

SUBMISSION TO THE FLOOD INQUIRY RE PRIVATE INSURERS

The following sequence of events is my experience relating to a flood event at a farming property ([REDACTED] Park), situated at [REDACTED]

- [REDACTED] Park was insured for many years with Suncorp under a rural insurance package. The insurance policy included flood cover.
- In late 2009/2010, Suncorp discontinued their rural insurance cover, but the domestic dwellings (2 houses – one for the manager/caretaker and one for the owner) were insured under a separate cover.
- I “shopped” around and discovered there was no competition/choice in farm/rural insurance packages. In fact both the brokers I approached were underwritten by CGU.
- I approached 2 brokers.
 - 1) Dalby Insurance Brokers
 - 2) Aon’s Rural Insurance

I asked that both of the above parties visit the property to assess the location and needs. To reach the property, both parties would have crossed the Condamine River!

- Prior to accepting a quote from the 2 brokers, I explained to both that I held the domestic buildings (the 2 houses) under a separate policy with Suncorp (which included flood cover) and I wished to retain this arrangement.
- I received quotes from the 2 brokers as listed above.
 - 1) On the 20-8-10 I received a quote from Dalby Insurance Brokers (See Attachment A), and who also informed me that they wanted both the domestic (houses) and farm insurance under the one policy (**highlighted**). I felt I had no choice but to accept their offer as they were the cheapest, and also both brokers were underwritten by CGU, so I assumed there was no difference other than the price.
- In early January 2011, the farm suffered 2 flood inundations within the space of 2 weeks. Water from the first inundation entered the 2 houses and the shearing shed up to a depth of about 40 cms. Damage to fixtures and fittings and furniture, particularly in the bigger house was considerable.
- I visited Dalby Insurance Brokers and outlined what had happened, but they were unresponsive to our plight. I explained that by relinquishing my flood cover with Suncorp, which they had asked me to do in order to receive total farm cover, they had subjected the farm to considerable financial outlay to rectify the damage to both houses. I asked if another flood was to occur in the future, how could the farm outlay another large sum of money to rectify any damage. Their response was no flood cover was available; that it was their choice, so I responded if that was their choice, surely it was my right to choose how I structured my insurance policy and with whom!

Upon further consideration of the matter, I have made the following observations:

- The Countrypak Insurance Product Disclosure Statement issued by CGU, that I received as part of the farm's new insurance policy tells me on Page 9 (**See Attachment B**), that I have a duty of disclosure; headed: **"Your duty of disclosure"**. It goes on to say – **"provide us with any information that could affect our decision to insure you, or the terms of your policy"**, and then under the sub-heading, **"What you must do when you apply to take out this policy"** and later goes on to say, **"We will use your answers to help us decide whether to insure you and anyone else under this policy, and on what terms."** (highlighted).
- Furthermore the PDS is divided into sections: (**See Attachment C – highlighted**)

Section 1 – Domestic Buildings and Domestic Contents.

Section 2 – Farm Property

Section 7 – Business Liability

This suggests to me that separate insurance can be taken out for different sections, depending on one's needs.

- In fact **"The Financial Services Guide"** issued by Dalby Insurance Brokers under the heading, **"Our Services"**, states the following: **"We offer a range of services to assist you to protect your assets and guard against unexpected liabilities including: (See Attachment D – highlighted)**
 - **Reviewing and advising on your insurance needs**
 - **Identifying risk factors to avoid claims**
 - **Seeking competitive premium payments**

Also under the heading, **"Responsibility for Services Provided" –to ensure that you receive fair and honest Financial Services from us.** (highlighted)

- Dalby Insurance Brokers must have been aware that by my action of accepting their quote; that they had taken away my ability under Suncorp to be covered for flood for the domestic buildings. See CGU's PDS on Page 9 (**See Attachment E**), **"Your duty does not require the disclosure of anything that:**
 - **we know, or in the ordinary course of business, ought to know, or (highlighted)**
- The behaviour as outlined above would appear to constitute a breach/s of the Trade Practices Act 1974, now the Competition and Consumer Act 2010, and the Australian Securities and Investment Commission Act 2001 and the Fair Trading Act 1989 (Qld). (**See Attachment F**)

In summation, a reasonable person would deduce that the actions of the broker were unfair and inequitable ; that the interests of [REDACTED] Park farm were ignored, resulting in financial loss, whereas the broker's interests would appear to have taken precedence, to the extent that they contravened their own **"Financial Services Guide"**.

A BRIEF COMMENTARY ON THE FLOOD EVENTS IN THE ST. RUTH/SPRINGVALE DISTRICT, FROM THE CONDAMINE RIVER

- That inadequate warning was given to farming communities in this district.
- After the flood events farmers were too busy getting their properties back into working order to prepare submissions for the Flood Inquiry. In future it would be beneficial for farmers within a reasonable distance on both sides of the Condamine River and stretching both upstream and downstream to include those areas worst affected, to be visited on an individual basis by personnel, to assess their needs.
- Only by assessing needs in particular areas, can meaningful strategies be prepared to deal and assist with future flood events, particularly of this magnitude.
- The insurance industry needs to provide more market choice/competition for farming needs.

NOTE:

Please delete those sections that identify individuals/contact details, to protect their privacy.



Celia Karp [REDACTED]

Insurance Quote

4 messages

Fri, Aug 20, 2010 at 4:14 PM

To: [REDACTED]

Good Afternoon Celia,

Thanks again for giving me the opportunity to quote on the insurance for Wysall Park, It's a nice piece of country you have out there.

The following is a few different prices for different sums insured. The pump as discussed is included in your domestic side of the policy as is the ride on mower. We did include \$5,000 worth of theft to include the mower but it is already included as your contents, so let me know if you wish to keep this theft cover or not. I'll break all the sums insured and prices up for you so you can compare. Please keep in mind that insurance rates have increased considerably over the past 12 months since your last renewal.

I do have to keep the house and the farm all together on the one policy due to its use and the size of it. I do believe that this is really the best way to go anyway.

House

Sum Insured = \$ 300,000

Premium = \$ 755.46

Sum Insured = \$ 350,000

Premium = \$ 870.40

Contents

Sum Insured = \$ 30,000

Premium = \$ 242.72

Sum Insured = \$ 40,000

Premium = \$ 282.21

Cottage

Sum Insured = \$ 150,000

Premium = \$ 410.64

Shed

Sum Insured = \$ 100,000

Premium = \$ 620.46

Sum Insured = \$ 60,000

Premium = \$ 372.27

Sum Insured = \$ 30,000

Premium = \$ 186.14

Liability

Sum Insured = \$ 10, 000, 000

Premium = \$ 682.30

Theft

Sum Insured = \$ 5,000

Premium = \$ 53.21

Above Ground Farm Improvements (power lines)

Sum Insured = \$ 5, 000

Premium = \$ 52.94

Total Policy with the following sums insured selected.

House

Sum Insured = \$ 300,000

Contents

Sum Insured = \$ 30, 000

Cottage

Sum Insured = \$ 150,000

Shed

Sum Insured = \$ 30,000

Liability

Sum Insured = \$ 10, 000, 000

Theft

Sum Insured = \$ 5,000

Above Ground Farm Improvements (power lines)

Sum Insured = \$ 5, 000

Total Annual Premium = \$ 2,383.51 + \$ 33 broker fee
= \$ 2,416.51

Please let me know if you have any questions at all, ill be only happy to help you.

I await your advice as to place cover or not.

Enjoy your weekend

Kind Regards



The information contained in this message and any attachments is intended for the exclusive use of the addressee. It may be privileged and confidential. If you are not the addressee any disclosure, reproduction, distribution, on-transmission, dissemination or use of the communication is strictly prohibited.

Whilst any attachments may have been checked for viruses, you should rely on your own virus checking programmes and procedures.

To facilitate our communications we will store your e-mail name and address and any other contact details you have provided on our database. Please advise us of any changes or if you wish your name to be removed.

Fri, Aug 20, 2010 at 4:19 PM

So sorry Celia, I didn't attached the ute to the previous email.

For full comprehensive insurance on the ute it will be \$ 410.70. For Third Party Fire & Theft it will be \$ 253.60 annually.

Kind Regards



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Whilst any attachments may have been checked for viruses, you should rely on your own virus checking programmes and procedures.

To facilitate our communications we will store your e-mail name and address and any other contact details you have provided on our database. Please advise us of any changes or if you wish your name to be removed.

Celia Karp [REDACTED]

Mon, Aug 23, 2010 at 12:26 PM

To: [REDACTED]

Thank-you [REDACTED] for your prompt attention to this matter.

I will study the contents and get back to you in the near future.

Celia

[Quoted text hidden]



Celia Karp [REDACTED]

Wed, Jan 5, 2011 at 2:14 AM

To: [REDACTED]

Rodney,

The insurance details.

Note: Where [REDACTED] says about having to keep houses and farm together otherwise I would have kept the houses with Suncorp. I still have their premium notice at home!!!!

I think we can make a strong argument. I know it takes time to argue these things when you are busy trying to clean. Even if you notify them that you intend to make a claim for water damage. At least they should come out and assess the situation!

[REDACTED]

[REDACTED]

[REDACTED]

love Celia

[Quoted text hidden]

Attachment B

If you are not satisfied with our response or we cannot agree with you on alternative timeframes, you can go to step 2.

2. Seek a review

If the matter is still not resolved, the manager will refer you or your insurance adviser to the relevant dispute handling department or area who will conduct a review of your dispute and will usually provide you with a response to your dispute within 15 business days. If this timeframe is impractical, we will discuss with you alternative timeframes. If you are still not satisfied with our response to your dispute or we cannot agree on alternative timeframes, you can go to step 3.

3. Seek an external review

You are entitled to seek an external review of our decision. We will provide you with information about option(s) available to you, including, if appropriate, referring you to the external dispute resolution scheme administered by the Financial Ombudsman Service Limited (FOS). You will not be able to have your dispute resolved by the FOS if your dispute does not fall within the scope of the FOS's Terms of Reference.

Further information about our complaint and dispute resolution procedures is available by contacting us.

Your duty of disclosure

When you take out, renew, or change or vary a policy, or when you make a claim, you have a duty to answer our questions truthfully and provide us with any information that could affect our decision to insure you, or the terms of your policy. This is called your 'duty of disclosure'.

What you must do when you apply to take out this policy

When applying to take out insurance, we will ask you certain questions. When answering these questions you must be honest, and you have a duty under the Insurance Contracts Act 1984 to tell us anything:

- ◆ known to you, and
- ◆ which a reasonable person in the circumstances, would include in answer to any question.

We will use your answers to help us decide whether to insure you and anyone else under this policy, and on what terms.

Who you are answering the questions for

It is important that you understand you are answering the questions in this way on behalf of yourself and anyone else that you want to be covered by the policy.

If you do not answer our questions in this way

If you do not answer our questions in the way, we may reduce or refuse to pay a claim, or cancel the policy. If you answer our questions fraudulently, we may refuse to pay a claim and treat the policy as never being in place.

Renewal, variation, reinstatement or extension of your policy

When your policy is renewed, varied, reinstated or extended, you have a duty, under the Insurance Contracts Act 1984, to tell us anything that you:

- ◆ know, or
- ◆ could reasonably be expected to know is relevant to our decision whether to accept the risk of insurance and on what terms.

Your duty does not require the disclosure of anything that:

- ◆ diminishes the risk to be undertaken by us,
- ◆ is of common knowledge,
- ◆ we know, or in the ordinary course of business, ought to know, or
- ◆ is a matter that we indicate your duty has been waived by us.

If you do not comply with your duty of disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the policy in respect of a claim, or we may cancel the policy. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Intermediary remuneration

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary, you should ask your intermediary.

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OUR SOURCES OF INCOME

When placing your insurance we usually receive a commission from the insurer. The amount varies between 0% and 25% of the base premium you pay.

If you are a Retail Client and we give you Personal Advice, full commission details (including the dollar amounts) will be provided in any SOA or (where an SOA is not required to be provided) included on any relevant invoices. When we give you General Advice, full commission information (including dollar amounts) will be provided on request.

We have a set of standard non refundable Broker Fees that we charge you for the cost of services such as:

- Market research on products available.
- Assessing the claims paying ability of insurers.
- Sourcing alternative quotations and coverage.
- Risk analysis and portfolio co-ordination.

All fees payable for our services will be advised to you at the time of providing the advice or service.

We may receive additional remuneration from insurers with whom we have profit share or volume bonus arrangements. This remuneration is payable if we meet certain agreed sales and/or profitability targets set by the insurer. If we have profit share arrangements with an insurer that apply to a product we recommend to you, we will advise you of this at the time of making any such recommendation.

We retain the interest on premiums paid by you that are held in our trust account before paying the insurer.

We are a shareholder of the buying group IBNA and may receive up to 2% commission on premiums paid from certain insurers. These payments are used to operate IBNA.

Depending on the operating costs of IBNA (including the costs of member services provided to us and other shareholders) and the amount of total business we place with the participating insurers in any financial year, we may receive some of that commission at the end of each financial year.

As an IBNA shareholder, we can access services including operating and compliance tools, advice and assistance from professional bodies, group insurance arrangements, product comparison and placement support, claims support and purchasing arrangements. These member services are either

funded or subsidised by IBNA or available exclusively to shareholders for a fee.

Premium funding products enable you to pay your premiums by installments. Premium funders do charge interest. We can arrange premium funding if you require it. We may receive a commission based on a percentage of the premium from the premium funder for doing so. We will tell you the basis and amount of any such payment if you ask us.

HOW OUR REPRESENTATIVES ARE PAID

Our representatives do not receive any benefit directly from the sale of a product to you. Our representatives may receive bonuses payable based on the overall performance of our business.

If a person has referred you to us, we may pay them a part of any fees or commission received. If you are a Retail Client and receive Personal Advice full remuneration details will be disclosed in the SOA or invoices related to the advice.

CONFLICTS OF INTEREST

As a business we have relationships with and receive income from various third parties as detailed in this FSG. For Retail Clients receiving Personal Advice, details of relationships that impact the advice will be included in any SOA or invoice documentation we send you. All material conflicts that impact our advice, that are not mentioned in this FSG, will be advised to you on the invoices related to that advice.

CONTACT AGREEMENT

To ensure that we provide you with appropriate products and services, you agree to us calling you at our discretion to discuss any new products and services. If you do not wish to receive such calls please advise us and we will place you on our Do Not Call Register.



Australian Financial Services Licence No: 236738

ABN: 92 310 073 157

FINANCIAL SERVICES GUIDE

43 Patrick Street

DALBY QLD 4405

PO Box 770

DALBY QLD 4405

PHONE: (07) 4669 8300

FAX: (07) 4669 8088

EMAIL: dib@dalbyib.com.au

WEBSITE: www.dalby.com.au

This FSG APPLIES FROM 1/11/2007

THE PURPOSE OF THIS GUIDE

This Financial Services Guide (FSG) is designed to assist you in deciding whether to use any of our services and contains important information about:

- The services we offer you
- How we and our associates are paid
- Any potential conflicts of interest we may have
- What to do in the event of a complaint

RESPONSIBILITY FOR SERVICES PROVIDED

We hold a current Australian Financial Services Licence and are authorised to advise and deal in the full spectrum of general insurance products.

We are responsible for the financial services provided to you, or through you to your family members, including the distribution of this FSG.

In order to be granted and then retain our Licence we are required to meeting stringent guidelines in areas such as: staff training, organisational competence, management expertise, financial control and compliance disciplines.

We have an ongoing requirement to maintain and enhance our professionalism to ensure that you receive fair and honest Financial Services from us.

WHO DO WE ACT FOR

We usually act on your behalf and in your interests in all matters. Sometimes, it may be more appropriate for us to access insurance or manage claims where we act as an agent of the insurer. If and when this situation arises we will explain and highlight this to you.

OUR SERVICES

We offer a range of services to assist you to protect your assets and guard against unexpected liabilities including:

- Reviewing and advising on your insurance needs
- Identifying risk factors to avoid claims
- Seeking competitive premium quotations

HOW TO CONTACT US

You are able to contact us by phone, in writing, by fax, email or in person.

OUR PRODUCTS

We can advise and arrange a broad range of insurances on your behalf including:

Home Building and Contents, Private and Commercial Motor, Farm, Crop, Business Packages, Construction, Liability, Industrial and Professional covers.

RETAIL CLIENTS

Under the Corporation Act 2001 (The Act) Retail Clients are provided with additional protection from other clients. The Act defines Retail Clients as:

Individuals or a manufacturing business employing less than 100 people or any other business employing less than 20 people And that are purchasing the following types of insurance covers:

Motor vehicle, home building, contents, personal and domestic, sickness/accident/travel, consumer credit and other classes as prescribed by regulations.

Some of the information in this FSG only applies to Retail Clients and it is important that you understand if you are covered by the additional protection provided.

RETAIL CLIENT ISSUES

Typically we only provide General Advice to our Retail Clients. General Advice does not take into account your particular needs and requirements and you should consider the appropriateness of this advice to your circumstances prior to acting upon it. We will provide you with a General Advice Warning in such cases.

If you are a new Retail Client purchasing Personal Accident or Sickness insurance and obtain Personal Advice, that is, advice that takes into account your particular circumstances, we will give you a **Statement of Advice (SOA)**, that sets out the advice provided and the basis on which the advice is made and our remuneration should you purchase the product.

For existing Retail Clients we may not provide an SOA but rather provide the advice to you orally. In such cases you may request us to provide you with a Record of Advice (via phone or in writing) which we will provide to you within 28 days of such request.

When you ask us to recommend an insurance policy for you, we will usually only consider the policies offered by the insurers or insurance providers that we deal with regularly. In giving you advice about the costs and terms of recommended policies we have not compared those policies to other policies available, other than from those insurers we deal with regularly.

If we recommend the purchase of a particular financial product, we will also give you a **Product Disclosure Statement** at that time, which sets out details specific to that product and the key benefits and risks in purchasing the product.

WHAT WE EXPECT FROM YOU

To enable us to provide the right advice we need you to provide us with complete information about the risk(s) that you face and those that you want to be insured for. You should also tell us about any relevant changes as they occur so that we can review your insurance needs accordingly.

PERSONAL INFORMATION

The Federal Privacy Act 2000 sets out standards for the collection and management of personal information. With your consent, we will only use your personal information for general insurance services.

COOLING OFF PROVISIONS

All retail products are subject to a 14 day 'cooling off period'. This means that if you are not happy with the product, you have 14 days to withdraw from the contract at no cost to you.

COMPLAINTS

Clients not satisfied with our services should contact our Complaints Officer. We are members of the Insurance Brokers Disputes Limited (IBD), a free consumer service. Further information is available from our office, or contact IBD directly on 1300 780 808 or visit www.ibdltd.com.au We also adopt the Insurance Brokers Code of Practice.

COMPENSATION

For your added protection we also hold a Professional Indemnity Policy. This policy is designed to pay claims by Third Parties (including our clients) arising out of our Professional Negligence. The policy has a minimum cover of \$5M for any one claim with the additional protection of providing for further claims in the same policy year. This compensation arrangement satisfies the requirements for compensation arrangements under Section 912B of The Act.

If you are not satisfied with our response or we cannot agree with you on alternative timeframes, you can go to step 2.

2. Seek a review

If the matter is still not resolved, the manager will refer you or your insurance adviser to the relevant dispute handling department or area who will conduct a review of your dispute and will usually provide you with a response to your dispute within 15 business days. If this timeframe is impractical, we will discuss with you alternative timeframes. If you are still not satisfied with our response to your dispute or we cannot agree on alternative timeframes, you can go to step 3.

3. Seek an external review

You are entitled to seek an external review of our decision. We will provide you with information about option(s) available to you, including, if appropriate, referring you to the external dispute resolution scheme administered by the Financial Ombudsman Service Limited (FOS). You will not be able to have your dispute resolved by the FOS if your dispute does not fall within the scope of the FOS's Terms of Reference.

Further information about our complaint and dispute resolution procedures is available by contacting us.

Your duty of disclosure

When you take out, renew, or change or vary a policy, or when you make a claim, you have a duty to answer our questions truthfully and provide us with any information that could affect our decision to insure you, or the terms of your policy. This is called your 'duty of disclosure'.

What you must do when you apply to take out this policy

When applying to take out insurance, we will ask you certain questions. When answering these questions you must be honest, and you have a duty under the Insurance Contracts Act 1984 to tell us anything:

- ◆ known to you, and
- ◆ which a reasonable person in the circumstances, would include in answer to any question.

We will use your answers to help us decide whether to insure you and anyone else under this policy, and on what terms.

Who you are answering the questions for

It is important that you understand you are answering the questions in this way on behalf of yourself and anyone else that you want to be covered by the policy.

If you do not answer our questions in this way

If you do not answer our questions in the way, we may reduce or refuse to pay a claim, or cancel the policy. If you answer our questions fraudulently, we may refuse to pay a claim and treat the policy as never being in place.

Renewal, variation, reinstatement or extension of your policy

When your policy is renewed, varied, reinstated or extended, you have a duty, under the Insurance Contracts Act 1984, to tell us anything that you:

- ◆ know, or
- ◆ could reasonably be expected to know is relevant to our decision whether to accept the risk of insurance and on what terms.

Your duty does not require the disclosure of anything that:

- ◆ diminishes the risk to be undertaken by us,
- ◆ is of common knowledge,
- ◆ we know, or in the ordinary course of business, ought to know, or
- ◆ is a matter that we indicate your duty has been waived by us.

If you do not comply with your duty of disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the policy in respect of a claim, or we may cancel the policy. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Intermediary remuneration

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary, you should ask your intermediary.

Attachment F

[Business home](#) > [Skills development](#) > [Starting a business](#) > [Licensing and legislation](#) > Trade Practices Act 1974 (Commonwealth)

Trade Practices Act 1974 (Commonwealth)

The *Trade Practices Act 1974* (Cwlth) (often abbreviated to TPA) is legislation that aims to promote fair trading conditions for all Australian businesses and to protect both consumers and businesses against unfair practices.

The provisions of the TPA are largely mirrored in state and territory fair trading legislation-in Queensland, the *Fair Trading Act 1989* (Qld) (often abbreviated to FTA)-to ensure the same rules apply to businesses and individuals.

Businesses need to be aware of their rights and responsibilities under the TPA and FTA so they can seek protection from unfair trading practices when they need to and so they can ensure they do not contravene provisions of the legislation.

What does the TPA prohibit?

Unconscionable conduct

A stronger party must not deal with a disadvantaged party in a harsh or oppressive manner. For example, a larger company must not exploit its bargaining power to impose unreasonable contractual terms on a fledgling business or smaller client.

Price fixing

Competitors must not make arrangements between themselves that fix, maintain or control prices, discounts, allowances, rebates or credits. For example, businesses involved in an industry association cannot agree with competitors to follow prices that may be published by that association. Individual use of such prices as a guide is acceptable, but using them as a foundation for agreeing on prices is illegal.

Boycotts

Two or more suppliers must not get together to refuse to supply goods or services to your business or to any other business. There are two types of boycotts-primary and secondary.

- **primary boycotts**-businesses must not make arrangements that contain an 'exclusionary provision'. An exclusionary provision prevents, limits or restricts the supply of goods to, or acquisition of goods from, particular third parties by the parties to an arrangement
- **secondary boycotts**-two or more businesses (who need not be competitors) must not act in concert to hinder or prevent the supply of goods or services by a third person to a fourth.

Anti competitive arrangements

A business must not enter into a contract, arrangement or understanding to substantially decrease market competition.

Third-line forcing

It is illegal for a business to sell to a client only if that client purchases something from a particular, specified, supplier. An example of third-line forcing arises when a lender, as a condition of approving loans, requires borrowers to take out loan insurance with a nominated insurance company.

Misuse of market power

When a business has substantial power in a market, it must not use that power for anti competitive purposes such as:

- eliminating or substantially damaging a competitor
- preventing the entry of a person or business into that market or any other market
- deterring or preventing a person or business from engaging in legitimate competitive conduct.

Exclusive dealing

A business must not practise exclusive dealing, which has the following elements:

- supply of (or refusal to supply) goods or services by one party to another
- supply or acquisition on the condition that the purchaser will or will not deal with certain other clients
- an anti-competitive purpose or effect.

Misleading and deceptive conduct

A business must not do anything that is misleading or deceptive, or likely to mislead or deceive. This prohibition is particularly relevant to how businesses advertise. These provisions are aimed at protecting the public, and accordingly, a contravention of these provisions does not require an intent to mislead or deceive or act negligently. A business can contravene these sections even though it may act honestly and reasonably.

- **Accuracy**-statements, advertisements or promotions need to be factually correct. Furthermore, there must be evidence available to support any advertised comparisons between products.
- **Context**-the misleading and deceptive conduct provisions of the TPA are not only concerned with whether a statement is accurate or not. A statement may be literally true, but may nevertheless mislead or deceive due to the context in which it appears or other surrounding circumstances. This is relevant in relation to comparisons drawn between businesses. The Australian Competition and Consumer Commission (ACCC) suggests that businesses follow the 'Dos' and 'Don'ts' set out below in relation to advertising.
- **Do:**
 - give current and correct information
 - be sure to provide all the relevant facts
 - ensure the overall impression is correct
 - back-up claims with facts
 - note important limitations or exemptions
 - correct misunderstandings.
- **Don't**
 - guess the facts
 - leave out relevant information
 - use unnecessary jargon
 - make promises that can't be kept
 - make predictions without reasonable basis
 - offer services that can't be delivered.

Implied guarantees and warranties