

ACCC submission to the 2013 Franchising Code review

1. Introduction

The Australian Competition and Consumer Commission (ACCC) plays a key role in the franchising sector. The ACCC is responsible for promoting compliance with the *Competition and Consumer Act 2010* (the Act)—including the Australian Consumer Law (ACL)—and the Franchising Code of Conduct (the Code) through education, liaison and, where necessary, enforcement action.

Set out below is a summary of the ACCC's franchising related awareness-raising, compliance and enforcement activities. This is followed by a discussion of the issues the ACCC considers should be addressed as part of the current review of the Code.

ACCC education/liaison activities

The ACCC has a team dedicated to franchising and industry codes. This team has prepared extensive materials to assist prospective franchisees, existing franchisees and franchisors understand their rights and obligations under the Code and the Act, including:

- *Franchisee Manual*
- *Franchisee start-up checklist*
- *Your essential guide to the Franchising Code* (DVD)
- *Franchising Code compliance manual for franchisors and master franchisees.*

The ACCC has a web page devoted to franchising, with a link to the Code, frequently asked questions and other useful information. The page is currently being updated as part of the ACCC's website review.

The ACCC has funded a free online education program for prospective franchisees, which is administered by Griffith University. More than 3,600 people have signed up to do this course since its release in 2010.

The ACCC has a Franchising Consultative Committee (FCC), which has been running for 10 years. Members—who include franchisees, franchisors, business advisors and franchising researchers—meet twice per year to discuss issues affecting the franchising sector, particularly those relating to the ACCC's role. The ACCC will host an out-of-session meeting between the FCC and Mr Wein in February to discuss the issues raised in the current review.

The ACCC prepares a six-monthly report entitled *Small Business in Focus*, that summarises the ACCC's small business and franchising related activities, and provides a breakdown of relevant complaints and enquiries data. The latest edition of the report, covering the period 1 July to 31 December 2012, is attached to this submission (**Annexure 1**).

The ACCC has a team of Education & Engagement managers operating across Australia, giving presentations and disseminating important information to franchisees, franchisors and other small business operators about their rights and obligations under the Act and the Code. The ACCC also has a dedicated Small Business Helpline for small businesses and franchisees seeking quick guidance (1300 302 021).

The ACCC regularly delivers speeches at franchising conferences and other events. For example, in October 2012, Deputy Chair Dr Michael Schaper delivered a keynote address at the Legal Symposium of the Franchise Council of Australia’s National Convention.

Franchising complaints¹

The ACCC receives a large number of franchising related complaints each year. Figure 1 illustrates the trend in complaints. Figure 2 breaks down these complaints by issue.

Figure 1: Franchising related complaints since the 2008 Code amendments

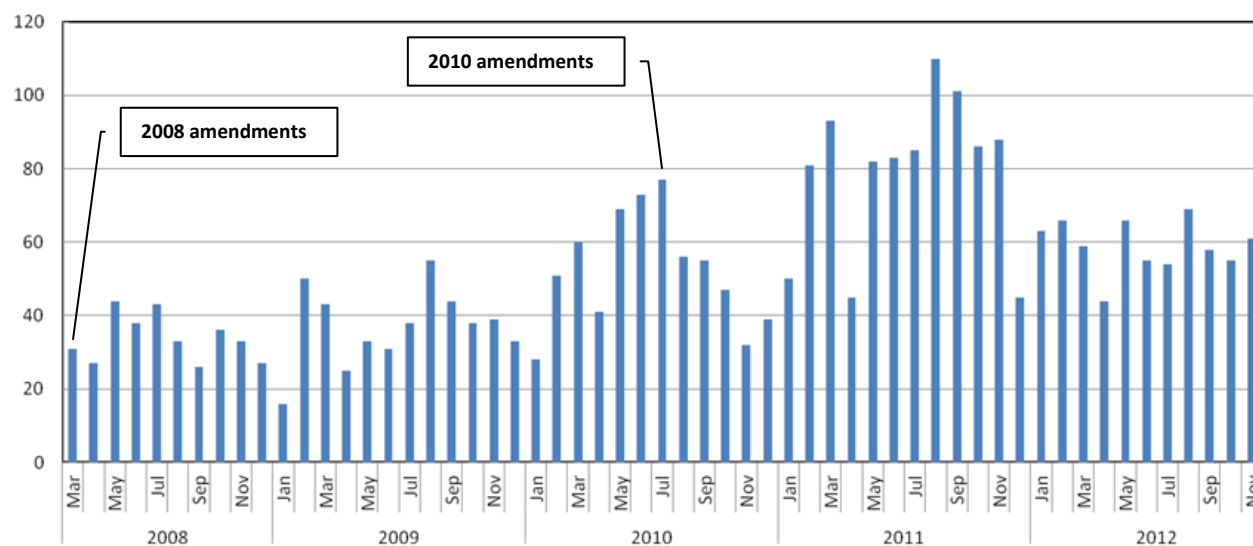


Figure 2: The issues raised in franchising related complaints

	1 March 2008 - 30 June 2010 (28 months) 1109 complaints		1 July 2010 - 31 Dec 2012 (30 months) 1937 complaints	
Pre-entry/cooling-off period				
Misleading conduct/false representations – other (Act)	315	28.4%	249	12.9%
Misleading conduct/false representations – earnings (Act)	107	9.6%	160	8.3%
No disclosure document (Code)	92	8.3%	101	5.2%
Inaccurate disclosure (Code)	56	5.0%	89	4.6%
Copy of franchise agreement not provided (Code)	23	2.1%	36	1.9%
Deposit not refunded	16	1.4%	58	3.0%
No legal advice statement (Code)	5	0.5%	19	1.0%

¹ As distinct from enquiries

Mid-term				
Unconscionable conduct (Act)	149	13.4%	159	8.2%
Lack of training/support (contractual)	72	6.5%	54	2.8%
Stock/supply issues (e.g. price, quality, reliability) (contractual)	50	4.5%	95	4.9%
Franchisor owes franchisee money (contractual)	44	4.0%	69	3.6%
Exclusive dealing (Act)	32	2.9%	54	2.8%
Franchisee wants to exit – losing money	31	2.8%	74	3.8%
Franchisor not approving sale of franchise (Code) or delaying process	24	2.2%	49	2.5%
Territory issue (contractual)	23	2.1%	55	2.8%
Lease issue (contractual)	22	2.0%	37	1.9%
No marketing fund statement (Code)	19	1.7%	25	1.3%
Franchisor has new owner/taken over – imposing new conditions	16	1.4%	19	1.0%
Unilateral variation of franchise agreement	14	1.3%	34	1.8%
How franchisor spending marketing fund (contractual)	12	1.1%	37	1.9%
Franchisor setting franchisees' prices (Act)	10	0.9%	17	0.9%
Franchisor competing with franchisees – online	6	0.5%	11	0.6%
Franchisor competing with franchisees – physical store	6	0.5%	36	1.9%
Franchisee required to make expensive refurbishment (contractual)	3	0.3%	23	1.2%
Franchisee not allowed to trade online	1	0.1%	8	0.4%
Dispute resolution				
Mediation – franchisor refusing to attend (Code)	18	1.6%	28	1.4%
Mediation – franchisor not complying with settlement	9	0.8%	4	0.2%
End of agreement				
Unfair termination (Code)	37	3.3%	89	4.6%
End-of-term arrangements (contractual)	25	2.3%	43	2.2%
Non-compete/restraint clause (contractual)	16	1.4%	19	1.0%
Non-renewal of agreement without cause	8	0.7%	17	0.9%
Other				
Contractual – other	30	2.7%	112	5.8%
Franchisor insolvent	25	2.3%	65	3.4%
Franchisor claims that not a franchise system (Code)	7	0.6%	42	2.2%
SCAM	3	0.3%	20	1.0%
TOTAL	1326		2007	

Note: As many complaints involve multiple allegations, the total number of issues raised exceeds the number of complaints.

Note that the frequency of some of the most common allegations made prior to the 2010 amendments has decreased significantly since the amendments came into effect (1 July 2010). For example, allegations of misleading conduct/false representations have dropped from 38 per cent to 21.2 per cent; allegations that a disclosure document was not provided have fallen from 8.3 per cent to 5.2 per cent; and allegations of unconscionable conduct have decreased from 13.4 per cent to 8.2 per cent.

Industry code audits

On 1 January 2011, the ACCC was given the power to audit traders for compliance with industry codes prescribed under the Act (currently the Franchising Code, Horticulture Code, Oilcode and Unit Pricing Code). The ACCC can require a corporation to provide any

information or documents it is required to keep, generate or publish under a prescribed code. The corporation has 21 days to comply. The ACCC is able to conduct random audits – it does not need to suspect that the company may have breached the Code before using the power.

The audit power enables the ACCC to obtain a range of documents from a franchisor, including disclosure documents and marketing fund statements. The ACCC has now served audit notices on 33 franchisors. The vast majority of these franchisors have been found to be complying with the Code following these audits.

ACCC enforcement outcomes

The ACCC has actively enforced the Code since its introduction in 1998. In this time we have taken successful court action against more than 20 franchisors and have also obtained court enforceable undertakings from more than 10 franchisors.

A full list of the ACCC's franchising related enforcement outcomes is at **Annexure 2**.

Case Study: Allphones Retail Pty Ltd (2010)

The ACCC instituted class action proceedings against Allphones and three of its executives for breaches of the then Trade Practices Act. The ACCC alleged that Allphones had engaged in conduct that was in all the circumstances unconscionable, including:

- receiving commissions and bonuses from telecommunication networks and handset suppliers which were not paid to franchisees in accordance with their franchise agreements, and which were not disclosed to franchisees
- threatening or engaging in a pattern of harsh conduct towards franchisees
- implementing policies targeted at certain franchisees, including franchisees who sought to enforce their contractual rights against Allphones, in order to pressure them to sell, transfer or otherwise terminate their franchise.

Justice Foster of the Federal Court declared that Allphones had engaged in misleading and deceptive conduct, contravened the Franchising Code and engaged in unconscionable conduct in its dealings with franchisees. The Court, by consent, ordered that the franchisees be paid \$3 million in damages for money that had been withheld. A number of injunctions were imposed to prevent similar conduct in the future. The three individuals were found to have been knowingly concerned in the unconscionable conduct.

Case Study: JV Mobile Pty Ltd (2007)

JV Mobile sold licences to retailers to own and operate stores using the name JV Mobile in Melbourne, Sydney, Adelaide and Brisbane. Despite operating and marketing itself as a franchise, JV Mobile failed to provide its retailers (franchisees) with disclosure documents as required by the Franchising Code. In response to concerns that it had breached the Code, JV Mobile provided the ACCC with a number of court-enforceable undertakings, including to:

- formally structure all new agreements with JV Mobile retailers as franchise agreements and provide the opportunity for existing JV Mobile retailers to structure their existing

agreements as franchise agreements (including the provision of disclosure documents, dispute resolution and termination procedures); and

- implement a trade practices compliance program that includes complaints handling procedures and practical trade practices training focusing on the Franchising Code.

Based on our extensive experience as the national franchising regulator, we consider that the following issues should be addressed as part of the current review of the Code.

2. Enforcement challenges

While many complaints from franchisees involve alleged breaches of the Code, a large number of complaints involve alleged breaches of other provisions of the Act, such as those prohibiting misleading or deceptive conduct or unconscionable conduct.

The Code is a mandatory industry code of conduct prescribed under section 51AE of the Act. A breach of the Code is a breach of section 51AD of the Act. The remedies available for a breach of the Code (i.e. a breach of section 51AD of the Act) include injunctions, damages and other remedial orders, including third party redress. The ACCC can also issue a public warning notice for likely breaches of the Code.

While the contravention of certain provisions of the Act attracts civil pecuniary penalties (e.g. penalties of up to \$1.1 million apply to unconscionable conduct by corporations), pecuniary penalties are not currently available for breaches of the Code.

Where the ACCC has reasonable grounds to believe that a person has contravened certain provisions of the Act, the ACCC can issue an infringement notice² stating the penalty payable under the notice (\$10,200 for an unlisted corporation, \$102,000 for a listed corporation and \$2,040 for an individual³). However, the ACCC is unable to issue infringement notices for likely breaches of the Code.

A table setting out the powers and remedies that apply to the Code and to some of the most relevant provisions of the Act is attached (**Annexure 3**).

Civil pecuniary penalties – the need for greater deterrence

The ACCC considers that for a code of conduct to be effective, the consequences of breaching that code must be sufficiently serious to deter non-compliance.

Despite our record of enforcement action for breaches of the Code (see **Annexure 2**) and our ongoing audit program (discussed above), the ACCC continues to receive complaints from franchisees alleging that their franchisor has not complied with the Code, as well as

² Payment of an infringement notice penalty is not an admission that the person has contravened the Act. Once an infringement notice is paid, the ACCC cannot commence court proceedings in relation to the alleged contravention (but other parties may). Non-payment of an infringement notice penalty could result in the ACCC taking court action for the alleged breaches. The ACCC maintains a register on its website listing infringement notices that have been paid.

³ The penalties for infringement notices are calculated using penalty units rather than dollar figures. On 28 December 2012 the value of a penalty unit increased from \$110 to \$170. This resulted in the penalties for infringement notices increasing from \$6,600 to \$10,200 for unlisted corporations, from \$66,000 to \$102,000 for listed corporations and from \$1,320 to \$2,040 for individuals).

complaints about businesses operating franchise systems under the guise of a licensing or distributorship arrangement in a deliberate attempt to bypass the Code. The lack of penalties means there is little to deter rogue franchisors from continuing to engage in this conduct.

The ACCC considers that a civil pecuniary penalty (imposed by a court) is an appropriate remedy to address a breach of the Code that undermines the Code's purpose, such as a franchisor's failure to provide a disclosure document to a prospective franchisee or an unlawful termination of a franchise agreement.

The ACCC has held this view for some time. For example, as part of the last review of the Code, the ACCC made a submission to the Parliamentary Joint Committee on Corporations and Financial Services (the Joint Committee) recommending that, among other things, the Joint Committee consider whether the introduction of civil pecuniary penalties for a breach of a prescribed code under the Act (then the *Trade Practices Act 1974*) would improve compliance. The Joint Committee subsequently recommended that the Act be amended to include pecuniary penalties for breaches of the Code. The Government did not adopt this recommendation.

The ACCC acknowledges that the amount of the penalty should be proportionate to the seriousness of the conduct, and that this would be determined by the court.

Infringement notices – quickly responding to less severe breaches

The availability of infringement notices for Code breaches would also allow the ACCC to quickly and efficiently address certain types of breaches.

For example, the ACCC receives many complaints from franchisees alleging that they received an inaccurate or incomplete disclosure document from their franchisor. While many of these complaints can be resolved administratively (court action would usually be excessive), the payment of an infringement notice in these circumstances would make the matter public and would act as a deterrent to other franchisors.

The audit power – limited in scope

As discussed above, the audit power enables the ACCC to obtain from a franchisor any information or documents it is required to keep, generate or publish under the Code, including disclosure documents and marketing fund statements. However, the audit power does not allow the ACCC to assess the franchisor's compliance with all aspects of the Code. For example:

- Before entering into a franchise agreement, the franchisor must have received from the prospective franchisee signed statements that the prospective franchisee has received advice from an independent legal adviser, business adviser and/or accountant, or has been told that such advice should be sought but has decided not to seek it (subclause 11(2) of the Code). As the franchisor is not required to 'publish' or 'generate' these statements (they can be generated by the franchisee) and there is no obligation for the franchisor to 'keep' the statements (even though, in practice, it is likely to do so), at present the ACCC cannot compel a franchisor to provide copies of these statements using the audit power.

- The franchisor must notify the franchisee, at least six months before the end of the term of the franchise agreement, of the franchisor’s decision to renew or not to renew the franchise agreement or to enter into a new franchise agreement (if the term of the agreement is less than six months, at least one month’s notice is required) (clause 20A of the Code). As the Code does not require this notice to be given in writing, the audit power will not assist the ACCC to determine whether a franchisor has complied with this requirement.

Further, while the ACCC can obtain a franchisor’s disclosure document, it cannot compel the franchisor to provide documents or other information that supports the information set out in that disclosure document. For example, if the disclosure document provides that no franchise agreements were terminated by the franchisor in the last three financial years (item 6.4(c)), the audit power does not allow the ACCC to test the accuracy of this statement. If a franchisor discloses that it does not receive rebates or other financial benefits from any of its suppliers (item 9.1(j)), again it is not possible to test the veracity of this statement using the audit power.

The ACCC can only compel a franchisor to provide additional information outside the scope of the audit power (e.g. by issuing a section 155 notice⁴) if the Chairperson or a Deputy Chairperson has formed the view that the franchisor is capable of producing documents or information or giving evidence relating to a matter that constitutes or may constitute a *breach* of the Act. A section 155 notice cannot be used merely to check for compliance with the Code.

For the reasons discussed above, it may be appropriate to extend the scope of the audit power to capture a wider range of documents and information to allow the ACCC to more accurately assess a franchisor’s level of compliance with the Code.

Recommendations:

- 1. The ACCC recommends that civil pecuniary penalties and infringement notices be made available for breaches of the Code.**
- 2. The ACCC recommends that the scope of the industry code audit power be extended to allow the ACCC to more accurately assess a franchisor’s level of compliance with the Code.**

3. Disclosure

Short risk statement

There is anecdotal evidence (and complaint data) suggesting that many franchisees do not read, or at least do not understand, the disclosure document they receive before they enter into a franchise agreement. This is usually attributed to the length and complexity of most disclosure documents.

⁴ Section 155 of the Act is the ACCC’s most widely used mandatory information-gathering power. Where the ACCC, its chairperson or deputy chairperson has reason to believe that a person is capable of providing information, documents or evidence about a matter that constitutes, or may constitute, a contravention of the Act, the ACCC can issue a notice requiring the person to provide the information or documents or to give evidence.

The ACCC considers that it may be appropriate to require franchisors to provide prospective franchisees with a one or two page summary document or risk statement that accompanies (or forms part of) the disclosure document. Such a document could set out the elements of a franchising arrangement that appear to be most misunderstood by franchisees; for example:

- “When the term of your franchise agreement ends, the franchisor may decide not to renew your agreement. If your agreement is not renewed, you ~~will~~/will not receive an exit payment.”
- “If you breach the franchise agreement and do not remedy the breach within the time specified by the franchisor, the franchisor may be entitled to terminate your agreement.”
- “If the franchisor fails, you may lose the right to occupy any premises leased by the franchisor, as well as the right to use the franchisor’s intellectual property.”
- “You may be required to purchase products or services only from specified suppliers, even if you could obtain similar products or services at a cheaper price elsewhere.”

Note that when announcing the 2010 amendments, the then Minister for Small Business, the Hon. Dr Craig Emerson MP, asked the franchising sector to develop a short "plain English" document for franchisees setting out their rights and responsibilities. The guide would be additional to the existing disclosure requirements under the Code and would emphasise the key costs, benefits and risks of a franchise system. However, such a document has not yet been developed.

Ability of franchisor to compete with franchisees online

In the last five years, the ACCC has received 17 complaints from franchisees who are concerned that their franchisor is competing against them through its website. The ACCC expects this issue to become more prevalent over time.

A franchisor must currently disclose whether a franchise being offered for sale is for an exclusive or non-exclusive territory and whether the franchisor (or its associate) may operate a business that is substantially the same as the franchised business within or outside the franchisee’s territory (item 8 of Annexure 1 of the Code). As the internet is not technically a territory, it is unclear whether the franchisor is required to disclose its ability to compete with a franchisee online.

Griffith University’s *Franchising Australia 2012* report found that almost 40 per cent of franchisors engage in online sales.⁵ A further 32 per cent indicated that whilst they do not currently sell online, they intend to do so in the future.⁶

As online trading by franchisors was not prevalent when the Code was initially developed, the Code has now ‘fallen behind’ how franchise systems are operating in practice. The ACCC considers that franchisees would benefit from increased disclosure about the ability of a franchisor to operate online.

⁵ Prof. Lorelle Frazer, Assoc. Prof. Scott Weaven, and Dr Kelli Bodey, ‘Franchising Australia 2012’, Griffith University, 2012. p.76

⁶ Ibid.

Disclosure of infringement notices paid

Franchisors are currently required to disclose certain current court proceedings and past judgments under item 4 of their disclosure documents. Franchisors must also inform their franchisees of the existence and content of any undertaking or order under section 87B of the Act. However, franchisors are not required to disclose infringement notices they have paid⁷. The ACCC considers that it would be appropriate to require disclosure of any infringement notices paid by a franchisor.

Preventing the non-disclosure of franchisees' contact details

The ability to contact past and current franchisees is a critical aspect of a prospective franchisee's due diligence.

Under the Code, franchisors are required to disclose the name and contact details of all existing franchisees, as well as franchisees that were transferred, ceased to operate, terminated, not renewed or bought back in the last three financial years. However, a franchisor does not have to provide details of a franchisee if the franchisee has requested, in writing, that their details not be disclosed (item 6.6 of Annexure 1).

The ACCC has become aware that, following a franchising dispute, some franchisors are inserting clauses into their deeds of settlement to the effect that the franchisee requests that their contact details not be disclosed in future disclosure documents. In some cases, such a clause may even be inserted into the franchise agreement itself. The practical consequence of this type of clause is that prospective franchisees may be prevented from contacting franchisees who have experienced serious issues with the franchisor.

While it is important that past and current franchisees are able to keep their details confidential if they wish, the Government should consider ways to close this loophole to ensure that the written request from a franchisee that its details not be disclosed is in fact initiated by the franchisee.

Recommendations:

- 3. The ACCC recommends that franchisors be required to provide prospective franchisees with a short summary document or risk statement that accompanies (or forms part of) the disclosure document.**
- 4. The ACCC recommends that franchisors be required to disclose the ability of the franchisor to operate online in competition with their franchisees.**
- 5. The ACCC recommends that franchisors be required to disclose the existence of any infringement notices they have paid.**
- 6. The ACCC recommends that the Code be amended to ensure that a written request from a franchisee that its details not be disclosed has in fact been initiated by the franchisee.**

⁷ The ACCC maintains a public register of infringement notices which have been paid.



SMALL BUSINESS IN FOCUS



SMALL BUSINESS, FRANCHISING AND INDUSTRY CODES HALF YEAR REPORT

NO. 5

July–December 2012

The Australian Competition and Consumer Commission is committed to protecting the interests of small businesses. This twice-yearly report provides a summary of the ACCC's work and activities amongst the small business sector.

Facts and figures

2 338 is the number of complaints and enquiries recorded by the ACCC Infocentre from small businesses, franchisees and franchisors over the last six months

20 132 is the number of hard copy publications distributed to small businesses and associations

108 is the number of presentations, expos and field days that the ACCC participated in

3 590 is the number of registrants who have signed up to the ACCC-funded free online franchising education program since it began in 2010

Complaints and enquiries¹

The ACCC receives a large number of complaints and enquiries from small businesses about competition and consumer issues. The following number of contacts were received from the small business sector:

	This period: Jul–Dec 2012	Last period: Jan–Jun 2012
Small business	1471 complaints and 366 enquiries	1803 complaints and 872 enquiries
Franchising ²	454 complaints and 47 enquiries	271 complaints and 76 enquiries

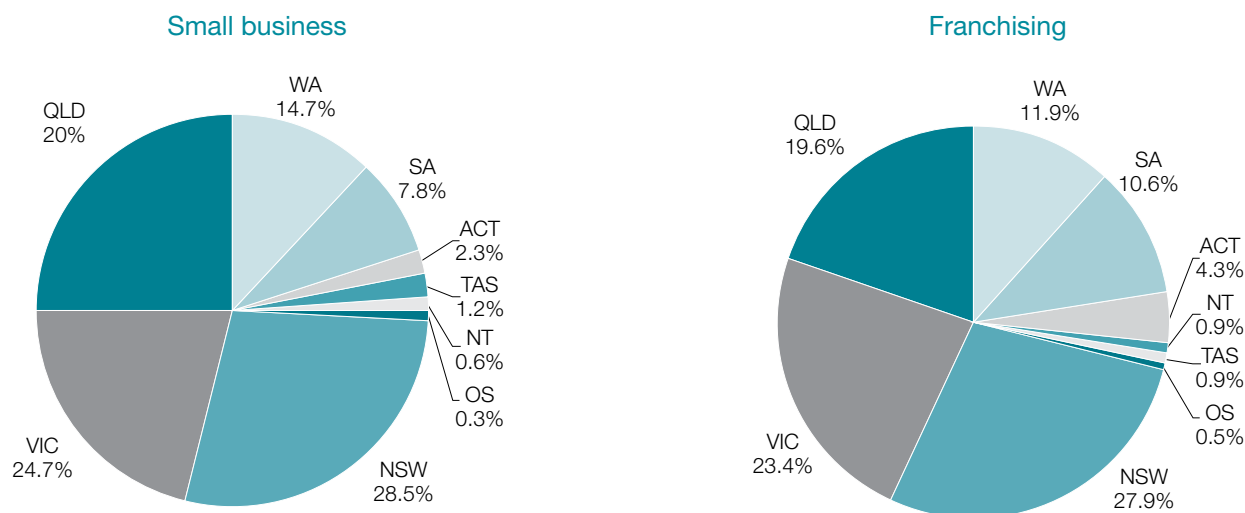
To find out more about your rights and obligations, or to make a complaint, contact the ACCC via the Small Business Helpline:

1 300 302 021

¹ The data provided reflects complaints and enquiries received by the ACCC from various sources and is provided as general guidance only. Upon further investigation, the conduct being complained about may not amount to a legislative breach. Care should be taken when drawing any conclusions based on this data.

² Primarily from franchisees, but includes a small number from franchisors.

Breakdown of complaints by location where supplied



Breakdown of complaints by key issue³

Issue	Small business		Franchising	
	This period Jul–Dec 2012	Last period Jan–Jun 2012	This period Jul–Dec 2012	Last period Jan–Jun 2012
Consumer protection related issues				
Misleading conduct/false representations	389	678	65	59
Consumer guarantees	135	307	4	18
Unsolicited goods/services	25	50	0	0
Unconscionable conduct	68	71	47	31
Product safety standards	25	54	2	4
Other ACL issues	25	108	6	5
Unlikely to raise ACL issues ⁴	158	334	19	30
Competition related issues				
Exclusive dealing	35	66	15	9
Misuse of market power	47	102	4	0
Other competition related issues	22	46	4	8
Unlikely to raise competition issues ⁵	62	65	11	4
Franchising Code of Conduct related issues				
Disclosure	N/A	N/A	62	43
Termination of franchise agreement	N/A	N/A	26	12

For more information about the principles adopted by the ACCC to achieve compliance with the law and the ACCC's enforcement powers, functions and priorities, see our *Compliance and Enforcement Policy*.

³ Multiple issues may be identified from a single complaint. Complaints not within the remit of the ACCC are excluded.

⁴ The nature of contacts within this category primarily concern issues related to disputes that are better resolved under the terms and conditions of the specific contractual arrangements and other matters where it is evident that no breach of ACL provisions exist.

⁵ The nature of contacts within this category primarily concern issues where it is evident that no breach of competition provisions exist, including refusal to deal/supply.

New ACCC small business guidance

Unconscionable Conduct Business Snapshot

The ACCC's latest Business Snapshot provides practical tips for you to minimise the risk of becoming a victim of unconscionable conduct, and to avoid engaging in such conduct towards other businesses or consumers.

The Australian Consumer Law prohibits what is known as 'unconscionable conduct'—but it can be a difficult concept to nail down. Certain conduct may be unconscionable if it is particularly harsh or oppressive to another party—either another business or to a consumer. Conduct may also be considered unconscionable where one party knowingly exploits the special disadvantage of another. But it needs to be more than just hard commercial bargaining.

The ACCC snapshot uses examples of cases where the ACCC has successfully prosecuted businesses for engaging in such conduct towards small-business owners, franchisees and Indigenous and elderly consumers. The snapshot was published in September 2012.

Factors to consider when assessing whether conduct is unconscionable include:

- What are the relative bargaining strengths of the parties?
- Were any conditions imposed on the 'weaker' party that were not reasonably necessary to protect the legitimate interests of the 'stronger' party?
- Did the 'stronger' party use undue influence, pressure or unfair tactics?

The snapshot is available at www.accc.gov.au.

Small Business and the Competition and Consumer Act: your rights and responsibilities

The ACCC has revised one of its key publications for small businesses. The *Small Business and the Competition and Consumer Act* is a handy, comprehensive guide to the main competition and consumer laws you need to be aware of and your rights as a business operator.

The guide also gives some practical tips when it comes to:

- refund and return signs
- sales practices including proof of transactions and itemised bills
- product safety bans and recalls
- advertising and promoting your business
- working with other businesses in the supply chain, and
- competing fairly.

You can download or order a copy of this publication from www.accc.gov.au.

The Marker



The ACCC has released *The Marker*—a short film showing the devastating effects involvement in a cartel can have on both individuals and businesses. *Businesses compete, cartels just cheat* is the theme and message of the ACCC's cartels-awareness campaign.

A cartel is formed when two or more competing businesses agree to work together to profit by engaging in conduct such as:

- Fixing prices—so there is no competition and buyers have no choice.
- Allocating customers, suppliers or territories—to remove competitors.
- Rigging bids—so that cartel members can rotate winning jobs at inflated rates.
- Controlling output or limiting the amount of goods and services available to buyers—so they have no choice but to pay higher prices.

Civil and criminal sanctions apply, including up to 10 years in jail.

The ACCC runs an immunity program that enables past or present cartel members to confess their actions and cooperate with investigations in exchange for immunity from ACCC-initiated civil and (through the Commonwealth Director of Public Prosecutions) criminal proceedings.

For more information about cartels or to watch *The Marker* visit www.accc.gov.au/cartels.

ACCC Shopper App



In December 2012 the ACCC released a free ACCC Shopper app for Apple and Android smartphones and tablets. The app provides instant advice to consumers while they are shopping, and answers commonly asked questions about refunds, returns, warranties, and lay-bys. Some consumers might use the app to store photographs of receipts as proof of purchase on their smartphone or tablet.

The app answers questions such as:

- 'What do I do if a product is faulty?'
- 'What happens if I don't have a receipt?'

The app allows consumers to set reminders for lay-bys and the expiry date for warranties and gift vouchers. It also explains common labelling terms like 'Made in Australia'.

You can download the free app from the Apple App Store and Google Play—search for 'ACCC Shopper'.

The ACCC acknowledges Consumer Affairs Victoria's assistance in developing this app.

Advertising and selling

'Was/now' and 'strikethrough' pricing

'Was/Now' and 'strikethrough' pricing are forms of two-price advertising commonly used by businesses.

Example of was/now price statements

Was \$50 Now \$25 or ~~\$100~~ Now \$75

A likely impression conveyed by this pricing is that consumers will save an amount, which is the difference between the higher price—the 'was' or 'strikethrough' price—and the lower price (if the item is purchased during the sale period). You are free to make these statements but you need to be accurate about any claim you make.

Where this type of pricing statement is made it is likely to breach the ACL if consumers would not make the represented savings—in other words, if a customer would not have paid the 'was' or 'strikethrough' price during a reasonable period, immediately before the start of the sale.

How long this 'reasonable period' is may depend on factors such as the type of product or market involved and the usual frequency of price changes.

Consideration of the ticketed or 'offer' price of an item and actual sales data will help determine whether a consumer would or would not have paid the higher price.

Carbon price claims—the first 100 days

Remember with carbon price claims it has always been business as usual and you are entitled to increase your prices as you see fit. However, if you make claims about the impact of the carbon price those claims need to be truthful and have a reasonable basis.

Carbon Price Claims

In the first 100 days since the commencement of the carbon price mechanism, the ACCC received close to 2500 carbon price related complaints and enquiries. To give that figure some context, the ACCC received just over 43 000 total complaints and enquiries in the same period. The majority of contacts came from small businesses and consumers seeking information or wishing to report concerns about carbon price claims. The low complaint levels show that most businesses have acted in accordance with the law during the first 100 days of the carbon price.

The ACCC has engaged extensively with business and industry as part of its dedicated carbon price related compliance activities. On 16 August the ACCC hosted an interactive webinar to give businesses an opportunity to learn from complaints and queries received by the ACCC, investigation outcomes to date and to link with updated guidance. A range of guidance material has been developed, including web FAQs, checklists and snapshot summaries.

The webinar and all ACCC carbon price guidance can be found at www.accc.gov.au/carbon.

ACCC continues to protect small businesses against misleading or deceptive conduct

In September the Federal Court ordered three publishing companies to pay penalties totalling \$400 000, and the companies' director, Mr Andrew Clifford, to pay \$100 000 after they admitted that they had engaged in misleading and deceptive conduct, harassment and coercion, and unconscionable conduct in relation to advertising services that were never requested or provided.

The publishing companies contacted mostly small businesses and told them that they had already paid for, or agreed to, advertising in one of the companies' magazines, when they had not. The companies would then send them a document and invite them to sign it in order to receive complementary copies of the magazines. The publishing companies then claimed the signed document was an agreement to buy advertising services, and demanded payment of around \$500 for each.

The companies also admitted they used harassment and coercion and acted unconscionably when pursuing payment from some businesses.

"...the ACCC will use its powers to take action against companies that make a living out of deceiving small businesses."—ACCC Chairman Rod Sims

Also in September, following ACCC action, the Federal Court ordered Ms Rosemary Bruhn to pay a civil pecuniary penalty of \$50 000 for conduct involving substituting cage eggs for free range eggs. The ACCC alleged that from March 2007 to October 2010, Ms Bruhn represented that eggs she supplied to 109 business customers in South Australia including retail outlets, bakeries, cafes and restaurants, were free range when a substantial proportion were in fact cage eggs.

Dealing with your suppliers and competitors

Resale price maintenance

Resale price maintenance occurs when a supplier requires a business customer to not sell or advertise goods below a minimum price specified by the supplier. This limits the ability of business to engage in price competition.

In October the Federal Court in Melbourne imposed penalties of \$90 000 against Eternal Beauty Products Pty Ltd (Eternal Beauty) and its Director, Penny Rider, a wholesaler and retailer of skin care products, for engaging in resale price maintenance.

The Court made declarations that Eternal Beauty and Ms Rider engaged in specific acts of resale price maintenance and Eternal Beauty was ordered to contribute \$10 000 to the ACCC's costs and establish a trade practices

compliance program. The declaration and orders were made by consent.

Noting the penalties, ACCC Chairman Rod Sims said “Businesses are free to sell their products at prices below suppliers’ recommended retail prices if they wish...The ACCC takes seriously any attempts by suppliers to prevent discounting of their products, which affects the fundamental right of traders to compete for business”.

Prior to the orders Eternal Beauty voluntarily sent letters to all of its retailers and informed them that resale price maintenance is illegal and retailers were entitled to independently set the price at which they offer those products for sale.

During the period, the ACCC also accepted a court enforceable undertaking from Chemical Formulators Pty Ltd, Valiant Enterprises Pty Ltd and Oticon Australia Pty Ltd for engaging in resale price maintenance.

Collective bargaining

Under certain circumstances the ACCC can authorise an arrangement where two or more small businesses can come together to negotiate terms and conditions with a supplier or a customer.

These arrangements usually raise concerns under the *Competition and Consumer Act 2010* as they involve agreements between competitors, often in relation to pricing.

In the last six months the ACCC has authorised arrangements between Tasmanian lottery agents, small private hospitals, truck drivers providing concrete cartage services and potato growers.

If you want to know more about your rights to collectively bargain go to www.accc.gov.au or ring the Small Business Helpline.

Spotlight on scams—be aware of scams targeting you

Beware that scammers are continuing to target you with false billing scams.

Warning signs for false billing scams

- You receive a call from a business directory or other publication you’ve never heard of, ‘confirming’ your entry or advertisement.
- You receive a document in the mail that appears to be an invoice from a publication you’ve never heard of.
- The caller reads out your listing or advertisement and you recognise it as a listing you put in a different publication.

Tips to protect yourself

- Make sure the business billing you is the one you normally deal with.
- Always check that goods or services were both ordered and delivered before paying an invoice.
- Try to avoid having a large number of people authorised to make orders or pay invoices.

In September the ACCC also issued a joint alert with the Australian Taxation Office urging you to be aware of scam calls or emails around deadlines for submitting tax returns—a known time for scammers to target busy businesses with tax-related and other scams.

For more information visit SCAMwatch, at www.scamwatch.gov.au and view ‘small business scams’.

Franchising and other industry codes

Franchising

ACCC Education and Engagement Managers continued to deliver seminars and distribute publications to prospective franchisees.

The ACCC funds a free online franchising education program run by Griffith University which now has more than 3590 registrants. If you are interested in participating in this program visit www.franchise.edu.au/pre-entry-franchise-education.

Audit notices

The ACCC has the power to audit businesses for compliance with prescribed industry codes. The ACCC can require a business to provide any information or documents it is required to keep, generate or publish under one of these codes. The business then has 21 days to produce the documents.

The ACCC audited 15 traders across Australia in the last six months—13 franchisors and two horticulture traders. The majority of the businesses that have been audited so far have been found to be complying with the relevant codes. Where audits reveal shortcomings, the ACCC engages with the business to bring about compliance.

Voluntary industry codes

The ACCC continued to participate as an observer at Code Development Committee meetings for a port access code being developed for wheat export.

This period, the ACCC met with the Clean Energy Council regarding the voluntary Solar PV Retailer Code of Conduct it is developing. The ACCC also provided comments to the Complementary Healthcare Council on the recently revised Code of Practice for the Marketing of Complementary Medicines and Health Food Products.

Energy–National Energy Retail Law

In 2012, the National Energy Retail Law (Retail Law) commenced in the Australian Capital Territory and Tasmania. South Australia expects to commence the new law on 1 February 2013 with New South Wales to follow on 1 July 2013.

The new laws set out the rights and responsibilities of residential and small business gas and electricity customers.

Knowing your rights helps small businesses to make informed choices about the energy services you purchase. If you are a small energy customer your energy retailer must:

- provide fair contracts with clear terms and conditions so you can fully understand the energy offer
- provide clear and transparent bills
- tell you about your right to complain if you have problems with your energy service.

Energy customers in states and territories that have commenced the Retail Law can also use the Australian Energy Regulator's 'Energy Made Easy' website. It can help you compare all of the electricity and gas offers generally available for your business, making it much simpler for you to find an energy offer which meets your needs.

For further information on the new energy laws visit www.aer.gov.au or you can visit Energy Made Easy at www.energymadeeasy.gov.au.

Telecommunications Consumer Protection Code review

The Telecommunications Consumer Protection (TCP) Code is the key industry-developed regulation that sets out rules for telecommunications service providers about consumer protection issues including advertising, billing, and complaint handling. Most of the TCP Code's rules cover small business consumers (defined as those that spend less than \$20 000 with a provider each year).

A revised TCP Code has been registered following an extensive review process. The ACCC actively participated in the review, which sought to address concerns that the TCP Code was not adequately protecting consumers.

The revised TCP Code contains a number of improvements over the previous version. In particular, it includes several measures supported by the ACCC, including:

- provisions to improve the clarity and accuracy of advertising, including a requirement to display 'unit' pricing in advertisements, and a ban on the use of 'cap' to describe mobile phone plans
- a pre-sale Critical Information Summary for all telecommunications products, that must include key pricing information, terms and conditions (this will be mandatory for all providers from September 2013).

The ACCC will be observing the operation of new measures in the revised TCP Code to assess their effectiveness in improving practices across the sector.

Small business engagement

National Small Business Summit

The ACCC was a sponsor of the Council of Small Businesses Australia (COSBOA)/NAB National Small Business Summit, which was held on 1 and 2 August in Melbourne. Chairman Rod Sims presented on the ACCC's small business activities and launched the *Small Business, Franchising and Industry Codes Report* (January–June 2012). Deputy Chairman Dr Michael Schaper opened the evening networking session. The ACCC also hosted an exhibition booth.

Contact us

ACCC Small Business Helpline 1300 302 021

ACCC website www.accc.gov.au/forbusinesses

Small business publications
www.accc.gov.au/smallbusinesspublications

Small Business Information Network—regular updates from the ACCC on issues relevant to small business—email your contact details to smallbusinessinfo@acc.gov.au

Franchising Information Network—regular updates from the ACCC on issues relevant to franchisees and franchisors—email your contact details to franchisingcode@acc.gov.au

Australian Competition and Consumer Commission
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Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

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Annexure 2

ACCC franchising related enforcement outcomes

Summary of activity 1998-2013

Litigation	27
Current litigation	1
Fully contested & successful	9
Consent orders	15
Settled without declarations	1
Unsuccessful	1
Court Enforceable undertakings (s87B)	14

Current litigation

Company/Matter	Commenced	Alleged misconduct	Status
Sensaslim Australia Pty Ltd (in liquidation)	Jul-2011	Misleading or deceptive conduct and false representations in relation to the identity of Sensaslim officers, the Sensaslim Solution and the business opportunities offered by Sensaslim.	Court proceedings concluded on 13 September 2012. Judgment has been reserved.

Litigation – Fully contested & successful

Company/Matter	Date	Misconduct	Outcome
Allphones Retail Pty Ltd	Jul-2011	Contempt of court – breach of undertakings given to the court as part of ACCC proceedings in 2008.	Court declarations and orders. Penalty of \$45,000.
Seal-A-Fridge Pty Ltd	Jun-2010	<ul style="list-style-type: none"> ▪ Unconscionable conduct towards franchisees. ▪ Contravention of the Franchising Code (inadequate disclosure to franchisees both before and after they had entered into franchising agreements). 	Court declarations and orders.
Global Pre paid Communications Pty Ltd and In-Touch Networks Pty Ltd	Feb-2006	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct about the profitability and operations of the franchised business. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of distribution agreements). 	Injunctions and more than \$3.5 million in compensation for affected franchisees.
Chaste Corporation Pty Ltd	Sep-2005	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of distribution agreements). ▪ Resale price maintenance. 	Court declarations and orders; penalty of over \$1 million for resale price maintenance.
Will Writers Guild Pty Ltd	Nov-2003	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct and false or misleading representations in connection with the promotion of 	Court declarations by consent, injunctions, fines totalling \$105,000 and

		franchises. <ul style="list-style-type: none"> ▪ Contravention of the Franchising Code (failure to provide prospective franchisees with key information about the franchise). 	compensation to franchisees totalling \$364,467.
4WD Systems Pty Ltd and 4WD Systems Australia Pty Ltd	Aug-2003	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct and unconscionable conduct in relation to representations made to franchisees concerning the supply and quality of goods. ▪ Contravention of the Franchising Code (failure to provide a disclosure document to a prospective franchisee). ▪ False representation about the place of origin of a good supplied to franchisee. 	Injunctions for the misleading or deceptive conduct and the false representation. Unconscionable conduct action unsuccessful.
The Furniture Wizard	Nov-2000	Misleading or deceptive conduct and misrepresentations in connection with the promotion of franchises (including earnings misrepresentations, and the existence and level of demand for the franchise's service).	Court orders, injunctions and refunds to four franchisees totalling \$169,201 plus interest.
Simply No Knead (Franchising) Pty Ltd	Sep-2000	<ul style="list-style-type: none"> ▪ Unconscionable conduct towards franchisees (including failing to negotiate matters in dispute with franchisees, excluding franchisees from promotional material and competing with franchisees within their exclusive territories). ▪ Contravention of the Franchising Code (refusing to provide disclosure documents in response to written requests from franchisees). 	Court declarations.
Millennium Diagnostics (Victoria) Pty Ltd, Millennium Solutions (Australia) Pty Ltd and Millennium Solutions Group Australasia Pty Ltd	Aug-1999	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct and false or misleading representations in connection with the promotion of franchises. ▪ Contravention of the Franchising Code (failure to provide a disclosure document to a prospective franchisee). 	Court declarations and court orders, some franchisees refunded.

Litigation – Consent orders

Company/Matter	Date	Alleged Misconduct	Outcome
Allphones Retail Pty Ltd	Apr-2010	<ul style="list-style-type: none"> ▪ Unconscionable conduct. ▪ Misleading or deceptive conduct. ▪ Contravention of the Franchising Code. 	Court declarations and orders by consent, including \$3 million in damages for franchisees, and a number of injunctions.
Mailpost Australia Limited and Mailpost Postie Network Pty Ltd	Apr-2010	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct in relation to misrepresentations made to current and prospective franchisees. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). 	Court declarations and orders by consent.
Refund Home Loans Pty Ltd	Mar-2010	Misleading or deceptive conduct and false representations in relation to misleading statements to franchisees that the ACCC had 'approved' its treatment of franchisees.	Court declarations and orders by consent.
Personalised Chocolates 4U Pty Ltd	Dec-2009	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct and false representations in the marketing and sale of franchises. 	Court orders by consent.

		<ul style="list-style-type: none"> ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). 	
Photo Safe Australia Pty Ltd, Data Vault Services Pty Ltd and ie Networks Pty Ltd	Apr-2006	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct in relation to misrepresentations to prospective franchisees. ▪ Contravention of the Franchising Code (failure to provide prospective franchisees with disclosure documents and other required information). 	Court declarations by consent.
Maintenance Franchise Systems Pty Ltd and Archem Australia Pty Ltd	Mar-2006	Misleading or deceptive conduct in relation to misrepresentations about the business opportunity to prospective franchisees.	Court declarations by consent, compensation to 11 franchisees.
Contact Plus Group Pty Ltd	Feb-2006	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct towards franchisees. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). 	Court declarations, injunctions and orders by consent.
Office Support Services International Pty Ltd	May-2005	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct in the promotion and sale of franchises. ▪ Contravention of the Franchising Code (incomplete and deficient disclosure to prospective franchisees). 	Court orders by consent.
Little Joe' and 'Joey's'	Feb-2005	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct concerning income guarantees, advertising, and the nature of the business opportunity. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). 	Court declarations by consent, and injunctions.
Synergy in Business Pty Ltd	Jan-2004	<ul style="list-style-type: none"> ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). ▪ Misleading representations about future profits. 	Court declarations by consent.
Arnolds Ribs and Pizza Australia Pty Ltd	Oct-2003	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct in the promotion of and negotiations for the sale of franchises. ▪ Unconscionable conduct. 	Court declarations by consent. Compensation of \$200,000 to affected franchisees.
Suffolke Parke Pty Ltd	May-2002	<ul style="list-style-type: none"> ▪ Unconscionable conduct in relation to the terms of a franchisee's lease agreement. ▪ Contravention of the Franchising Code (refusal to attend mediation). 	Court orders by consent and \$10,000 in compensation to franchisee.
Australian Industries Group Pty Ltd	Mar-2002	<ul style="list-style-type: none"> ▪ Unconscionable conduct, misleading or deceptive conduct, and misleading representations in dealings with franchisees. ▪ Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements). 	Court declarations including injunctions and compensation to three affected installers/franchisees totalling \$77,594.
Cheap as Chips Franchising Pty Ltd	Mar-2001	<ul style="list-style-type: none"> ▪ Unconscionable conduct (unilaterally imposed additional obligations on franchisees, suspended and terminated franchisees rather than negotiate disputes). ▪ Contravention of the Code (inducing franchisees not to associate). 	Court orders by consent, including \$82,000 in compensation to franchisees. Also offered a court enforceable undertaking.

Australian Billboard Connections Pty Ltd	Apr-2000	Misleading or deceptive conduct and misrepresentations in projected cash flow spreadsheets, a newspaper ad and verbally to prospective franchisees.	Court orders by consent. In private settlements, the affected franchisees received refunds and compensation totalled in excess of \$210,000.
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Litigation – Settled without declarations

Company/Matter	Date	Alleged misconduct	Outcome
Kwik Fix International Pty Ltd	Jul-2003	<ul style="list-style-type: none"> ▪ Unconscionable conduct prior to, and after entering franchise agreements. ▪ Misleading or deceptive conduct and misrepresentations as to the purchase price and profitability of a franchise. ▪ Contravention of the Franchising Code (failure to meet disclosure and advice requirements). 	Kwik Fix settled proceedings by agreeing to consent orders and a number of court-enforceable undertakings.

Litigation – Unsuccessful

Company/Matter	Date	Alleged Misconduct	Outcome
Kyloe Pty Ltd	Oct-2007	Contravention of the Franchising Code (operating a franchise system under the guise of 'sub-distribution agreements').	Application dismissed on the basis that the business did not constitute a franchise agreement as defined by the Code.

Court Enforceable Undertakings

Company/Matter	Date	Potential Conduct
Ray White (Real Estate) Pty Ltd	Jul-2010	Contravention of the Franchising Code (failure to follow correct procedure before terminating a franchise agreement)
Australian Loans Management Pty Ltd and Active Money (Aust) Pty Ltd	Sep-2009	<ul style="list-style-type: none"> ▪ Contravention of the Franchising Code (failure to comply with any provisions of the Code - operating a franchise system under the guise of 'sub-distribution agreements') ▪ Misleading representations that the licence agreements were not franchise agreements when they were.
Netdeen Pty Ltd (franchisor of G.J. Gardner Homes)	Sep-2009	Misleading representations to prospective franchisees about the benefits of the franchise, including the significance of its buying power.
Spray Pave Australia Pty Ltd	Jul-2009	<ul style="list-style-type: none"> ▪ Misleading representations that Spray Pave is a franchise when it is not a franchise. ▪ Misleading representations about international offices. ▪ Misleading representations about qualifications required.
Awesome Water Pty Ltd	Dec-2008	<ul style="list-style-type: none"> ▪ Misleading representations concerning franchisee income and working hours. ▪ Contravention of the Franchising Code (failure to follow procedures in Code and inadequate disclosure).
Quizno's Australia Pty Ltd	Aug-2007	Misleading or deceptive conduct relating to representations about the profitability of the system and its operational and trading record. Specific details of its business operation also either false or unachievable.
JV Mobile Pty Ltd	Apr-2007	Contravention of the Franchising Code (failure to provide its retailers with all of the safeguards available under the Code, including the upfront provision of a disclosure document).

Scotty's Premium Pet Foods Franchising Pty Ltd	Nov-2006	<ul style="list-style-type: none"> ▪ Unconscionable conduct by attempting to supply product, allegedly without reasonable cause, directly to an existing business customer of a franchisee within their exclusive territory. ▪ Contravention of the Franchising Code (issuing of breach notices that did not contain sufficient details of the alleged breaches and the remedial steps needed, or allow a reasonable time for the breach to be remedied).
You Can Bake-It Franchising Pty Ltd	Jan-2005	<ul style="list-style-type: none"> ▪ Misleading or deceptive conduct. ▪ Contravention of the Franchising Code (disclosure documents ambiguous or open to misinterpretation).
Lawson's Trading Co Pty Ltd	Feb-2004	Contravention of the Franchising Code (operating a franchise system under the guise of licence agreements).
Kwik Fix International Pty Ltd	Jul-2003	As part of court action described above, Kwik Fix offered the ACCC a court enforceable undertaking.
Cheap as Chips Franchising Pty Ltd	Mar-2001	As part of court action described above, Cheap as Chips offered the ACCC a court enforceable undertaking.
Advanced Hair Studios (Franchising)	Aug-2000	Misleading or false misrepresentations to a customer about the affect the introduction of the GST system would have on product prices.
Forty Winks Franchising Pty Ltd	Jun-2000	Misleading or false misrepresentations about the affect the introduction of the GST system would have on product prices.

Annexure 3

Relevant ACCC powers and remedies

	Franchising Code	Unconscionable Conduct	Misleading or Deceptive Conduct	False or misleading representations	Exclusive Dealing
ACCC Powers					
Industry code "audit power" - Production of documents required under code	Yes	No	No	No	No
Substantiation Notice - requiring claims to be substantiated	No ⁸	No	Yes	Yes	No
Accepting a court enforceable undertaking	Yes	Yes	Yes	Yes	Yes
Public Warning Notice (Must have reasonable suspicion of breach)	Yes	Yes	Yes	Yes	No
Infringement Notice (must have reasonable grounds to believe breach)	No	Yes Listed Co. – \$102k Other Co. – \$10.2k Individual – \$2,040	No	Yes Listed Co. – \$102k Other Co. – \$10.2k Individual – \$2,040	No
Available Court Outcomes					
Non-Party Redress	Yes	No	No	Yes	Yes
Non-punitive orders (e.g. compliance training)	Yes	Yes	Yes	Yes	Yes
Injunctions	Yes	Yes	Yes	Yes	Yes
Order disqualifying a person from managing corporations	No	Yes	No	Yes	Yes
Pecuniary Penalties	No	Yes Company – \$1.1m Individual – \$220k	No	Yes Company – \$1.1m Individual – \$220k	Yes Greater of: - \$10m - 3 x benefit - 10% annual turnover

⁸ But substantiation notices may be able to be issued in relation to claims or representations made by franchisors promoting the supply of franchise services: section 219 of the ACL