



Australian
Competition &
Consumer
Commission

Small business in focus

Small business, franchising and agriculture news

Report no. 13

July-December 2016



In the last six months

27

mail outs to the ACCC's small business franchising, and tertiary information networks

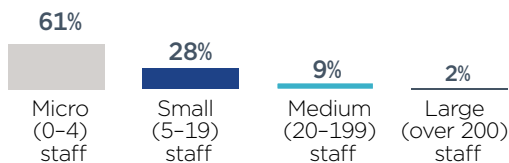
6700

views of the ACCC's small business videos on YouTube 3709

\$1 395 003

losses reported to the ACCC by small businesses from scam activities \$1 616 055

What businesses contact the ACCC?¹

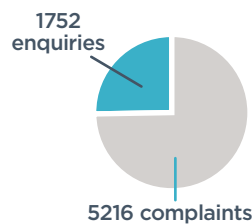


Complaints and enquiries²

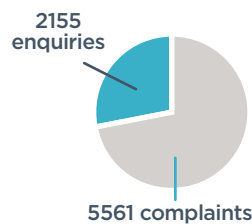
During this period the ACCC received a large number of small business and franchising related complaints and enquiries about competition and consumer issues³:

Small business

July-December 2016

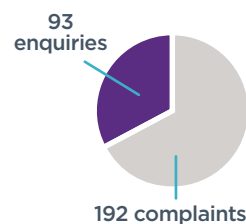


January-June 2016

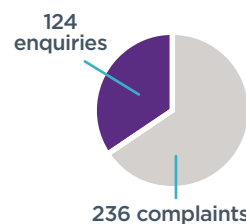


Franchising

July-December 2016

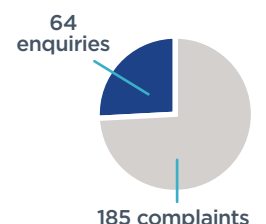


January-June 2016

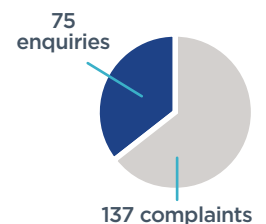


Agriculture

July-December 2016



January-June 2016



¹ Based on the 544 contacts during the period that disclosed business size.

² A complaint is a statement of dissatisfaction, grievance or wrong, often but not always referring to an alleged contravention of the *Competition and Consumer Act 2010* (CCA). An enquiry refers to the seeking of information which may relate to the operation of the CCA or the ACCC.

³ The data provided reflects complaints and enquiries received from various sources and are posted as a general guidance only. On further investigation, the conduct reported may not amount to a breach of the law. Care should be taken when drawing any conclusions based on this data.

Complaints by key issue⁴

Issues	Small business		Franchising		Agriculture	
	2016-17 YTD	2015-16	2016-17 YTD	2015-16	2016-17 YTD	2015-16 ⁵
Consumer law related issues						
Misleading conduct/false representations	735	1435	28	58	81	62
Consumer guarantees	329	817	3	5	19	7
Product safety	47	277	-	1	3	5
Unconscionable conduct	79	180	2	20	6	8
Unsolicited goods and services	16	102	-	-	-	-
Other Australian Consumer Law (ACL) issues	256	516	9	5	9	3
Competition related issues						
Misuse of market power	95	197	1	1	9	4
Exclusive dealing	71	162	8	6	5	3
Other competition issues	58	132	3	3	8	9
Franchising Code related issues						
Disclosure	-	-	27	44	-	-
Termination of agreement	-	-	13	15	-	-

Observation: Fewer franchisees have been reporting issues to the ACCC since the introduction of the new **Franchising Code** in January 2015. In the first six months of 2015, we received an average of 52 franchising complaints per month. By the end of 2016, average complaints had fallen to 32 a month. This is in contrast to overall ACCC complaint volumes, which have increased significantly over the two years.

Enforcing the law

The ACCC aims to make markets work for everyone. We use a range of tools to encourage compliance with the *Competition and Consumer Act 2010* (CCA), such as seeking court orders and obtaining undertakings enforceable in court. Recent key enforcement actions include:

- Instituting proceedings in the Federal Court against:
 - **Morild Pty Ltd**, the current franchisor of the Pastacup restaurant franchise system and its former director, Mr Stuart Bernstein. We allege the franchisor breached the Franchising Code by failing to disclose Mr Bernstein's role as a director of two previous franchisors of the Pastacup system that became insolvent. This is the first ACCC litigation under the new Franchising Code. We will be seeking penalties from the Court.
 - **ABG Pages Pty Ltd** and another individual associated with the company. We allege ABG Pages breached the Australian Consumer Law in its dealings with small businesses, who were actual or potential customers of its online business directory service.
- The Federal Court dismissed the ACCC's unconscionable conduct case against **Woolworths Ltd** in relation to a scheme that involved Woolworths' staff contacting suppliers asking for urgent payments to reduce significant profit shortfalls.

Agriculture

We've started an [inquiry](#) into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry.

Over the past six months we have released the following publications:

- [Cattle and Beef Market Study interim report](#), which focuses on concerns about competition, transparency, fair trading and market structures in the industry
- [Perspectives in horticulture and viticulture](#), outlining issues raised during our workshops and other discussions with people in the horticulture and viticulture industries, and the ACCC's response to these issues
- [ACCC Agriculture Unit—A year in review](#), outlining the Unit's work over the past year.

As the table above shows, in the last six months we've seen a significant increase in the number of contacts being raised in the agriculture sector.

We're keen to hear from farmers with competition and fair trading issues. Our contact details and further information are available at www.accc.gov.au/agriculture.

⁴ These figures do not correspond to the statistics on the previous page as not all issues are reported on. Complaints not within the remit of the ACCC are also excluded.

⁵ Agriculture statistics have only been recorded since January 2016.

Horticulture and Food & Grocery Industry Codes

The Australian Government is currently considering the recommendations of the **Horticulture Code** review. The government response is expected before April 2017, when the current code ends.

We've conducted our first round of audits of signatories to the **Food & Grocery Code**, including Coles, Woolworths and Aldi. During the audits we raised concerns with the retailers about their compliance with the code, particularly in relation to delisting notices. In response, the retailers agreed to make positive changes to improve their compliance.

Business-to-business unfair contract terms

On 12 November 2016, the existing unfair contract terms provisions under the Australian Consumer Law were extended to small business standard form contracts.

If a business thinks a term in a small business standard form contract is unfair, they can ask the other party to remove it. If the other party refuses, they can get help from the [Australian Small Business and Family Enterprise Ombudsman](#), or a state Small Business Commissioner.

We've released a report, [Unfair terms in small business contracts](#). It highlights concerning terms we observed across the advertising, agriculture, franchising, independent contracting, telecommunications, retail leasing, and waste management industries.

Potentially problematic terms we found common across all industries included those that allowed one party (but not the other) to:

- change key aspects of a contract at any time
- unreasonably limit or indemnify their liability to the other party
- unreasonably terminate the contract.

With the laws now in effect, we will investigate unfair terms such as these and take action where appropriate. Enforcing the new law is one of our priority areas.

You can find more information about unfair contract terms on the [business section of our website](#).

Excessive payment surcharging

On 1 September 2016, a ban on excessive payment surcharges imposed by 'large merchants' came into effect. Large merchants are businesses with 50+ employees, consolidated gross revenue of \$25 million or more, or consolidated gross asset value of \$12.5 million or more.

The ban limits the amount businesses can charge customers for use of payment methods such as most credit and debit cards.

While the law only applies to large merchants now, it will extend to all businesses from **1 September 2017**. You can find more information about the ban and how to meet your obligations on our [website](#).

Misuse of market power

On 1 December 2016, the government introduced legislation into Parliament to amend the misuse of market power provisions under s. 46 of the CCA. The amended s. 46 will prohibit a corporation with substantial market power from engaging in conduct with the purpose, effect or likely effect of substantially lessening competition in a market in which it directly or indirectly participates. This differs from the current law where the corporation must be using its market power for one of three specific purposes, related to damaging an actual or potential competitor.

We'll publish guidelines in the future that will outline our approach to the amended s. 46. In an open consultation, we took comments and suggestions on a framework for the guidelines. The framework is available on our [Consultation Hub website](#).

New car retailing market study

In June 2016 we announced that we would undertake a **market study** into the new car retailing industry. The study focuses on competition and consumer issues that may be present or emerging in the industry. In November 2016, we published an issues paper inviting submissions on the following topics:

- consumer guarantees, warranties and new cars
- fuel consumption, carbon dioxide (CO₂) and noxious emissions, and car performance
- post-sale service arrangements
- access to repair and service information and data.

In December 2016, we held a forum with stakeholders, including industry participants and representatives of small businesses, to talk about the key issues of interest to the study. The next stage will be the release of the draft report in mid-2017.



Sharing economy

The sharing economy is a system which enables people to utilise online or digital platforms to share access to their goods or services, usually for a fee. [Our website](#) has guidance for private traders participating in the sharing economy. It is designed to help businesses understand their rights and obligations under the consumer law and the relationships involved in the supply of services in the sharing economy.

Business scams—beware

The **Little Black Book of Scams** is a helpful tool to protect yourself against common scams in Australia. It contains information about a variety of popular scams that regularly target Australian consumers and small businesses. We've recently updated this publication to include new scam types and delivery methods, as well as information about where you can go for help.

You can find the new version on [our website](#).

Exemptions

Businesses wishing to engage in certain arrangements or conduct that may otherwise breach the competition provisions of the CCA can seek an exemption from the ACCC by lodging an authorisation or notification. An exemption provides protection from legal action under the CCA where the public benefit of the arrangement or conduct outweighs the public detriment.

Collective bargaining is an exemption that is commonly sought by small businesses and farmers. It is an arrangement whereby competitors get together to negotiate terms, conditions and prices with a common supplier or buyer. During the last six months, we:

- allowed the **Council of Australian University Directors** of Information Technology to collectively negotiate with 103 producers, sellers and distributors on behalf of itself and its members (primarily Australian universities) regarding the provision of computing information technology products and services.
- proposed to deny authorisation to a collective bargaining and boycott proposal involving **Property Media Group and 170 real estate agents**. The group proposed to collectively bargain and boycott suppliers of online and print residential real estate advertising in Australia including realestate.com.au and domain.com.au. We were not satisfied that this proposal would result in significant public benefits. In particular we were concerned by the potential size and scope of collective bargaining groups and boycott activities, combined with uncertainty about how negotiations would be conducted and the boycotts implemented. The Property Media Group withdrew its applications before our final decision.

We have a [guide for small business](#) on the potential benefits of collective bargaining. If you and other businesses are thinking about lodging an application for authorisation or notification, please contact the ACCC for an informal discussion.

Online programs

We've recently made improvements to our free [small business](#) and [tertiary](#) education programs. Both programs now reflect the new business to business unfair contract terms law. In addition, you can now have your results from the quiz at the end of each module emailed directly to your chosen email address.

To date, our free online **small business education program** and **program for tertiary students** combined have been accessed by over 64 000 users since their launch in 2013. The ACCC-funded **free online franchising program**, run by Griffith University since 2010, has had over 11 600 enrolments.

Have you got staff that may not be aware of their rights and responsibilities when dealing with customers? They can learn through our online programs at www.accc.gov.au/ccaeducation.

Publications

Other guides released by the ACCC and in conjunction with ASIC and the state and territory consumer protection agencies include:

- [Section 155 notices: a basic guide for individuals and small businesses](#)
- [Small business self assessment checklist](#)
- [A guide to competition and consumer law: for businesses selling to and supplying consumers with disability](#)

Contact us

ACCC Small Business Helpline: 1300 302 021

ACCC website: www.accc.gov.au/smallbusiness

Email updates: Would you like to keep up with the latest news and events relevant to small business?

You can sign up to our **free newsletters** for small businesses, franchises, and educators. Subscribe online by visiting [our website](#).