

Recent Australian consumer law developments

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DATE

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AGENDA

1. ACCC enforcement priorities
2. Areas of interest
3. Cases of interest
4. Key takeaways

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ACCC's 2026/2027 enforcement priorities

Supermarket and retail sectors	Essential services (telecommunications, electricity and gas)
Aviation	Digital markets
Greenwashing	Unfair contract terms (harmful cancellation terms)
Consumer guarantees (focus on motor vehicles)	Consumer product safety issues for young children

Source: <https://www.accc.gov.au/system/files/compliance-enforcement-policies-priorities-2026-2027.pdf>

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Supermarkets

- Supermarkets inquiry final report – March 2025
 - Discount information
 - Package size change notifications
 - Loyalty programs
- ACCC proceedings against major supermarkets regarding discounts
- Mandatory Food and Grocery Code of Conduct
 - Includes provisions governing how large businesses contract with suppliers

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Subscription and Cancellation

- Focus on “subscription traps”
 - HelloFresh & YouFoodz
 - JustAnswer
 - Microsoft
- Proceedings against eHarmony and Bradford Exchange remain reserved

Hidden fees

- *Australian Competition and Consumer Commission (ACCC) v Webjet Marketing Pty Ltd* [2025] FCA 867:
 - \$9 million penalty – hidden fees not disclosed (and false booking confirmations)
- “Drip-pricing” – penalties paid by Dendy Cinema

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Promotions and sales

- *Australian Competition and Consumer Commission v The Good Guys Discount Warehouses (Australia) Pty Ltd* [2025] FCA 1085
 - Store credit not sent
 - Opt-in required
 - Early expiry
 - \$13.5 million penalty
- *Australian Competition and Consumer Commission v Emma Sleep GmbH* [2025] FCA 618
 - False representations about pricing or sale duration
 - Liability of Philippines subsidiary: s 139(2)(b)(i) of the *Competition and Consumer Act 2010* (Cth)
- Black Friday period: “sitewide” sales
- Proceedings against Magnamail

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Consumer guarantees

- Reebelo Australia
 - Infringement notices issued for false time limitations on consumer guarantee remedies
- *Capic v Ford Motor Co of Australia Pty Ltd (Supplementary Common Questions and Other Issues)* [2026] FCA 38
 - Availability of remedy under s 272 for second-hand car purchases
 - Differences between dealer vs private sales
- ACCC guidance on second-hand car sales

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Product safety issues

- Button batteries
 - Consumer Goods (Products Containing Button/Coin Batteries) Safety Standard 2020 and Consumer Goods (Products Containing Button/Coin Batteries) Information Standard 2020
 - *Australian Competition and Consumer Commission v Fewstone Pty Ltd (Penalty)* [2025] FCA 1636 (City Beach)
- Consumer Goods (Toppling Furniture) Information Standard 2024



Internationally recognised safety alert symbol for button batteries, which meets the information standard.

Source: <https://www.productsafety.gov.au/business/search-mandatory-standards/button-and-coin-batteries-mandatory-standards/products-containing-button-and-coin-batteries-mandatory-information-standard>

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Greenwashing

- Proceedings commenced against Australian Gas Network
 - “Love Gas” campaign
 - Statements about transition to renewable gas “for this generation and the next”
 - Complaint to Ad Standards Community Panel dismissed
- *Australasian Centre for Corporate Responsibility v Santos Limited* [2026] FCA 96
 - Dismissed greenwashing claim based on statements made in corporate documents
- Proceedings against Edgewell in relation to “reef friendly” claims
- *Australian Competition and Consumer Commission (ACCC) v Clorox Australia Pty Ltd* [2025] FCA 357
 - Representation that products were made from 50% plastic waste collected from the ocean
 - Products contained plastic resin derived from recycled plastic found up to 50 km away from the ocean
 - \$8.25 million penalty

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Digital markets

- Final report – Digital Platform Services Inquiry (March 2025)
 - Strengthening unfair trading/ contract laws, mandatory processes to prevent and remove scams
 - Undisclosed influencer sponsorships, subscription traps and “paying” with personal data
- *Australian Competition and Consumer Commission v Meta Platforms, Inc. (formerly Facebook, Inc.)* (No 4) [2025] FCA 1084
 - Celeb-Bait: fake celebrity endorsement advertisements published on Facebook for scam cryptocurrency scheme
- ACCC AI development snapshot (December 2025)

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NDIS Approval

- Infringement notices issued to Vorwerk Australia and Bedshed
 - False representations of NDIS approval
- Proceedings against Ausnew Home Care Service
- Mable: unfair contract terms in contracts with consumers and support-workers. Enforceable undertaking given.
- ACCC report on consumer issues in the NDIS (February 2026)

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Essential services

- Diamond Energy: penalty paid for breaches of the Electricity Retail Code (June 2025)
- ACCC to investigate poor value energy plans following designated complaint by CHOICE
- *Australian Competition and Consumer Commission v Optus Mobile Pty Limited* [2025] FCA 1177
 - Unconscionable conduct in relation to vulnerable consumers
 - \$100 million penalty aimed at specific and general deterrence
- ACCC guidance in relation to broadband speed claims (July 2025)

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Bed Bath 'N' Table High Court

- First instance: no trade mark infringement, but misleading and deceptive conduct established (*Bed Bath 'N' Table Pty Ltd v Global Retail Brands Australia Pty Ltd* (No 3) [2024] FCA 226)
- Appeal to Full Court: neither cause of action established (*Global Retail Brands Australia Pty Ltd v Bed Bath 'N' Table Pty Ltd* [2024] FCAFC 139)
- High Court finds misleading and deceptive conduct made out (*Bed Bath 'N' Table Pty Ltd v Global Retail Brands Australia Pty Ltd* [2025] HCA 50):
 - Caution not to conflate test for trade mark infringement with test for misleading and deceptive conduct
 - Lower bar to establishing that "intention" is relevant to misleading and deceptive conduct finding

House
BED & BATH

BED BATH 'N' TABLE

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Other key cases

- Proceedings against Jayco: misrepresentations about vehicle use
- Proceedings against LDV: misrepresentations about durability and suitability of vehicles (driving off-road, near water and through mud) despite increased propensity for rust.
- *Australian Competition and Consumer Commission v Mobil Oil Australia Pty Ltd* [2026] FCA 93
 - Misrepresentations about benefits of fuel
- *Australian Competition and Consumer Commission v Mosaic Brands Limited* [2025] FCA 99, penalty orders made separately
- *Australian Competition and Consumer Commission v Bupa HI Pty Ltd* [2025] FCA 1564
 - Misrepresentations about entitlements arising from claims
- *Australian Securities and Investments Commission v ACBF Funeral Plans Pty Ltd, in the matter of ACBF Funeral Plans Pty Ltd (No 2)* [2025] FCA 756
 - Misrepresentations about Aboriginal ownership and management of entity

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Key takeaways

1. Exercise caution in relation to discounting practices and sales, particularly around high traffic periods.
2. Provide details of subscription and cancellation rights up front.
3. Provide details of associated fees up front and at the earliest point possible.
4. Be mindful of subsidiary liability under Australian Consumer Law.
5. Be careful in relation to representations about consumer guarantees.
6. Be aware of mandatory standards.
7. Carefully consider any statements made about future ESG impacts or aspirations.
8. Exercise caution when working with vulnerable consumers.
9. Even if it's not trade mark infringement, it may well be misleading or deceptive conduct. Do not conflate the tests.

Presenters



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