

Law for Management

Question 1

A) The *Competition and Consumer Act 2010* (CCA) is a nationwide rule that administers how every organizations inside Australia should manage their rivals, suppliers and consumers. The rule is intended to allow every organization to contend on their qualities in a reasonable and open business sector, whilst guaranteeing customers are additionally treated decently. Particular provisos concerning with the treatment of customers could be found in the Australian Consumer Law (ACL), which is contained in a calendar to the CCA (Australian Competition & Consumer Comission, 2015).

According to this act, I have selected an Australian based engineering company named Galvin Engineering. The strategies adapted by this company and the way this was presented in the company policies and via its website are (Galvin Machined Castings, 2015);

In the Terms & Conditions of Trade section in the website, it was mentioned that,

“The contract between Galvin Engineering and the customer (its successors and permitted assigns) (Customer) relating to any of Galvin Engineering's products (Products) or its services including customer service and technical backup (Services) or transactions are subject to these terms and conditions of sale (Terms). Unless otherwise agreed in writing these Terms apply to and form part of all agreements for the supply of Products and related Services by Galvin Engineering to the Customer (Contract) (Galvin Machined Castings, 2015).”

According to the “*Competition and Consumer Act 2010 (Cth) (CCA)*” it states (Galvin Machined Castings, 2015);

- a. “Where the provisions of the CCA apply, the provisions of these Terms will be read subject to the application of the CCA and in the case of any conflict, the provisions of the CCA will apply.”
- b. “Nothing in these Terms is intended to limit or replace any rights of consumers as that term is defined under the CCA.”
- c. “The Customer agrees that if the Customer buys any Products for the purposes of re-supply, manufacture or repair of other goods, the CCA will not apply to such supplies.”
- d. “If the Customer on sells any Products it agrees that it will not make any representations in relation to the Products which are not: contained on the packaging of the Products; or contained in any materials supplied by Galvin Engineering; or set out in any applicable manufacturer's warranty; or approved in writing by Galvin Engineering. If the Customer on sells the Products to consumers who purchase them for the purposes of re-supplies, manufacture or repair of other goods, the Customer agrees to contract out of the CCA in writing with those consumers.”

e. "The Customer agrees that it will indemnify Galvin Engineering against any claim, liability or cost incurred by Galvin Engineering as a result of any breach by the Customer of its obligations in clause 15d above."

B) According to ACCC, when it believes commerce has not followed the rule it could take lawful measures. During determining a conclusion concerning whether to go to court, the ACCC will consider many features together with the "ACCC's *Compliance and enforcement policy*", which contains: "blatant disregard of the law, or significant public interest or concern, or educative or deterrent effect, or new market issues, or the need to clarify the reach of the CCA. (Contract Law, 2015)" The ACCC can also decide the matter without moving to the court in numerous conditions. The ACCC is much probable to resolve without moving to court if the trade apprehensive about: "cooperates by compensating people who have been affected by the illegal conduct, or undertakes to change its management practices and improve staff training to ensure there are no further breaches of the law. (Australian Competition and Consumer Commission 2010, 2015) "

The penalties for the breach of the CCA comprises of punishments, unfavourable publicity and losing of repute. Breach the CCA might effects in the court: "imposing significant penalties for breaches of the consumer protection or anti-competitive conduct provisions, or making declarations that a business has contravened the CCA, or making injunctions restraining current or future conduct, or requiring certain action to be taken, or requiring businesses to publish notices about their conduct and corrective advertising, and to disclose relevant information to others (for example to customers), or allowing damages to be recovered by consumers and businesses affected by the conduct, or requiring businesses to provide compensation for consumers or businesses harmed by the conduct. (Australian Competition and Consumer Commission 2010, 2015)"

C) The recommendation would be a procedure to help a corporation in accomplishing a *competition law compliance* culture. The main focus of the procedure is the promise towards compliance - requiring higher management, particularly the board, to show a clear obligation to competition law compliance. This commitment ought to filter its way down via every levels of the pecking order of the association. The thought is that the more recognizable a worker is with the idea of competition law and the way might influence them, the much probable that the corporation would succeed in moderating the threats of breach. The 4 approaches to accomplishing a culture of compliance: threat recognition, threat evaluation, threat mitigation along with review (Allen & Overy , 2011).

In the terms and condition page of the website, it was mentioned that; “Applicability of the Law, these Terms shall be governed by and construed in accordance with the laws of the State of Western Australia, Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Western Australian Courts and any court which may hear appeals there from. (Galvin Machined Castings, 2015)”

Question 2

A) The rights and remedies available to Bronwyn under the “*Competition and Consumer Act 2010 (Cth) (CCA)* and as found in the *Australian Consumer Law (ACL)* in Schedule 2 of the CCA” are (NSW Government, 2013);

According to “The Australian Consumer Law (ACL), section 18, broadly prohibits misleading or deceptive conduct in trade or commerce. This manner could comprise procedures and declarations, like misleading: advertisements, or promotions, or quotations, or statements and representations by a person. A business is likely to breach the ACL if they create a misleading overall impression with the consumer about price, quality or value. A court would determine whether a forecast or declaration was misleading or deceptive. (Competition and Consumer Act 2010, 2010), (Dundas lawyers, 2014)”

The remedies are; (Hobart Community Legal Service Inc., 2013);

“Misleading or deceptive conduct might lead to civil remedies which include injunctions, declarations, damages, compensatory orders, orders for non-party consumers and non-punitive orders. Consumer protection agencies may issue public warning notices against traders who have been given court orders for misleading and deceptive conduct. (Australian Competition Law, 2015)”

“According to Section 37 of the Act, misleading representations about certain business activities includes, a person must not, in trade or commerce, make a representation that is false or misleading in a material particular; and concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person’s place of residence. A pecuniary penalty may be imposed for a contravention of this subsection. A person must not, in trade or commerce, make a representation that is false or misleading in a material particular; and concerns the profitability, risk or any other material aspect of any business activity that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and that requires the performance of work by other persons, or

the investment of money by other persons and the performance by them of work associated with the investment. A pecuniary penalty may be imposed for a contravention of this subsection. (Australian Contract Law, 2011)”

Case law related to this provision - *Google Inc v ACCC* (Australian Contract Law, 2011)

“The ACCC recently (2013) lost a High Court case relating to misleading and deceptive conduct. The ACCC alleged Google had engaged in misleading or deceptive conduct in relation to its display of sponsored links. The High Court held that Google was not responsible for misleading or deceptive representations contained in the links themselves (they were the responsibility of the advertisers themselves). View High Court Decision in. The High Court released a brief Press Release stating, in part: The High Court unanimously allowed the appeal. Google did not create the sponsored links that it published or displayed. Ordinary and reasonable users of the Google search engine would have understood that the representations conveyed by the sponsored links were those of the advertisers, and would not have concluded that Google adopted or endorsed the representations. Accordingly, Google did not engage in conduct that was misleading or deceptive.”

B) The role of Australian Competition and Consumer Commission in relation to Bronwyn case (NSW Government , 2013);

“The Australian Competition and Consumer Commission (ACCC) is a nationwide sovereign statutory power. It controls the *Competition and Consumer Act 2010* (Cth) and additional Acts. The ACCC promotes competition and fair trade inside the commercial center, controls nationwide infrastructure industries, and make sure that people and corporations abide by the Commonwealth’s competition, fair trading and consumer protection laws. The *Competition and Consumer Act 2010* (CCA) is a national law that administers how every associations in Australia should handle their competitors, suppliers and customers. The law is intended to permit all association to contend on their qualities in a sensible and open commerce sector, while guaranteeing consumers are also treated politely. Particular provisions regarding with the treatment of consumers could be found in the Australian Consumer Law (ACL), which is contained in a calendar to the CCA. In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies (NSW Fair Trading in New South Wales), which manage the mirror legislation of their jurisdictions. As well as education and information the ACCC recommends dispute resolution when possible as an alternative to litigation, can authorize some anti-competitive conduct and will take legal action where necessary (Australian Consumer Law, 2010). The *Competition and Consumer Act 2010* offers

the ACCC with a variety of enforcement remedies, including court-based results and court enforceable undertakings. The ACCC also resolves numerous matters administratively. The ACCC relies on complaints to recognize problems and notify its compliance and enforcement activities, but, the ACCC cannot pursue all the complaints it receives. The ACCC is improbable to become involved in resolving individual disputes, or disputes that are more appropriately resolved directly between the parties under an industry code. Whilst every complaint is carefully considered, the ACCC's role is to focus on extensive customer detriment and the ACCC exercises its discretion to direct resources to the investigation and resolution of matters that offer the greatest on the whole advantage for customers."

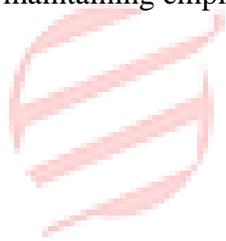
Question 3

"According to the Section 576 the Fair Work Commission of the Australian Fair Work Commission, the FWC has the purposes bestowed by this Act concerning the topics: the National Employment Standards; or modern awards; or enterprise agreements; or workplace determinations; or minimum wages; or equal remuneration; or transfer of business; or general protections; or unfair dismissal; or industrial action; or right of entry; or stand down; or other rights and responsibilities; or the extension of the National Employment Standards entitlements; or transfer of business from a State public sector employer; or unlawful termination protections; or special provisions about TCF outworkers; or workers bullied at work. (Fair Work Act 2009, 2015)"

The functions of FWC: promoting cooperative and productive workplace relations and preventing disputes; and dealing with disputes as referred to in section 595; and providing assistance and advice about its functions and activities; and providing administrative support in accordance with an arrangement under section 650 or 653A; and mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the *Federal Court of Australia Act 1976* or section 34 of the *Federal Circuit Court of Australia Act 1999*, have been referred by the Fair Work Division of the Federal Court or Federal Circuit Court to the FWC for mediation; and any other function conferred on the FWC by a law of the Commonwealth. (The Fair Work Commission, 2015)"

The strategies for management of the employee relations adopted by the above mentioned Australia based engineering company named Garvin Engineering are;

It is chiefly apprehensive with the relation among company, the employer, and its employees. Being an employer, it is accountable for managing worker relationships in the business. Employee relations could expand to comprise circumstances where there was a breakdown in communications among employees, causing arguments and grievances to emerge. It is company's function as an employer to have a procedure ready to manage these differences of opinion when they happen. An early method of being capable towards managing employee relations is by being amicable to employees. If employees feel contented in coming forward for help, then issues are more probable to be recognized and brought to company's notice earlier. The earlier one is aware of these problems, the easier they can solve in most cases. Keeping good employee relations has many of advantages for their business. It can progress communiqué among employees and therefore increase the productivity and competence. When people feel that there are good employee relations inside the place of work, they are usually more probable too long to remain with the company, thus improving employees withholding. An additional significant component of managing employee relations engages training and growth. Employees must be made conscious of their functions and tasks as workers. They must also be made conscious of rules concerning discrimination and harassment within the office. Workplace training and progress is a practical measure to stop upcoming disputes and thus helps in maintaining employee relations (Univeristy Of Western Sydney , 2015).



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