

## ○ A MESSAGE TO MOBILE PHONE RETAILERS FROM M2 TELECOMMUNICATIONS

M2 Telecommunications Pty Ltd (M2) seeks to alert other mobile phone retailers to be careful when making claims about a mobile phone's performance characteristics and consumers' rights to warranties and refunds if things go wrong.

It is important that any representations do not overstep the mark to ensure that consumers are not misled. Recently the ACCC approached M2 with its concerns about certain representations we made on our Simply Mobiles website between June 2007 and February 2009.

In particular, we made representations to the effect that we were not required to provide refunds and the mobile phone manufacturer was responsible for all warranty claims. The ACCC was concerned that the warranty representations may have misled consumers because express warranties offered by mobile phone manufacturers are in addition to, and not in the place of, the statutory rights available to consumers under the Trade Practices Act 1974 (the Act). These statutory rights entitle consumers to a refund from a retailer in certain circumstances and cannot be excluded.

We also made representations to the effect that:

- preconfigured software will not have an impact on a customer's ability to use the mobile phone on any other compatible Australian mobile network. The ACCC was concerned that the preconfigured software representations may have misled consumers because the existence of preconfigured software does or could have such an impact in certain circumstances; and
- certain mobile phones were compatible with all Australian 3G networks when those mobile phones were not compatible with Telstra's NextG network.

We acknowledge the ACCC's concerns that by making the representations, we may have made false representations and engaged in misleading or deceptive conduct in contravention of the Act. We did not intend to mislead or deceive our customers. M2 cooperated fully with the ACCC to resolve its concerns and the ACCC has accepted a court enforceable undertaking offered by us. As part of the undertaking we undertook to contact our customers offering redress to affected customers and to maintain an extensive trade practices compliance program to ensure we do not engage in similar conduct in future.

Mobile phone retailers should remain vigilant and have proper processes in place to ensure that they do not give consumers the wrong impression.

For further information about retailers' obligations under the Act, visit [www.accc.gov.au](http://www.accc.gov.au).



Australian  
Competition &  
Consumer  
Commission

This information notice has been placed and paid for by M2 Telecommunications Pty Ltd pursuant to undertakings accepted by the ACCC.