



Australian
Competition &
Consumer
Commission

Small business in focus

Small business, franchising & agriculture news

Report no. 14

January–June 2017



In the last six months

10 800+

total subscribers to our four information networks hit over 10 000 for the first time



693 690

page views of small business education resources on ACCC website

\$512 840

reported small business scam losses¹

3

enforcement actions taken for alleged Franchising Code breaches

Coming up this year

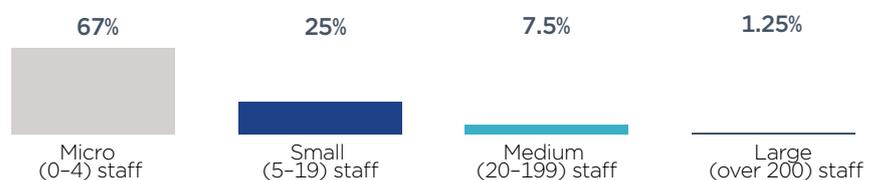
- Excessive payment surcharge ban on all businesses —1 September
- New car retailing market study report—late 2017

What businesses contact the ACCC?

Business age



Business size (by staff numbers)



¹ In this report we have applied a new methodology on how we identify scams reported by small businesses. We are now only reporting on those that have specifically identified themselves as a small business. This has resulted in the reported losses to be lower than previous reports.

Who's contacting us

We had slightly fewer small business related contacts in the last six months, while more franchisees asked us about their rights:

| Contact type | Small business | | Franchising | | Agriculture | |
|--------------|----------------|---------------|---------------|---------------|---------------|---------------|
| | Jan-June 2017 | July-Dec 2016 | Jan-June 2017 | July-Dec 2016 | Jan-June 2017 | July-Dec 2016 |
| Reports | 4894 | 5216 | 192 | 192 | 138 | 185 |
| Enquiries | 1503 | 1752 | 127 | 93 | 66 | 64 |
| Total | 6397 | 6968 | 319 | 285 | 204 | 249 |

Reports by key issue²

| Issues | Small business | | Franchising | | Agriculture ³ | |
|--|----------------|---------|-------------|---------|--------------------------|---------------|
| | 2016-17 | 2015-16 | 2016-17 | 2015-16 | Jan-June 2017 | July-Dec 2016 |
| Consumer law related issues | | | | | | |
| Misleading conduct/false representations | 1429 | 1439 | 58 | 58 | 59 | 81 |
| Consumer guarantees | 643 | 818 | 2 | 5 | 13 | 19 |
| Product safety | 81 | 277 | - | 1 | 5 | 3 |
| Unconscionable conduct | 118 | 181 | 12 | 20 | 3 | 6 |
| Wrongly accepting payment | 302 | 310 | 3 | - | 5 | 6 |
| Unsolicited goods and services | 29 | 101 | 1 | - | - | - |
| Other Australian Consumer Law (ACL) issues | 216 | 205 | 9 | 5 | 7 | 3 |
| Competition related issues | | | | | | |
| Misuse of market power | 187 | 198 | 2 | 1 | 10 | 9 |
| Exclusive dealing | 147 | 163 | 22 | 6 | 5 | 5 |
| Other competition issues | 116 | 134 | 4 | 7 | 4 | 8 |
| Franchising Code related issues | | | | | | |
| Inadequate disclosure | - | - | 71 | 60 | - | - |
| Termination of agreement | - | - | 21 | 17 | - | - |

Enforcing the law

Small business issues continue to be a priority for us, as we outlined in our [2017 Compliance and Enforcement Policy](#) earlier this year. Ensuring that small firms receive the protection of industry codes is one of our priority areas. We also want to ensure compliance with new laws affecting small businesses, including business to business unfair contract terms, excessive payment surcharges, and country of origin labelling laws.

We have worked to protect small businesses in several recent key enforcement actions. In the last six months we:

- took court action against:
 - Ultra Tune Australia Pty Ltd**, for [alleged breaches of the Franchising Code](#) including a failure to act in good faith in dealing with a prospective franchisee, and failing to provide documents required under the Code. We also allege Ultra Tune made false or misleading representations about the franchise site, in breach of the Australian Consumer Law (ACL)
 - Geowash Pty Ltd**, for an [alleged breach of the Franchising Code](#) obligation to act in good faith, as well as alleged false or misleading representations and unconscionable conduct in breach of the ACL
- issued [two Infringement Notices](#) to **Domino's Pizza Enterprises Pty Ltd** for failing to provide an audited marketing fund statement and an auditor's report to franchisees. These were the first infringement notices issued under the Franchising Code
- accepted a [court enforceable undertaking](#) from **Sensis Pty Ltd** after it failed to adequately disclose that its bundled print and online packages automatically renewed unless cancelled by the customer. Some customers also faced a cancellation fee equal to the remaining cost of the contract if they cancelled an automatically renewed contract after a certain date.

² The data provided reflects reports 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.

³ The comparison for agriculture contacts is in six month periods as full data wasn't collected for 2015-16 FY.

Agriculture

We're continuing our [inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry](#). Nearly 600 people attended the eight forums convened in dairy production regions in each state. The ACCC has used its compulsory information gathering powers to access relevant business material and conduct hearings with businesses in the industry.

In March 2017, we released the final report on the ACCC's [market study into the cattle and beef industry](#). Key recommendations included the need to improve the coverage and nature of market reporting, the transparency and independence of carcass grading, and competition among buyers of cattle. We are working with the Red Meat Advisory Council to monitor the industry's progress in implementing the 15 recommendations made in the report.

Horticulture Code of Conduct

On 1 April 2017 a new **Horticulture Code of Conduct** came into effect. The Code provides more protection to growers trading in unprocessed horticulture produce and gives the ACCC powers to seek penalties for certain breaches. The Code also has several new requirements, including an obligation on all parties to act in good faith.

Some parts of the code apply immediately and others must be complied with by 1 April 2018. Guidance material including FAQs and sample horticulture produce agreements are available on our [website](#).

Excessive payment surcharging

There's a new law that prevents businesses overcharging their customers for card transactions. From 1 September 2017 all businesses will be banned from imposing excessive payment surcharges for certain payment methods, including most credit and debit cards. Payment surcharges are excessive when they are more than what it costs the business to accept the payment. Large businesses are already subject to the ban.

The ACCC is currently working with key stakeholder groups to make sure small businesses are aware of the changes.

Start preparing for the ban now. Go to [our website](#) to find more information about the ban and how to meet your obligations.

Country of Origin Labelling

We recently [urged small businesses to review their country of origin labels](#) to ensure they are correctly labelling their products. Businesses may face penalties for false or misleading claims.

There have been changes to how food products must be labelled. Affected businesses have until 1 July 2018 to change their food labels. To assist businesses to understand what they need to do to change their labels we've recorded a **webinar** with experts in the food and grocery industry to discuss these changes. You can watch the webinar on our [YouTube channel](#).

The ACL sets out criteria to give businesses some certainty around when they can make a country of origin claim without it raising concerns. These are known as 'safe harbour defences'. In February 2017, changes were made



to the defences. The biggest change was to the definition of what constitutes a 'substantial transformation'. This will be particularly relevant if you claim that your products were 'Made in' a particular country.

Country of origin representations must be clear, accurate and truthful. Go to [our website](#) to find out more about the new rules.

B2B Unfair contract terms

Both prior to and since the new B2B unfair contract terms law came into effect in November 2016, we have engaged with a number of businesses who have now amended their standard form contracts to address our concerns. Some examples of changes made include:

- **Uber** amended its standard Driver Agreement that allowed it to terminate the agreement 'without cause'. Its right to termination is now limited to certain circumstances including where acting reasonably in order to protect its legitimate interests.
- **Fairfax Media** amended a term in its Advertising Contract that allowed it to refuse or withdraw a customer's advertisement for any reason at any time. This is now limited to certain situations (e.g. where advertising may be illegal, defamatory or obscene).
- **Lend Lease Property Management (Australia)** amended various terms in its standard lease that allowed it unlimited rights to recover costs from its tenants. It is now limited to costs properly and reasonably incurred.
- **Sensis** amended automatic renewal terms in its standard Product Contract Terms. It made the terms more transparent, and included a contractual obligation requiring it to remind customers of the pending automatic renewal of their contracts.
- **Jetts Fitness** amended a wide-ranging restraint of trade clause in its Franchise Agreement to reduce both the period and geographical scope of the restraint.

We've also continued to assess standard form contracts in the agriculture sector, resulting in some traders amending or removing potentially unfair contract terms.

New car retailing industry market study

The ACCC is continuing its [market study](#) into the new car retailing industry, focusing on competition and consumer issues that may be present or emerging in the industry.

In the first half of 2017, the ACCC continued to engage with key stakeholders to collect and discuss matters relevant to the new car retailing industry. This has included gathering additional supplementary information from key stakeholders to inform analysis for the study. Publicly provided information has been published on the [ACCC's website](#).

We will be releasing the draft report in mid-2017 and holding an invited stakeholder roundtable in the third quarter of 2017. We intend to release the final report by the end of this year.

Scams—protect your business

The ACCC released its [Targeting Scams report](#) for 2016 during the National Consumer Fraud Week in May this year. The report outlines that nearly 6000 businesses reported falling victim to a scam in 2016, with losses averaging \$10 000. Computer hacking, fake investment schemes, and buying and selling scams were responsible for the highest losses in scams targeting businesses.

Protect your business against scams by carefully checking any new or unexpected payment requests and have a clearly defined process for verifying and paying accounts and invoices.

Further information is on the SCAMWatch [website](#). You can also [sign up for radar alerts](#).

Exemptions

Sometimes conduct that breaches the competition provisions of the CCA can have wider public benefits. In those cases small businesses can ask for an exemption from us by lodging an authorisation or notification. For example, during the last six months, we allowed:

- **Murray Billing Transport** and other current or future lorry fleet owners to collectively negotiate with Boral Resources Ltd to deliver Boral concrete within the Melbourne metropolitan region. The ACCC's authorisation relates to concrete cartage businesses with four or more trucks. Businesses with fewer trucks are already able to collectively bargain with Boral under state legislation.
- **Homemakers Furniture and Sleepzone Bedding** to continue to collectively bargain on behalf of their members with suppliers of furniture, bedding and related stock, advertising and marketing services, and ancillary services. Homemakers is a buying, advertising and marketing group comprised of around 76 independent furniture and bedding retailers. The ACCC initially authorised these arrangements in 2012 and has now re-authorised them for a further 10 years.

A [guide for small business](#) on the potential benefits of collective bargaining is available on our website.

Levelling the playing field for small business

In June the ACCC, ASIC, ATO, Fair Work Ombudsman, and the Australian Small Business and Family Enterprise Ombudsman presented a joint **webinar**—'Levelling the playing field for small business'—which looked at how regulators are working to make it easier for small businesses to succeed, including information on business-to-business unfair contract terms and scams. The webinar is now on the our [YouTube channel](#).

Online programs

How well do you and your staff know your rights and obligations under the CCA? Find out now by checking out our **free** [small business](#) and [tertiary](#) education programs.

We have recently updated the small business program to include a module about the new Country of Origin Labelling Standard.

To date, the ACCC's free online small business education program and the program for tertiary students combined have been accessed by over 72 300 users since their launch in 2013. The ACCC-funded free online franchising program, run by Griffith University since 2010, has had over 12 500 enrolments.

You can access these programs at [www.accc.gov.au/ccaeducation](#).

Publications

The ACCC has produced a number of guides and factsheets this year which may help small businesses:

- [Payment surcharges—only charge what it costs you](#)
- [Unfair contract terms: New protection for small businesses](#)
- [Business scams](#)
- [Country of origin claims and the Australian Consumer Law](#)
- [Country of origin food labelling factsheet](#)
- [How the Horticulture Code Helps You & Enforcement of the Horticulture Code](#)
- [Franchising: what you need to know](#)

Contact us

[Report a small business issue](#)

Small business helpline: 1300 302 021

ACCC Agriculture Unit: [www.accc.gov.au/agriculture](#)

ACCC website: [www.accc.gov.au/smallbusiness](#)

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