

# Consumer Debt Collection in the Fair Trading Act and CCCFA

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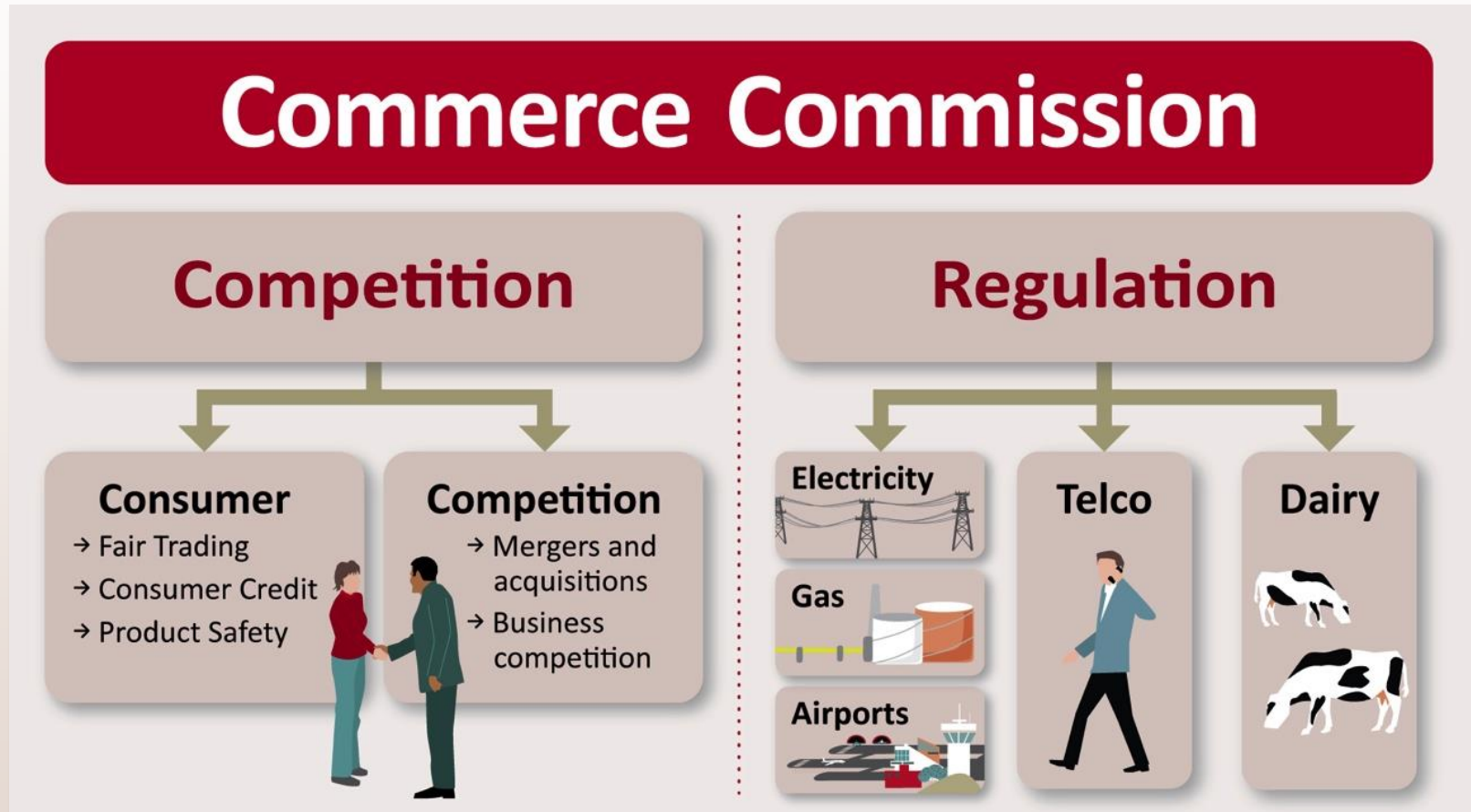


# Today's Topics

1. Who we are
2. What we do
3. Compliance issues relating to debt collection under the FTA and CCCFA
4. Developments in the credit and financial services landscape



# The Commerce Commission



# Vision and strategy 2017/2022

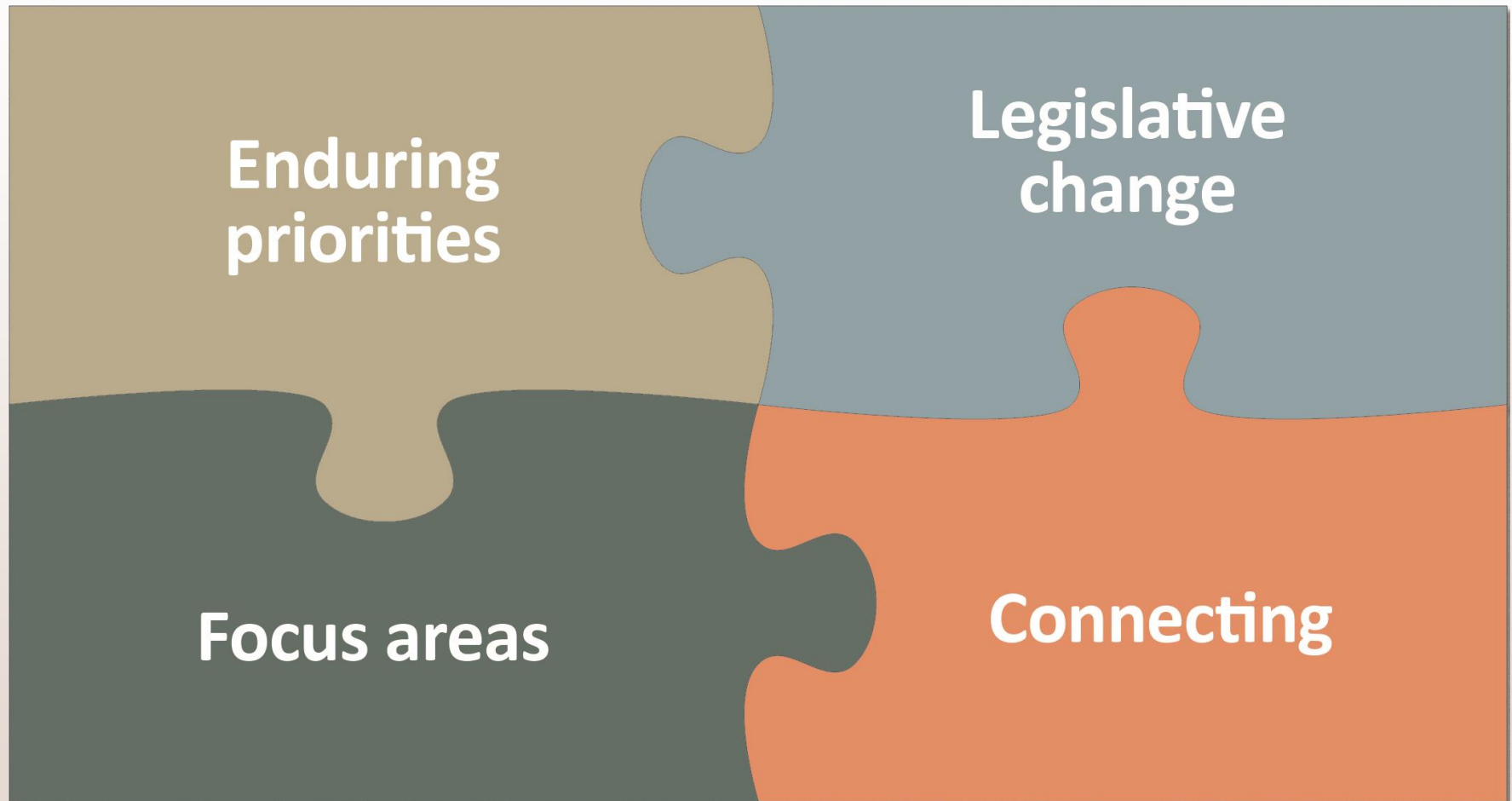


# Identifying compliance problems

- Complaints
- Industry projects
- Stakeholder information and feedback
- Analysis
- Interventions in court proceedings



# Strategic priorities



# Focus areas

- Credit issues broadly (enduring priorities)
- Motor vehicle financing and related add-ons (new in 2019/20)



# Complaint trends

- 8,924 complaints in 2018/2019 financial year
  - 314 relating to credit matters
- Key issues:
  - Responsible lending
  - Fees
  - Disclosure; and
  - Debt collection practices





# Compliance in the debt collection area

- Steps promoting compliance:
  - Fact sheet for debt collectors
  - Warning debt collectors
  - Criminal prosecution of Budget Loans and Evolution Finance
  - Prosecution of lenders taking security over prohibited consumer goods
  - Clarifying irresponsible practices in enforcing loans



# Misleading conduct and representations

- Potentially misleading conduct and representations:
  - Debt collectors falsely claiming they specialize in commencing legal proceedings and can commence them immediately
  - Misrepresenting debtors rights to dispute a debt
  - Misrepresenting inevitability of court proceedings:
    - “if you don’t reply by 4 o’clock I’m just going to send it to Court”



# Misleading conduct and representations

- Potentially misleading conduct and representations:
  - Falsely claiming to have listed defaults
  - Falsely claiming debtors are liable for additional costs
  - Use of logos that could mislead consumers that the agency was associated with the courts



# Budget Loans and Evolution Finance

- Issues:
  - Repossessed goods not subject to a security interest
  - Unlawfully added fees and interest
  - Misrepresented payments due
  - Misrepresented attachment orders
- Judgement:
  - “cynical and extortive”
  - Fined \$720,000 plus reparations
  - Banning orders



# Harassment and coercion

- Coercion involves a negotiation of choice, though an express or implied threat
- Harassment involves repeated conduct
- Australian case law relevant



# Unfair contract terms

- Terms can be declared unfair if they:
  1. Cause a significant imbalance in rights and obligations
  2. Are not reasonably necessary to protect legitimate business interests
  3. Would cause detriment if relied upon



# Responsible lending

- Lenders must act with the care and skill of a responsible lender
- They have obligations to treat a borrower reasonably and ethically when:
  - An agreement is breached
  - The borrower suffers hardship
  - Repossessing



# Changes to the credit landscape

- Hayne Australian Royal Commission
- Unfair commercial practices discussion paper
- Conduct of Financial Institutions options paper
- Targeted CCCFA Review
  - Debt collection practices





# Questions?



# Contact us



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