not stressing sufficiently that calls to other mobiles are excluded
- ❖ a car manufacturer using a radiator grille and badge that are deceptively similar to those of Rolls Royce
- ❖ a business advertising a position in the professional employment pages of a newspaper but failing to make it clear that the job is commission-based (see publication, Misleading job and business opportunity ads: how to handle them.

Businesses must not do things that are misleading or deceptive, or would be likely to mislead or deceive customers (or anyone else including other businesses) with whom they have any form of commercial contact. This includes discussions and contracts, advertising in any form as well as labelling and packaging of products.

Misleading someone includes:

- ❖ lying to them
- ❖ leading them to a wrong conclusion
- ❖ creating a false impression
- ❖ leaving out (or hiding) important information in certain circumstances
- ❖ making false or inaccurate claims about products or services.

It is not necessary to prove that the conduct actually misled or deceived anyone, nor does it matter whether the misrepresentation is intentional, deliberate or accidental. What matters is the overall impression that is left in the customer's mind.

What to do if you think you have been misled

ACCC

The ACCC can take action in court against corporations and related individuals involved in misleading conduct, injunction with other orders.

In enforcing consumer protection laws, the ACCC focuses on industry-wide conduct and conduct that affects many consumers, to achieve outcomes that make the most effective use of its resources. The ACCC cannot take action in all circumstances of misleading conduct.

The ACCC is more likely to take action against a business for misleading advertising if it has been carried out through a medium that reaches a wide audience, such as over the internet, on national television, or through a nation-wide print advertising campaign.

While it uses enforcement action to obtain compliance, the ACCC's preferred option is to show business how to take preventative steps to ensure that contraventions do not occur. Consumers who become aware of misleading conduct may report the matter to the ACCC as it may be valuable in the ACCC's future compliance work.

Private action

Any person or business that has suffered a loss as a result of a business' misleading or deceptive conduct or misrepresentation may have a private right of action under legislation. Courts can order damages, injunctions and other orders against businesses found to have engaged in misleading or deceptive conduct.

A consumer who has lost money as a result of misleading conduct may need to seek legal advice about taking court action against the business involved. Alternatively, depending on the amount of money involved, the consumer may be able to lodge a claim in their local small claims tribunal.

ASIC

The Australian Securities and Investments Commission (ASIC) is responsible for consumer protection in financial services. A consumer who has been misled by a business promoting a financial product, including investments, superannuation, banking and insurance may need to speak to ASIC about their rights.

Fair trading

There are offices of fair trading in each state and territory that can help with local issues of misleading conduct—if the business involved is a local trader, or the matter is within a certain locality. In some circumstances the offices of fair trading can help consumers to resolve issues with businesses, or provide information about lodging claims in the Small Claims Tribunal.

Misleading pricing

Businesses must not make false or misleading representations about the price of goods or services and must follow these rules:

The total cash price of a product or service must be revealed to the customer before purchase. Disclosing only the initial deposit and instalment payment amounts is not enough

Consumers are entitled to assume that prices quoted or advertised for products or services are quoted in full, and are not subject to additional costs unless these are specified

GST-inclusive prices should be displayed, advertised and quoted to consumers

Travel products such as airfares, holiday packages, cruises, accommodation and car hire should generally be advertised at prices inclusive of taxes, levies and charges

If products are advertised as being on special, comparisons to their previous or usual prices must be realistic. The goods must have been reasonably available at the pre-sale price beforehand

A consumer is entitled to assume that a product is available for purchase at the price advertised on its label or shelf, not at a higher price. Some supermarkets follow the guidelines in the Australian Retailers Association's Supermarket scanning code, see Other agency contacts in Related documents). If you feel that you have been misled follow the links in Related topics.

Professional Services

By enforcing the Trade Practices Act, the ACCC provides for the protection of consumers in their dealings with professionals. Types of professions include:

- ❖ health related: doctors, dentists, physiotherapists, podiatrists and pharmacists
- ❖ others: architects, engineers, veterinarians, surveyors and lawyers.

Anti-competitive conduct by professionals

The ACCC is concerned with the business practices of the professions and their relevance to the Trade Practices Act.

There is nothing in the Trade Practices Act that regulates the fees charged by professionals. However, the ACCC is concerned that the fees and charges raised by professionals are not arranged by agreement with another professionals with whom they compete. Price fixing of this type may occur when an industry association that represents the interests of professionals has a recommended fee or recommended fee schedule.

Examples of anti-competitive conduct by professionals might include:

- ❖ two or more veterinarians agreeing on a price to charge consumers for services they provide—this is likely to amount to price fixing under the Trade Practices Act and lead to higher prices payable by consumers
- ❖ a group of specialist doctors such as orthopaedic surgeons agreeing not to participate in a health fund's no-gap scheme—this could constitute a boycott under the Trade Practices Act and lead to unfavourable outcomes for consumers.

Misleading or deceptive conduct by professionals

The ACCC is concerned that members of the professions do not engage in misleading or deceptive conduct that may be harmful to consumers. Consumers can be disadvantaged in their dealings with professionals since a provider of a professional service usually knows more than the consumer about the service.

Examples of potential areas of misleading or deceptive conduct include:

- ❖ statements made in brochures, letters or advertisements in magazines, on television or on radio that relate to the professional or their services
- ❖ statements made directly to consumers by the professional.

These statements may relate to the professional's qualifications, to goods or services provided by the professional or to the price of the services.

The ACCC has set out tips for consumers of health products and services in its Fair treatment—summary of the guide to the Trade Practices Act for the advertising or promotion of medical and health services (see Medical and health services publications in Related topics).

The ACCC has also developed a guide for the medical profession on dealing with patients—See the leaflet Straight talking with your patients in the ACCC Info kit for the medical profession.

Informed financial consent

Professionals have an ethical duty to inform their clients or patients about the cost of services they provide and about consumers having a right to obtain a second opinion or information on these costs before the services are provided.

Professionals should disclose their commercial or financial interest in other professionals' practices that they refer clients to, or any inducements they receive from suppliers whose products they recommend or use.

The failure to obtain informed financial consent from consumers may raise issues under the misleading and deceptive conduct provisions of the Trade Practices Act.

Tips for consumers when dealing with professionals

Read limitations and qualifications on the value of a professional service carefully. Ask if you think there may be other limitations or qualifications that may apply.

Are there terms and conditions in small print or at the bottom of an advertisement that you have not read?

If comparisons are made with other services or service providers, do the comparisons appear fair, accurate and current?

Do you know what qualifications a professional has? Can you understand what the letters after a professional's name mean? Do you have doubts as to whether the professional is using terms such as 'surveyor' or 'accountant' accurately?

Beware of irrelevant qualifications or memberships used as a marketing tool in advertisements. If in doubt ask.

Ask how many visits or services you may require during your dealings with a professional. Check what other services you will need, perhaps from other service providers, as part of the total service package.

Make sure the professional has disclosed the full costs of goods or services before you commit yourself.

If you feel that a professional is not listening to you or dismissing you, remember you have the right to seek a second opinion, or change your choice of service provider.

Ask the professional advising you if you suspect there may be a conflict of financial interest that could be influencing their advice.

The ACCC has set out tips for consumers of health products and services in its Fair treatment—summary of the Guide to the Trade Practices Act 1974 for the advertising or promotion of medical and health services (see Medical and health services publications in Related topics).

How is the Trade Practices Act enforced?

Legal proceedings

Individuals (such as consumers), other professionals or a professional association (and others, that is, insurance companies) can take providers of professional services to court for breaching the consumer protection, fair trading or restrictive trade provisions of the Trade Practices Act. In fact the large amount of litigation under the consumer protection provisions (Part V) of the Trade Practices Act is private litigation—not involving public agencies such as the ACCC. These cases can range from individuals taking legal action to recover loss or claim damages, to class actions on behalf of a group of consumers affected by similar conduct in breach of the Act.

The ACCC can also institute proceedings for a breach of the Act. If a court decides that the law has been breached, it may make orders including:

- ❖ fines or penalties
- ❖ damages
- ❖ injunctions
- ❖ refunds and/or

- ❖ corrective advertising
- ❖ Enforceable undertakings.

Rather than instituting legal proceedings, the ACCC and the party engaging in the conduct may choose to settle a matter administratively. This can be done by accepting enforceable undertakings from an organisation or person who the ACCC alleges has breached the Trade Practices Act. Once entered into, compliance with an enforceable undertaking is essential. If the undertakings are not honoured, the ACCC will ask the court for an order instructing the organisation or individual to comply with the undertaking. If a court order is ignored, the court may find the party guilty of contempt of court, which is punishable by fines or imprisonment.

Enforceable undertakings may include requirements which involve:

- ❖ compensating consumers
- ❖ running corrective advertisements

introducing a trade practices compliance program.

