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Trade Practices Compliance

Distilling salient lessons from the complaints
received by the ACCC

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The purpose of this paper is twofold. First of all, the Australian Competition and Consumer Commission (ACCC) maintains a database of complaints received from the public. We will mine into that data to see what it tells us about the most complained about industries, the types of complaints received and hopefully identify some lessons that various sectors might do well to note. Secondly I will outline the ACCC's processes and practices in dealing with complaints.

Complaint handling is an important part of the ACCC's function of ensuring compliance with the Trade Practices Act (the Act). In addition to assisting individual complainants, the ACCC relies on complaints to obtain information about standards of conduct by business. This allows the ACCC to determine its priorities in undertaking enforcement action.

Sources of complaints to the ACCC

The vast majority of the ACCC's complaints come through its InfoCentre which is accessed by a 1300 phone number or via the email address provided on the ACCC's website. Other complaints are received by mail in all of the ACCC offices. Sometimes complainants come to ACCC offices in person, either walking in off the street, or following the making of an appointment.

The ACCC receives complaints from a variety of sources. These include consumers, business people, law firms, politicians, community organisations and other government agencies.

Whilst there has been little research on this issue, a Consumer Redress Study produced for Treasury in 1999 suggested that the consumer most likely to access a redress mechanism is a male between the ages of 35 and 45 living in a metropolitan area who speaks English as first language and has at least completed high school or has some tertiary education. I discuss below some of the action taken by the ACCC to ensure that a wider cross-section of the community accesses its complaints procedures.

Often business people will contact the ACCC to complain about the conduct of a competitor. This is a natural reaction. If a business person is doing their best to comply with the law and treat their customers and other suppliers fairly, they will believe that it is only right that they be doing so on a level playing field, where everyone is complying with the law.

The statistics outlined below for the InfoCentre include calls that are strictly not a complaint as they also cover general requests for information about how the Trade Practices Act works, or for a copy of an ACCC publication.

Telephone calls received by the ACCC Infocentre

	<i>2003/04</i>	<i>2002/03</i>	<i>2001/02</i>
Received	54,773	65,349	87,078
Served	52,239	62,205	75,108
Abandoned	2,462	2,910	7,948
Engaged	35	69	2,041
Voicemail	37	165	1,981

The number of calls in 2003/04 trended lower than the previous years as the ACCC's responsibility for administering the new tax system price exploitation laws came to an end. Calls that were classified as abandoned include those where the caller took advice from the ACCC's recorded message to find material on the ACCC website. In 2003/04 thirty five callers were put off by receiving the engaged signal at times when there were a large number of calls and 37 callers left a voicemail message. These figures have trended downwards over the last 3 years.

Emails received by the ACCC Infocentre

	<i>2003/04</i>	<i>2002/03</i>	<i>2001/02</i>
Number of emails received	8,922	8,348	12,333
Answered by telephone response	4,093	4,937	5,675
Answered by return email	2,456	1,843	4,924
Sent elsewhere for response	488	398	431
No response required	1,885	1,170	1,303

A high volume of email complaints in 2001/02 stemmed from the consumer price indexation of HECS debts with 3,200 emails received on this issue alone.

Of the total number of contacts made to the ACCC in 2003/04, 55,659 were entered into the ACCC's complaint database. Many of these matters had been resolved during the course of the first contact. The details of the person contacting the ACCC (if provided), the details of the person complained about, and a description of the information or advice provided are noted. In addition, information such as the relevant parts of the Act and the industry involved are recorded. Matters relating to small businesses are also identified.

Top 10 industries for complaint

	<i>2003/04</i>	<i>2002/03</i>
Telecommunication services	5125	4247
Business services generally	4664	2536
Domestic appliance retailing	3285	3117
Retailing generally	2078	2055
Real Estate Agents	1556	1378
Automotive fuel retailing	1169	1836
Car retailing	1158	1008
Services to finance and investment	990	902
General insurance	873	825
Sport and camping equipment retailing	644	534

As is evident from the list above, the ACCC receives a large number of complaints relating to financial services, notwithstanding that most of these issues are no longer within its jurisdiction. If appropriate, these matters are referred to the Australian Securities and Investments Commission.

The ACCC also receives a number of complaints in relation to price increases, notwithstanding that its prices surveillance role is now very limited.

Of complaints that do relate to breaches of the Act, the following table indicates which sections of the Act the complaints relate to:

Top 10 breaches of the Trade Practices Act

	<i>2003/04</i>	<i>2002/03</i>
Misleading or deceptive conduct	11,605	9,601
Retail warranties	5,450	4,848
Price misrepresentation	1,911	1,657
Misrepresentation of quality	1055	667
Performance misrepresentation	1,015	525
Warranties, rights misrepresentation	841	713
Accepting payment non supply	670	461
Exclusive dealing	775	698
Agreements lessening competition	603	713
Misuse of market power	553	830

Many complaints to the ACCC can be resolved by providing the consumer or business person with some further information in the form of an ACCC publication. The most popular publications are listed below.

Publications sent to callers

	<i>2003/04</i>	<i>2002/03</i>
Warranties and refunds	6,345	4860
Merchant pricing for credit card payments		4827
Franchisees guide	1,315	1312
Small business and the Trade Practices Act	1,047	1279
Franchisees Guide to the Code of Conduct (Flyer)	943	0
Refusal to deal	657	137
How to comply with the TPA	490	54
ACCC Role & Functions	468	105
Care labelling	451	158
Country of Origin claims and the TPA	392	183
Country of Origin Claims (Flyer)	367	2

Having looked at the complaint database in overview, let us return to look at the top industries for complaint. We saw that in 2003/04 most complaints were received about:

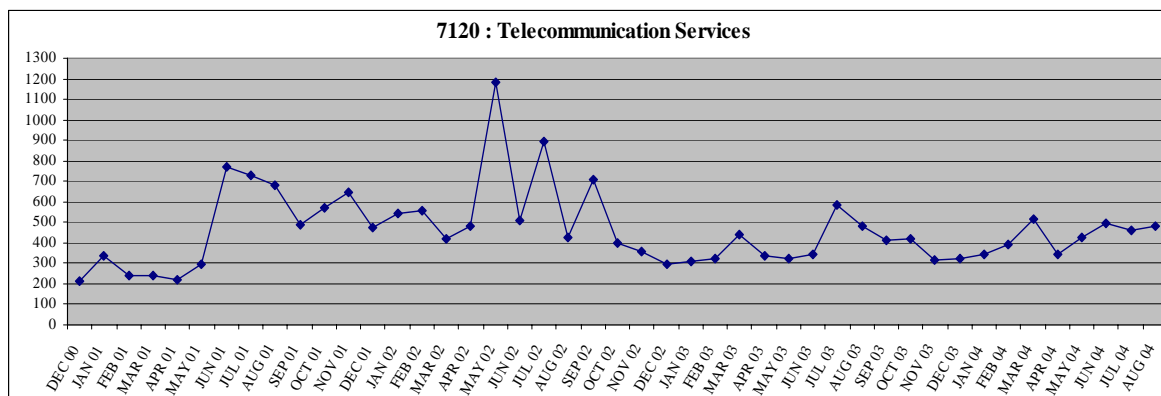
Telecommunication services
Business services generally
Domestic appliance retailing
Retailing generally
Real Estate Agents
Automotive fuel retailing
Car retailing
Services to finance and investment
General insurance
Sport and camping equipment retailing

Let us look briefly at the first nine of these sectors.

Telecommunication Services

There is a distinct consistency showing Telecommunication Services at the top of the complaint hit parade. In 2003/04 the Telecommunications industry received the most complaints, accounting for 10.2% of total complaints. The level of complaint has been consistently high over the last few years, indicating a stable but worryingly high level of customer grievance. It should be noted that most people in Australian society engage with the telecommunications industry in some way, and the industry is usually at the cutting edge of new consumer technology. Both aspects of the industry no doubt contribute to the high level of complaint.

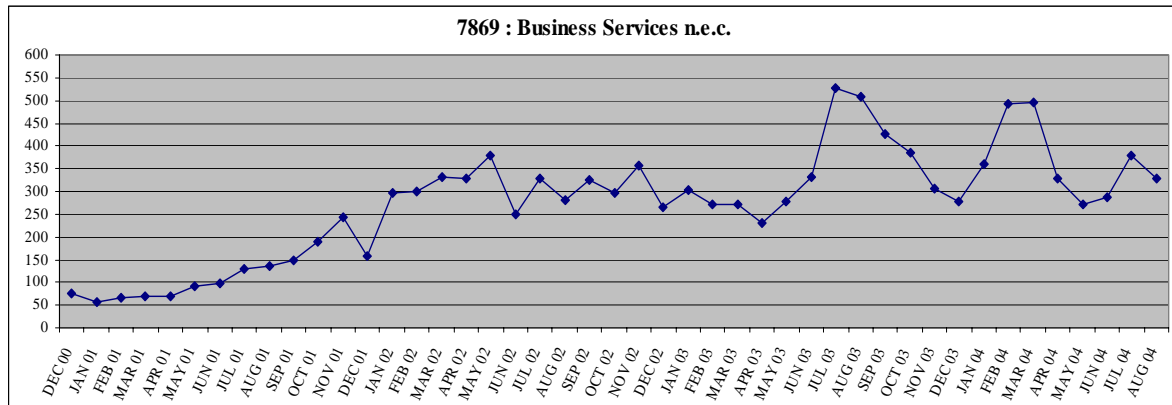
As the ACCC has regulatory roles in the telecommunications industry, as well as having to deal with a high level of complaint, the ACCC has formed a specialist Telecommunications Unit to deal this industry. The following graph shows the consistently high nature of complaint levels since December 2000.



What are these complaints about? In 2003/04 we know that these complaints ranged across a wide variety of conduct, but 9.6% related to misleading and deceptive conduct regarding internet services. Just behind that, at 9.3% was misleading and deceptive conduct relating to false billing.

Business services generally

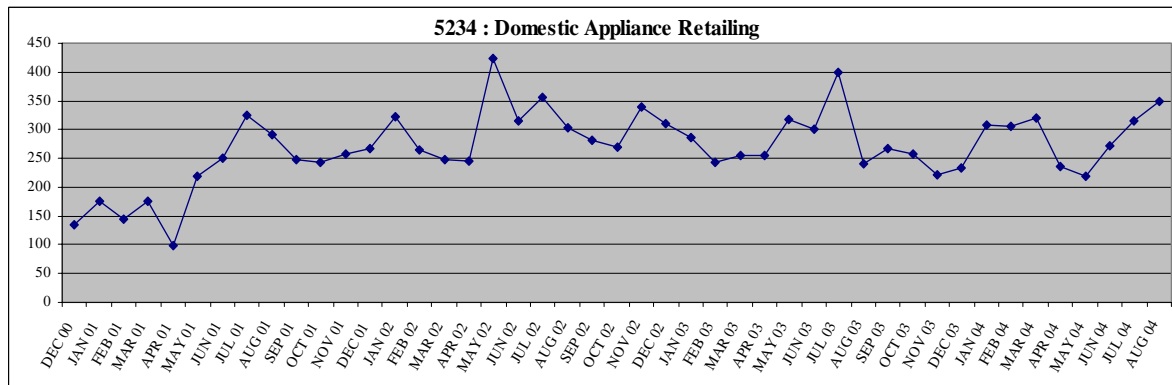
This is a very general category that captures many industries and that makes the data difficult to interpret. Nevertheless, there is a clear trend of increasing complaint which makes it interesting. The following graph shows the increasing nature of complaint levels since December 2000



Harassment and coercion complaints account for 6.7% of complaints in 2003/04 in this category, which indicates the likelihood that debt collection services are an important part of this category.

Domestic appliance retailing

There has been a slightly increasing trend since December 2000. This is shown by the following graph.



Interestingly, a staggering 39.6% of the complaints in 2003/04 in this sector involve retail warranties. The next highest set of complaints in 2003/04, at 6.1%, is misrepresentations about warranties, conditions and guarantees. That provides a very clear picture for us. In the domestic appliance industry, warranties are a major problem area.

Retailing generally

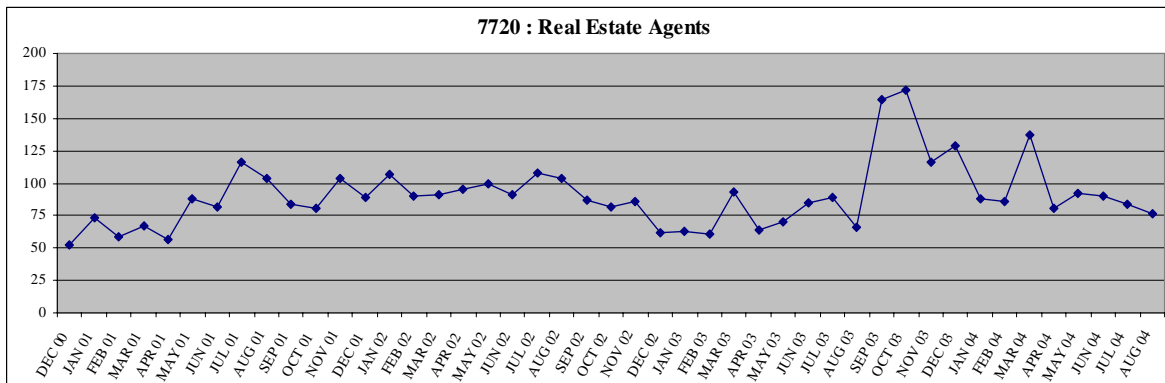
Since September 2003 there has been a fairly steady level of complaint. Prior to September 2003 there were some significant fluctuations. The following graph shows the trends since December 2000.



By now it will probably not surprise you that 15% of complaints in 2003/04 in this sector involve retail warranties. That figure simply translates the high level of dissatisfaction with domestic appliance retailing into the broader category of retailing generally. It is interesting to note that 4.7% of complaints in 2003/04 in this sector involve misleading television advertising: that is advertising on television rather than the advertising of televisions.

Real estate agents

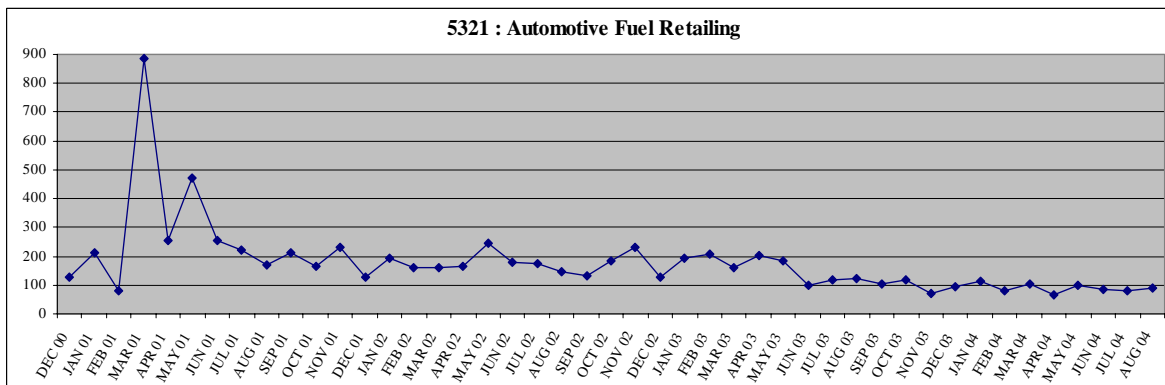
There is a steady trend of complaint against real estate agents and those involved in real property marketing. The following graph shows the trends since December 2000.



The spike in October 2003 coincides with a drive by the ACCC to clean up property marketing schemes promising to make everyone millionaires.

Automotive fuel retailing

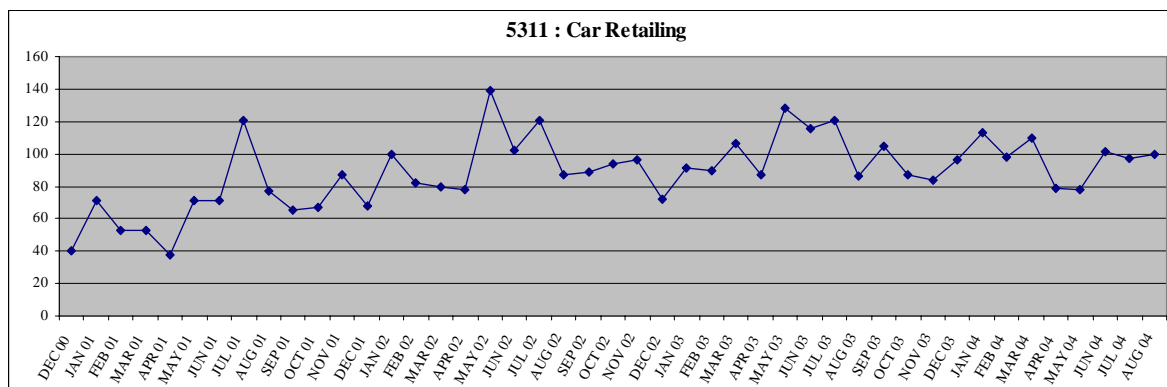
There has been a decreasing trend in this sector, but still a significant number of complaints. The following graph shows the trend since December 2000.



The huge spike in March 2001 may be due to the ACCC's involvement in monitoring petrol prices to ensure that the reduction in fuel excise of 1.5 cents per litre (effective 2 March 2001) was passed through to consumers in the form of lower prices. Beyond that it appears fair to say that petrol price rises irritate the community enormously. That observation is backed up by the fact that 36% of complaints in 2003/04 in this sector involve price rises.

Car retailing

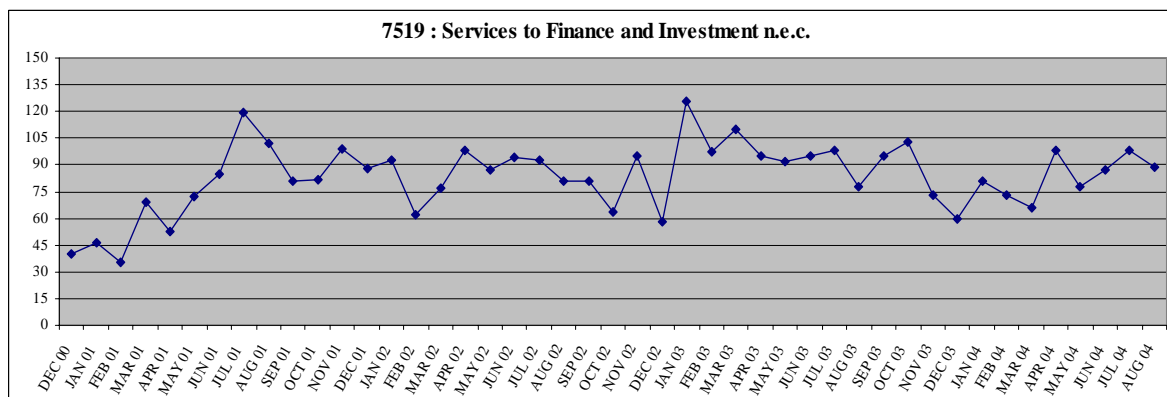
Car retailing is a sector that has traditionally loomed large in the statistics of all consumer agencies in Australia, and the ACCC's statistics are consistent with that. The trend appears to be a slight increase over time. The following graph shows the trend since December 2000.



In an ominous echo of general retailing, a huge 43.1% of complaints in 2003/04 involved warranties. It might or might not surprise you to know that 6.9% of complaints in this sector involve misleading and deceptive pre-contractual verbal misrepresentations. As most of the issues relating to car retailing are local issues involving car dealers, most complaints are referred to the various State Offices of Fair Trading who enforce industry specific legislation to deal with this sector. The ACCC is more likely to deal with complaints against national advertising campaigns by motor vehicle manufacturers.

Services to finance and investment

Complaints in this sector show a steady trend. The following graph shows the trend since December 2000.

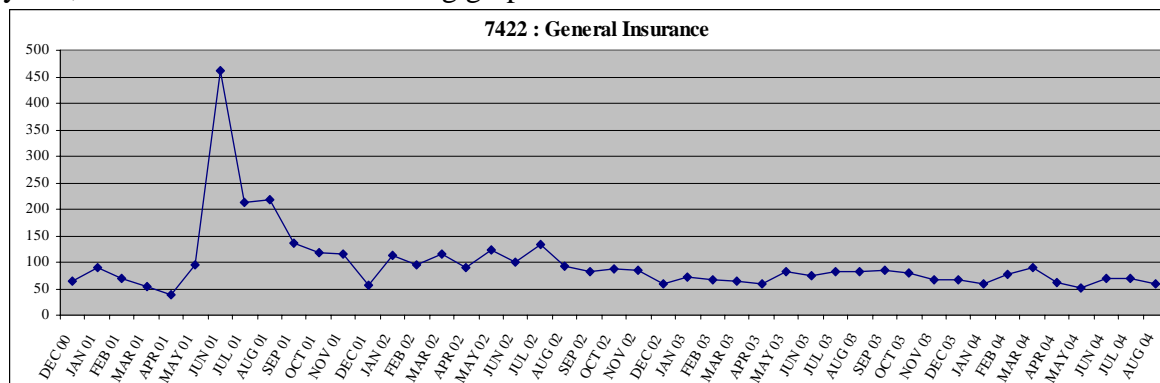


As many complaints in this area are referred to ASIC rather than recorded in detail by the ACCC, there is a tendency for complaints to be categorised in very general terms which makes them difficult to analyse. For example, in 2003/04, 5.6% of complaints

involved “Misleading and deceptive: Not specified” which adds little to the sum of human knowledge.

General insurance

The trend for general insurance complaints has remained steady for the last couple of years, as indicated on the following graph.



During 2003/04, 9.6% of complaints involved refusal to deal. This appears to flow from the decisions of many insurance firms to avoid certain types of risk and to refuse to insure many people. Related to this is the fact that 8.1% of complaints involved price rises, almost certainly arising from reassessments of risk areas.

Keeping perspective

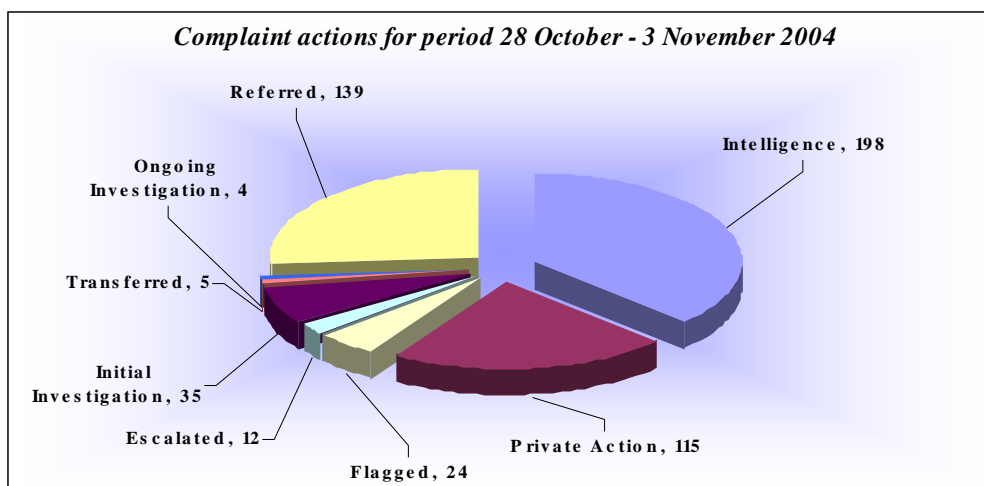
While those statistics give some insight into the ACCC’s complaint database, they are not the end of the story. The ACCC reacts to complaints and is very sensitive to what the public is telling it through their complaints, but the Commission is also alive to the fact that complaints are only an indicator of the problems that might exist.

For example, there is no doubt that cartels are a huge problem. They are by their nature hidden from the public and are likely to harm the public greatly, but the number of complaints about them is very low. That is because the public do not know they exist and do not know how they impact on purchasing decisions. The ACCC remains steadfastly committed to attacking cartels even though the complaint statistics are very low.

How then, does the ACCC deal with complaints?

Often a matter may be more appropriately resolved by referring the complainant to another government agency, in particular, their local Office of Fair Trading. The ACCC maintains close contact with all the State and Territory Fair Trading offices around Australia, and with other government agencies.

The following graph, (for the week I was supposed to have completed this paper – namely the weekly period commencing 28 October 2004), shows how complaints are dealt with in a typical week:



Following up: next steps with complaints

If complaints cannot be dealt with at the time of initial point of contact, or if they raise more serious issues for consideration or review, they are escalated or flagged by the InfoCentre to staff in other areas of the ACCC. 3638 complaints fell into this category in 2003/04.

Some of these matters may require some additional information to be obtained from the complainant in order to be able fully assess the matter. Matters involving breaches of Part IV of the Act are generally routinely escalated to an investigation officer.

Many matters are able to be resolved at this stage by the provision of further information to the complainant. Others will be determined not to have raised an issue under the Act. Where the action relates to the warranties and conditions provisions in Div 2 and 2A of Part V, the ACCC cannot take action. The consumer must take their own action in relation to the contract into which the condition or warranty is implied.

ACCC Priorities

A further selection process is undertaken by considering whether the matter falls within the ACCC's enforcement priorities. As has been outlined above, the ACCC receives a large number of complaints, and of necessity has to prioritise the enforcement action that it takes.

The kinds of things that influence the Commission in its decision making when potentially unlawful conduct is detected and investigated include:

- whether the conduct involves a blatant disregard of the law
- whether the person, business or industry has a history of previous contraventions of competition or consumer laws
- the detriment caused or being caused by the conduct and avenues available to redress that detriment

- whether the conduct is of major public interest or concern
- whether the conduct is “industry wide” or is likely to become widespread if the ACCC doesn’t intervene
- the potential for action to have worthwhile educative and deterrent effect.

Blatant and wilful contraventions of the law or the existence of a non-compliance culture within an organisation will almost certainly result in enforcement action by litigation.

Where a matter primarily concerns a private dispute between one consumer and one trader, the ACCC is unlikely to take action unless there is a suggestion that there may have been more widespread consumer detriment. Private disputes are more apt to be settled via consumer and small claims tribunal procedures and the ACCC will normally provide the complainant with information on this process. A decision by the ACCC not to pursue a complaint will not affect the right of a complainant to take their own action under the TPA or otherwise.

Matters that are taken further

It should be noted that only a small percentage of complaints received by the ACCC fall within this category.

Some matters may be able to be resolved in a relatively straight forward manner by reminding the trader of their obligations under the Act, and perhaps seeking some corrective action (such as amendment of their advertising). In the ACCC’s experience many matters are able to be resolved on this basis.

Other matters may require more extensive investigation. Complainants should be aware that the ACCC may need substantial information from them in order to deal with a matter properly. If the complainant cannot or will not assist with this process, and the ACCC is unable to obtain the information from other sources, the ACCC may have no option but to terminate its inquiries.

While the ACCC endeavours to keep the identity of complainants confidential, sometimes it is not possible to pursue a matter without disclosing, either directly, or indirectly, the source of the complaint.

In pursuing compliance with the Act, the ACCC seeks to achieve the following outcomes according to the circumstances of the matter:

- establishing contraventions of the Act and clarifying the law
- stopping offending conduct
- facilitating restitution for consumers and businesses adversely affected
- deterring the business concerned, and other businesses, from offending conduct
- penalties or fines.

The extent to which such outcomes will be pursued, if at all, depends upon whether there is a possible contravention of the Act and, if so, whether there is sufficient evidence of possible contravention, its seriousness, and its detriment to competition and consumers.

Following investigation the ACCC may determine that the possible contravention appears accidental, and of limited detriment to consumers and of limited gain to the business. The ACCC may simply draw the possible contravention to relevant parties' attention and provide information to encourage rectification and future compliance. Similarly where a business has promptly and effectively corrected a possible contravention and implemented measures to prevent recurrence, the ACCC may deal with the matter informally.

The ACCC maintains records of information it receives and its enquiries, and generally may draw on them at any time.

Whistleblowing: complaints from within an organisation

The ACCC will generally treat complaints made by persons within an organisation seriously, as coming from a source more likely to have complete knowledge of the facts than an outside observer. However the ACCC is aware that some persons, for example, disgruntled employees, may have other motives for bringing a matter to the attention of the ACCC.

Complaints made anonymously from within an organisation can cause difficulties for the ACCC. It means that the bona fides of the complaint cannot be easily confirmed. Additionally, the complainant may have not have provided all the information required by the ACCC in order to take a matter further. As noted above, the ACCC will take every effort to maintain the confidentiality of the sources of its information where that is sought by the complainant.

A corporation or executive may wish to make a complaint in the form of an application under the ACCC's leniency or co-operation policies if they believe that they may liable as a participant in the conduct.

The ACCC's leniency policy in relation to cartels commenced on 30 June 2003. It provides that where the ACCC is unaware of a cartel, the first person (company or individual) to come forward will receive an offer of conditional 'immunity' from ACCC-instituted court proceedings. Where the ACCC is aware of a cartel but has insufficient evidence to institute court proceedings, the first person (company or individual) to come forward will receive an offer of conditional 'immunity' from pecuniary penalty.

The ACCC has a more general co-operation policy in relation to all matters other than cartels. This policy provides that if a person comes forward with useful information and co-operates with the ACCC's investigation, the ACCC will be prepared to seek more limited remedies against them, or in some cases no remedies at all.

Liaison with business, industry and consumer groups

Where it becomes clear to the ACCC from analysis of complaints that there is an underlying compliance issue within a particular industry (rather than just a series of one-off complaints) the ACCC will often seek to resolve this in conjunction with the relevant industry body. This may result in solutions such as the publication of specific guidelines to assist industry members understand their obligations or the development of industry codes of conduct.

Similarly where the ACCC receives a series of complaints about the one business this may indicate a deficiency that company's overall compliance structures. If a company has good complaint handling mechanisms, consumers are unlikely to turn to bodies such as the ACCC. A large number of complaints to the ACCC may indicate that internal complaint handling mechanisms are failing. The ACCC will sometimes work with individual companies to improve their compliance practices so that consumer issues can be better resolved directly by the company.

The ACCC liaises closely with consumer groups in dealing with complaints they receive, particularly from disadvantaged and vulnerable consumers who might not otherwise be aware of how to contact the ACCC or be unable to make such contact. Such consumers may not be in a position to assert their rights as a consumer on their own behalf.

The ACCC has a Consumer Consultative Committee whose members are encouraged to bring matters to the ACCC's attention. The ACCC assesses and fast tracks complaints referred by the Consumer Consultative Committee members and other organisations.

ACCC contact details:

Information Centre – 1300302 502

Website: www.accc.gov.au