

Compliance with Best Practice Guidelines

Scam warning information

Education and awareness raising plays a key role in preventing harm arising from scams activity, by empowering individuals with the knowledge and skills to identify and avoid victimisation. Businesses can play a pivotal role in helping to forewarn consumers by providing them with timely and prominent warnings about scams activity.

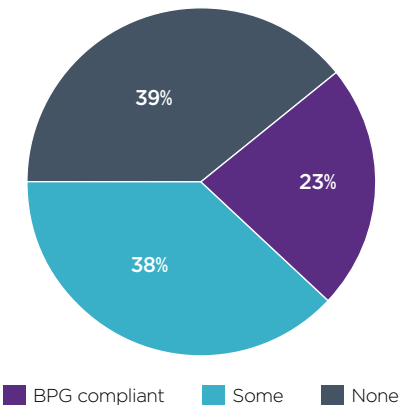
Scam warnings are only effective if they are brought to the attention of users or are readily accessible. Accordingly, the sweep endeavoured to assess:

- the extent to which scam messaging was present, and
- how accessible the warning messages were.

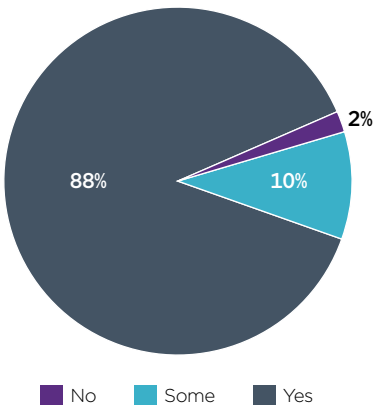
The sweep identified that 61 per cent of websites had some form of scam warning while 39 per cent of websites had no information at all. 23 per cent of sites reviewed were in line with the guidelines, whilst 38 per cent had some information which could be improved.

Where scam warning messaging was available, 88 per cent (54 per cent of all websites reviewed) had messaging that was displayed prominently on the homepage or was found with very little or no active searching.

Scam information



Scam warning accessibility



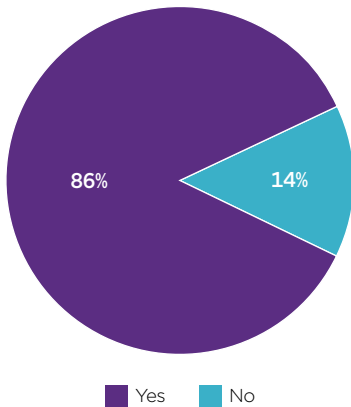
Of the 31 Australian-based dating sites that were swept, 58 per cent had some form of scam warning information. Just over half (53 per cent) of the non-Australian based sites had scam messaging.

Complaint reporting mechanisms

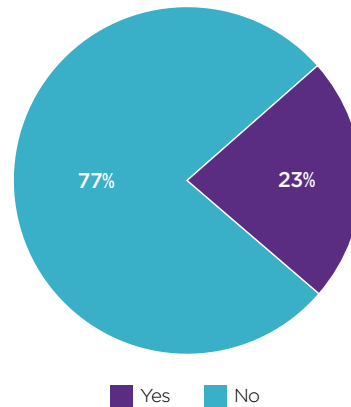
Sweep analysis showed that 86 per cent of dating sites provide users with a general complaint mechanism, allowing users to report suspicious conduct and other service quality issues. However, only 23 per cent of sites have a dedicated scam reporting mechanism (for example, via a 'report a scam' link).

Better practice is to have a dedicated scam reporting mechanism to assist dating sites to quickly identify and take action to remove scam profiles.

General complaint mechanisms



Scam reporting mechanisms



In conducting the sweep, it was found that some complaint reporting mechanisms are only available after logging in as a member. Given that most scammers seek to move their victims away from the official dating site, requiring past members to renew their membership in order to report fraudulent or suspicious conduct imposes an unnecessary impediment.

Better practice is for industry to make it possible for non-members to report scams without signing in or re-joining as a member.

Best Practice Guidelines compliance

In terms of overall industry uptake of the guidelines, results are mixed. Major industry participants and traders involved in development of the guidelines generally achieved good levels of compliance. However, there are still a number of smaller operators falling well short of best practice. These findings suggest further promotion of the guidelines is warranted.

The dating industry is encouraged to adopt the *Best Practice Guidelines*.

Potential issues arising under the Australian Consumer Law

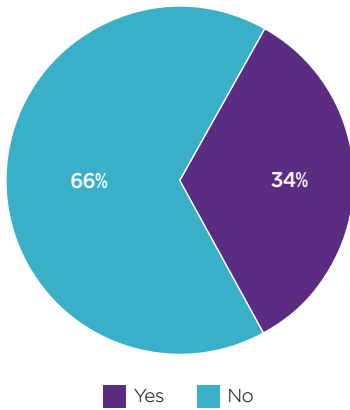
As part of the sweep, the ACCC identified the following five industry practices as areas of potential concern under the ACL:

- automatic subscription renewals
- unfair termination provisions
- pricing disclosure
- privacy policies and use of profile information (lack of disclosure)
- potentially misleading 'free' claims.

Automatic subscription renewals

The sweep identified that 66 per cent of dating sites operate an automatic subscription renewal policy and continue to charge users for their subscription until they actively revoke permission. This conduct is not of itself problematic if it is clearly disclosed that the consumer is entering into a subscription service. However, many dating sites use discounted or free introductory offers that are subject to terms and conditions that are only detailed in the fine print agreement. In their enthusiasm to join a dating site, consumers may not always read lengthy agreements and be aware that premium services or contract extensions attract charges for an ongoing subscription.

Automatic subscription renewal

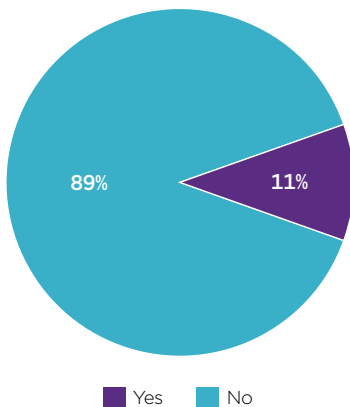


Better industry practice is for providers to offer fixed term contracts without automatic renewal. However, if services are offered on a subscription basis, providers should make it clear and disclose upfront that membership is a subscription that is automatically renewed and incurs ongoing fees until cancelled.

Unfair termination provisions (unfair contract terms)

Most dating services allow members to cancel online (89 per cent). However, potential unfair termination provisions were identified on 11 per cent of sites.

Unfair termination provisions



The sweep identified that some dating sites require notice of termination to be sent via post. This term could be considered unfair, given that dating sites operate online, collect payments online and can only be joined online. While the process of termination via post only requires a small additional expense on the part of the consumer (cost of postage), there is effort required in taking the time to prepare correspondence and attend to delivery.

In the case of foreign service providers, it may be more difficult for consumers to comply with the short timeframes in which to provide notice of termination. The consumer may miss the notice cut-off period due to delays in receipt of the letter and further delays in processing, and thus be required to pay the subscription for another month. The problem is compounded if the notice of termination is rejected as not falling within the window of opportunity and then needs to be repeated the following month.

Termination provisions requiring more onerous procedures than those required to subscribe do not appear to be a legitimate protection of the operator's interests and may disadvantage consumers.

Better industry practice is for service providers to accept a notice of termination by email or other form of electronic communication (for example, web form).

Where the contract does not outline how a consumer can terminate a contract, there is no term to be considered under the unfair contract terms framework. However, given that the contract must be read as a whole, failure to outline a termination procedure may make terms such as automatic renewal more likely to be classified as unfair. This may also raise questions about potentially misleading and deceptive conduct, and whether there was adequate disclosure of important terms and conditions.

Better industry practice is for providers to offer fixed term contracts without automatic renewal. However, if services are offered on a subscription basis, termination processes should be clearly and prominently stated.

Pricing disclosure

It is important that online dating service providers ensure clear and upfront pricing disclosure to provide consumers with adequate information to make an informed choice on the suitability of the services on offer.

While the rules and practices of any given individual site may differ, online dating services can generally be split into two broad categories: those that offer exclusively free services, and those that offer a range of free and paid-for services.

Generally, free sites offer limited services to consumers such as a capacity to list their personal profiles and search for profiles of interest. Some sites may also allow messages from users to be sent by email anonymously through the site's system and others may have their own internal messaging system.

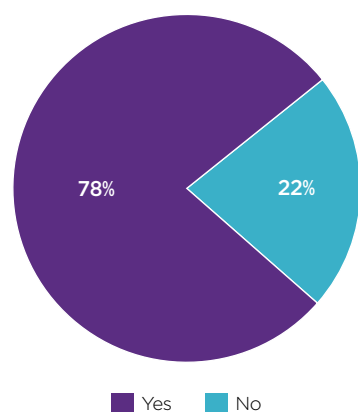
Fee charging sites often provide a basic level of service for free and this allows someone to list their profile, but it may not enable them to initiate contact with other members. An upgrade to paid-for subscription services may offer consumers a range of premium services including:

- an enhanced capacity to market profiles
- being able to initiate contact with other users by paying for alerts, for example 'winks', 'kisses', 'hugs', etc.
- specific matchmaking with other members through profile analysis
- priority listing in response to profile searches.

Pay-for online dating services typically involve consumers entering into a short term contract for premium level services with an automatic renewal of the contract. The contract then remains in place until such time as the customer notifies the service provider of their intention to cease.

Of the websites swept, 78 per cent offered free membership on their homepages. Some service providers operate on an entirely free basis while others offer additional 'premium services' that require users to pay for subscriptions. Many operators use discounted or free introductory offers. However, fine print terms may not always adequately disclose that subscription services attracting fees automatically follow. This type of conduct may lead to consumers being misled about the true cost of services.

Sites that make free offers



Better practice is for dating sites to clearly disclose all applicable fees and charges upfront to allow consumers to make an informed choice regarding the cost of services provided.

Less than two per cent of websites provided specific information about the costs of the service before becoming a member. It should be noted that a common business model is for operators to provide a limited range of free services upon becoming a member and this does not generally place an obligation on consumers to purchase additional 'premium service' packages.

While fees and charges for premium packages are generally disclosed to members, this information is often only available after a consumer has taken the time to complete membership applications and establish a profile. It is therefore not always possible for a consumer to evaluate the cost of full services until after they have committed time and energy into complying with membership requirements.

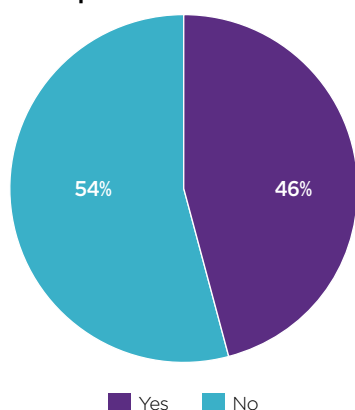
In addition, representing that a genuine dating service is 'free' may be misleading if the 'free' services are of limited utility.

Better practice is for dating sites to provide up-front disclosure of the full range of costs associated with the provision of services without requiring consumers to become a member.

Privacy policies and use of personal information

Of the sites swept, 91 per cent provide a privacy policy. However, 46 per cent were found to have terms and conditions stating that profile information may be used for other commercial purposes, including advertising and referral to third party affiliates. 57 per cent of sites provided consumers with an option to 'opt-out' of direct marketing.

Use of profile information



From an ACL perspective, a failure to adequately disclose that an individual's private information might be used or on-sold to other commercial interests could raise concerns regarding misleading or deceptive conduct.

The ACCC identified that 42 per cent of the dating sites swept went further, with terms and conditions allowing them to share profile information with other sites within a network.

The copying of profiles across partner sites has the potential to mislead members because a service provider could:

- advertise in a way that claims their membership numbers for one site is the total membership of all affiliated sites when this is not the case, or
- provide members of one site with potential matches from another different but affiliated site.

While disclosure of consumers' personal information is often made in the terms and conditions of use, it is likely these are overlooked and/or not fully understood before consumers sign up. This is not an uncommon issue and highlights the importance of consumers taking the time to read and understand the terms and conditions of the contracts they enter into.

Better practice is for dating site operators not to re-use customer information without express consent. Given the sensitive nature of the information provided, it should not be inferred that customers have consented to a broader use.

If dating site operators choose to re-use customer's information, it is better practice to adopt an opt-in model whereby they receive express consent from customers to re-use their profile or information, including on which sites their profile will appear, how their personal information will be handled, and how they can remove their profile at a later date.

Fake profiles

While it was beyond the scope of this internet sweep, the ACCC is aware of instances in the past where some operators in the online dating industry created and operated their own profiles. The profiles were used to send customised messages to users of the website and also appeared in searches carried out by users. The online dating industry should be aware that the ACCC previously took action against JetPlace Pty Ltd for engaging in such conduct. In this case, the Federal Court found the conduct to be misleading or deceptive.³

Next steps

The findings of this report lay a solid platform for further engagement with the online dating service industry and the ACCC will approach each of the dating sites that were reviewed to:

1. acknowledge the efforts of those who have adopted the guidelines
2. encourage broader adoption of the guidelines
3. advise the online dating service industry of the internet sweep findings and
4. seek participation from industry in a review of the guidelines.

As part of this review, ACCC contacts data also identified that automatic subscription renewals and onerous termination provisions have caused some issues for consumers. The ACCC will engage with online dating site operators on possible measures to address these concerns.

More broadly, the ACCC continues to explore opportunities to work with industry and other government agencies to disrupt scam activity. Scammers are quick to adopt emerging digital technology and exploit online communications channels including social media. As such, the ACCC's efforts to disrupt dating and romance scams will consider the role of a range of businesses that scammers target to enable their activity.

³ Australian Competition and Consumer Commission v JetPlace Pty Ltd [2010] FCA 759 (21 July 2010)