

<b>POLICY NAME:</b>	COMPETITION AND CONSUMER LAW POLICY	<b>POLICY NO.</b>	HR-001-PY.11
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## 1 PURPOSE

1.1 Neumann Contractors is a strong believer in free enterprise and business ethics. With this in mind it maintains a policy that Neumann Contractors complies with the Competition and Consumer Act 2010 and does not participate in restrictive trade practices or anti-competitive conduct.

### 1.2 Overview of Australian Consumer Law

Following on from the enactment of the first tranche of Australian Consumer Law reforms in mid-2010, the Law:

- establishes a national scheme for statutory consumer guarantees, which replace the existing Commonwealth, state and territory laws governing implied conditions and warranties in consumer transactions;
- establishes a national scheme for consumer product safety, which replace the existing Commonwealth, state and territory regulatory schemes;
- moves and reorders the fair trading and consumer protection provisions of the *Trade Practices Act 1974* (TPA) and the Australian Securities and Investments Commission Act 2001 into the Australian Consumer Law; and
- expands the consumer protection provisions to incorporate 'best practice' provisions of existing state and territory laws.

The reforms, which came into effect on 1 January 2011, also changed the title of the TPA to the Competition and Consumer Act 2010.

Whilst promoted by the Government as 'the biggest changes to the TPA in 35 years', these reforms do not radically alter the consumer protection and fair trading landscape within which suppliers must operate. However, they do require businesses – particularly in the retail and manufacturing sector – to review and update their compliance systems and procedures, and give renewed emphasis to their warranty policies, consumer complaints handling systems and reporting procedures.

### 1.3 Consumer Guarantees

'Consumer guarantees' are statutory rights conferred by the Australian Consumer Law in relation to every acquisition of consumer goods or services. They apply regardless of whether or not they are expressly stated in any contract for sale, and cannot be waived or excluded from transactions with consumers.

The guarantees apply the same definition of 'consumer' that prevailed under the TPA implied warranties regime, viz:

- Goods or services of any kind valued at less than \$40,000.
- Goods or services valued in excess of \$40,000, but that are of a kind ordinarily acquired for personal, domestic or household use or consumption, or
- A commercial vehicle acquired primarily for use in the transportation of goods (of any value).

The consumer guarantees applicable to **goods** include as to: **title, undisturbed possession, acceptable quality, fitness for a disclosed purpose, correspondence with any description or sample**, that **spare parts** and facilities for repair are reasonably available for a reasonable period (manufacturers only), and that a supplier or manufacturer will comply with any **express warranty** they have offered.

The consumer guarantees in relation to **services** include: **due care and skill, fitness or disclosed purpose** (with an exception for professional services provided by architects and engineers) and that services will be supplied **within a reasonable time**.

The consumer guarantees are similar, although not identical, to those that prevailed under the TPA implied warranty regime. The consumer relation to acceptable quality (which expands upon the current implied warranty of 'merchantable quality'), that a supplier or manufacturer will comply with any express warranty they have offered on goods and, perhaps of greatest practical import, that services will be supplied within a reasonable time.

Other elements of the consumer guarantee regime that impose substantially similar obligations to the TPA implied warranties regime include:

- That the consumer guarantees do not apply to goods or services acquired for the purpose of re-supply, or for the use in trade or commerce, or contracts of insurance.
- Any term that purports to restrict, exclude or modify the consumer guarantees will be void. However, suppliers may continue to limit their liability where goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, to:
  - in the case of goods: to replacement or repair of the goods, or payment of the cost of replacing or repairing the goods, and
  - in the case of services: to resupply of the services, or payment of the cost of having the services supplied.

Breaches of the Law may result in prosecution and fines. The Australian Competition and Consumer Commission (ACCC) has indicated that it will continue its policy of consulting with parties who may be in breach of the Law with a preference to avoid formal prosecutions.

## **2 COMPETITION POLICY**

### **2.1 Anti-competitive conduct**

Neumann Contractors personnel shall not engage in unfair practices or embark on any anti-competitive conduct or allow it to be nurtured when, and if, detected.

Restrictive trade practices include the following:

#### 2.1.1 Price Fixing

An Agreement between competitors to fix prices or limit discounts or discriminate between purchasers or engage in cartel conduct designed to drive up the profits of cartel members whilst maintaining the illusion of competition.

#### 2.1.2 Resale Price Maintenance

An attempt by a supplier to set a minimum resale price.

#### 2.1.3 Third Line Forcing

An attempt to force a customer, as a condition of buying your product, to buy some other product or service from a third party or from a related company.

**2.1.4 Entering into Exclusionary Agreements**

Agreements between or among competitors to “boycott” particular people or companies to prevent the supply of goods or services.

**2.1.5 Misuse of Market Power**

Where there is a substantial degree of power in a market using such market power to eliminate or damage a competitor, to prevent a new competitor from getting started, or to deter or prevent competitive behaviour in the market.

**2.1.6 Entering into Agreements, Arrangements or Understandings that Substantially Lessen Competition**

**2.1.7. Exclusive Dealing**

Arrangements where a supplier agrees to supply products or services on an “exclusive basis” on the condition that the customer will not deal with a competitor.

**2.1.8 Unfair Practices**

Making unreasonable representations or engaging in misleading or deceptive conduct.

**2.1.9 Unconscionable Conduct**

The exploitation by a stronger party of an evident special disability or disadvantage suffered by a small party.

**2.1.10 Market Sharing**

It is unlawful to divide a market with your competitors, no matter how you do it.

**2.1.11 Cartel Conduct**

The ACCC is the statutory authority responsible for detecting, disrupting and deterring cartels. It is extremely important that all businesses and individual officers are aware of the risks and consequences of cartels between competitors. In brief, a cartel exists when competitors agree to fix prices, rig bids, share markets or restrict supply or output. The Act provides significant criminal sanctions for both corporations and individuals involved in serious cartel conduct.

*Refer to Appendix 1 for examples of anti-competitive conduct.*

**2.2 Neumann Contractors Accepts its Consumer Protection Responsibilities under the Law**

2.2.1 Not to make misleading representations in advertising and product description. This includes prohibitions against false or misleading representations:

- that purport to be a testimonial, or
- concern a requirement to pay for a contractual right that is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy.

2.2.2 Ensure that its products are fit for the particular purpose and are of merchantable quality.

2.2.3 Meet all proper warranty claims by customers.

2.2.4 Provide services with due care and skill.

## 2.3 Product Safety

The Law creates a national consumer product safety regime to replace product safety laws under the TPA, and state and territory fair trading legislation.

The product safety reforms under the Australian Consumer Law implement a number of recommendations made by the Productivity Commission, including:

- expanding the application of product safety law beyond goods to cover services related to the supply, installation or maintenance of consumer goods in all jurisdictions.
- expanding the scope of product safety standards, bans and recalls from circumstances where the risk of injury arises from a primary normal or intended use of the product to include reasonably foreseeable use or misuse.
- allowing regulators to undertake product recalls directly where no supplier can be found, and
- mandatory reporting requirements which oblige suppliers (including manufacturers, retailers, distributors and importers) to notify the Commonwealth Minister and the ACCC within 2 days where they consider that death, illness or serious injury may have been caused by the use or foreseeable misuse of the supplier's goods or product related services. Such reports are to be kept confidential, with limited exceptions.

## 2.4 Your obligations

2.4.1 If you have any doubts or questions on competition or consumer issues, then consult your Manager or the General Manager.

2.4.2 All employees whose work carries a risk of breaching competition and consumer laws must complete training in trade practices awareness and compliance. After completing this training, they will be expected to:

- Be aware of the importance of trade practices compliance
- Understand the key provisions of the applicable competition and consumer laws and how they apply to the Company
- Maintain the highest standards of professional and ethical behavior when performing their role
- Comply with the letter and spirit of competition and consumer laws
- Report any actual or suspected breaches of competition and consumer laws to their manager.

2.4.3 You must also comply with the confidentiality obligations in your employment agreement.

## 3 MODIFICATION HISTORY

Date	Version	Modification	Author	Approval
25/06/14	1.0	Issue for use.	Stephen Train	Bill Neumann (GM)

## **Appendix 1 - Examples of Anti-competitive Conduct**

### 1. Price Fixing

Price cutting becomes relevant for a particular product or service where representatives of the competitors meet and decide on a price they will charge and the level of discounts they would allow.

This is unlawful although the agreement is not in writing and may not be effective.

### 2. Resale Price Maintenance

Neumann Contractors has a product that is selling very well. To maintain its market position it tells a reseller that if he discounts the product, then Neumann will no longer supply him.

It is illegal to cut off or threaten to cut off supply because they offer discounts. Neumann may, however, provide a recommended price list for its products.

### 3. Misuse of Market Power

Neumann Contractors effectively has a monopoly in supplying a service in a specific geographical area. It decides to refuse to supply that service to a competitor in the area knowing that this will damage his business and may in fact remove him as a competitor.

It is unlawful to misuse market power in a particular area to damage a competitor. Neumann may, however, refuse to supply goods to another business for reasons such as poor credit risk, unsatisfactory past trading experience or genuine commercial reasons.

### 4. Misleading Representations

Neumann Contractors has a product or service which it is promoting heavily. The impression created in the market is that it solves a lot of customers' problems and is a first class product or service. It then becomes apparent that whilst technically or morally correct, the product specification or service will not always meet the customer's expectations.

To continue with the marketing would be in breach of the Competition and Consumer Law and would more than likely lead to claims for compensation.

If there is a defect in the product or service, a person who is injured or suffers damage may also claim compensation.