



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Small business in focus

## Small business, franchising & agriculture news—Report no. 15

July—December 2017



### In the last six months



**737 000**

page views of our small business resources



**\$2.47m**

reported small business scam losses



**24**

compliance checks (franchising, horticulture + food & grocery codes)



**6**

ongoing inquiries



**4**

new court actions for matters affecting small business



Changes to competition laws introduced

### A profile of the typical business contacting the ACCC<sup>1</sup>



At least 1 out of 3 that contact us are established businesses aged 10+ years

Majority are micro sized businesses with 0-4 staff (63% of contacts)



Most commonly report misleading or deceptive conduct (21% of contacts)

### Coming up this year

- New food labelling requirements mandatory from 1 July 2018
- Review of the Food & Grocery Code
- Horticulture Code transition period ends 1 April 2018

<sup>1</sup> ACCC data of contacts where business size and age was stated (excludes scam reports).

## Who's contacting us<sup>2</sup>

Contact type	Small business <sup>3</sup>		Franchising		Agriculture	
	July-Dec 2017	Jan-June 2017	July-Dec 2017	Jan-June 2017	July-Dec 2017	Jan-June 2017
Reports	2590	2199	185	192	161	138
Enquiries	2356	1503	94	127	94	66
Total	4946	3702	279	319	255	204

## Reports by key issue<sup>4</sup>

Issues	Small business		Franchising		Agriculture	
	July-Dec 2017	Jan-June 2017	July-Dec 2017	Jan-June 2017	July-Dec 2017	Jan-June 2017
<b>Consumer law related issues</b>						
Misleading conduct/false representations	1057	696	49	32	77	59
Consumer guarantees	464	317	2	1	22	13
Product safety	36	34	1	-	1	5
Unconscionable conduct	40	39	9	8	4	3
Wrongly accepting payment	196	132	1	-	10	5
Unsolicited goods and services	34	13	-	1	-	-
Other Australian Consumer Law (ACL) issues	237	128	8	3	12	7
<b>Competition related issues</b>						
Misuse of market power	123	90	-	-	6	10
Exclusive dealing	87	78	8	15	4	5
Other competition issues	79	58	4	4	5	4
<b>Franchising Code related issues</b>						
Inadequate disclosure	-	-	29	26	-	-
Not acting in good faith	-	-	20	27	-	-
Improper termination of agreement	-	-	11	6	-	-

## Enforcing the law

In the last six months, we've worked to protect small businesses through our enforcement action, including:

- Court action and penalties totalling \$150 000 against Pastacup franchisor **Morild Pty Ltd** and the company's co-founder and former director for [failing to provide a disclosure document](#) to prospective franchisees which complied with the Franchising Code.
- Issuing an Infringement Notice of \$9000 to **West Aust Couriers Pty Ltd trading as Fastway Couriers (Perth)** for [allegedly breaching the Franchising Code](#) by providing a disclosure document to a prospective franchisee that didn't include details of former franchisees that had terminated or transferred their courier franchises.
- Starting court action against **Domain Name Corp Pty Ltd and Domain Name Agency Pty Ltd trading as Domain Name Register** for [alleged misleading or deceptive conduct](#) and making false or misleading representations to Australian businesses about the domain name services they offered.
- [Starting court action](#) against **Servcorp Ltd** and two of its subsidiaries, alleging that a number of terms in Servcorp's standard form contracts with small business are unfair and should be declared void.
- [Court action and orders](#) declaring, by consent, that eight terms in the small business standard form contract used by **JJ Richards & Sons Pty Ltd** were unfair and therefore void.

<sup>2</sup> 'Reports' are contacts about potential misconduct, and 'enquiries' are contacts seeking advice or information about competition or consumer issues. Further investigations of reports may not reveal a legislative breach. Data should be used as general guidance only and care should be taken when drawing any conclusions.

<sup>3</sup> This publication applies a different methodology to previous SBIF publications and excludes data on scam contacts to the ACCC, which has resulted in a lower number of contacts.

<sup>4</sup> Some reports are categorised as having more than one issue. Excludes reports not within the remit of the ACCC.

## Agriculture

In November, we released our [interim report](#) on the competitiveness of prices, trading practices and the supply chain in the Australian **dairy industry**. The final report will be submitted to the Treasurer by 30 April 2018.

We also held our 4th **Agriculture Consultative Committee** meeting in November. A review of the Committee's membership for 2018 and 2019 is underway.

Have you heard about our new **online tool for anonymous agricultural complaints**? We encourage you to [report](#)<sup>5</sup> potential misconduct in the agriculture industry using our online tool.

## Horticulture Code

The transition period for the revised [Horticulture Code](#) ends on 1 April 2018. We have been working with industry organisations to educate growers and traders of horticulture produce about their rights and obligations. We are now shifting focus to enforcing the Code. During this period we issued 15 compliance check notices to horticulture traders across the wholesale central markets.

## Changes to competition laws

On 6 November 2017, Australia's competition laws were amended by Parliament following a [comprehensive review](#). Changes relating to small business include:

- New 'purpose or effects test' in misuse of market power provisions—corporations with substantial market power are now prohibited from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition.
- New concerted practices prohibition—introduction of a new prohibition against concerted practices that have the purpose, effect or likely effect of substantially lessening competition. A concerted practice involves some form of cooperation between businesses that is less than an 'agreement'.
- Changes to the [collective bargaining notification process](#) now make it easier and more flexible for small businesses to lodge a notification to obtain legal protection to collectively bargain with a customer or supplier.

The ACCC has developed interim guidelines setting out how we propose to interpret the new [misuse of market power](#) and [concerted practices](#) provisions, which are available on our website.

## Consumer guarantee reports increase

In 2017, reports to the ACCC about consumer guarantee issues increased for both consumers and small businesses. A review of the online policies of several large Australian clothing retailers found that some may be misleading consumers about their rights under the ACL's consumer guarantees.

To make sure you know when you have to give a refund, and when you're entitled to one, check out our recently updated guide, [Small business and the Competition and Consumer Act](#) on our website.

## Business scams

The ACCC reminds you to beware of scams targeting businesses, particularly false billing scams which can include:

- **Fake directories and advertising scams** in which you receive an invoice for a listing or advertisement that you didn't authorise or request, resulting in subsequent demands for payment.
- **Domain name renewal scams** involving an unsolicited invoice or email from a domain name supplier trying to trick you into signing up to their service or a scammer trying to make you pay for a fake domain name registration.

For further information visit [www.scamwatch.gov.au](http://www.scamwatch.gov.au) and [sign up for radar alerts](#).

## Exemptions

Sometimes conduct that breaches Australia's competition laws can still have some wider public benefits. In those cases businesses can lodge an authorisation or notification asking for an exemption from us to engage in the conduct. For example, during the last six months, we allowed:

- **Licensed Post Office Group** to collectively negotiate with Australia Post on behalf of itself and current and future members for the provision of postal and distribution services.
- **SA Baiada Growers Group** to collectively bargain on behalf of current and future members who provide chicken growing services to Baiada.
- **Australian Medical Association (NSW)** to collectively negotiate on behalf of visiting medical officers in NSW with Healthscope Operations Pty Ltd regarding the terms and conditions (including remuneration) of visiting medical officer contracts at the Northern Beaches Hospital.

We have developed [draft guidelines](#) on small business collective bargaining to assist businesses, including farmers, to engage in and understand the processes for obtaining ACCC approval for collective bargaining or boycott activity.

## New car retailing market study—final report

In December, we released our [final report](#) which recommended that:

1. A **mandatory scheme** be introduced to give independent repairers the same level of access to technical information as dealers and preferred repairer networks (subject to the appropriate safeguards).
2. Manufacturers **update their complaints handling systems** and commercial arrangements with dealers to ensure that they properly consider customers' ACL consumer guarantee rights.

The ACCC will now work to implement the study's actions and recommendations, including taking enforcement action where we see potential breaches of the ACL.

<sup>5</sup> <https://app.whispli.com/accc-report-an-agricultural-issue-anonymously>

## Retail Electricity Pricing Inquiry

The ACCC is continuing its inquiry into the **competitiveness of retail electricity markets** in the National Electricity Market. In October, we released our [preliminary report](#) which found that retail electricity prices for small businesses and households have increased by 80 to 90 per cent over the past decade (when taking into account estimated price rises in July 2017).

The remainder of the inquiry will focus on identifying practical and meaningful measures that will ease the pressures on electricity prices for Australians. A final report will be provided to the Treasurer by 30 June 2018.

## Country of origin food labelling

From 1 July 2018, most food offered or suitable for retail sale in stores, markets, online or from vending machines must be labelled according to the *Country of Origin Food Labelling Information Standard 2016*.

To assist businesses who produce or supply dairy products in Australia to comply with the Standard, we released a [Country of origin labelling and the dairy industry](#) guide. The guide sets out our views on the application and interpretation of the new labelling rules for dairy-based foods e.g. cheese and yoghurt.

## Unfair contract terms

The ACCC continues to educate businesses and take action to ensure they receive the protections of the new unfair contract terms law. In addition to our court action against **JJ Richards & Sons** and **Servcorp**, we have also liaised with other businesses about potentially unfair contract terms. In response to concerns raised by us about certain terms, **Australia Post** is proposing some amendments to its Licensed Post Office Agreement. It plans to consult with its licensees on the proposed changes.

## Small Business & Franchising Consultative Committee—New members

Our SBFCC keeps us updated on issues affecting the small business and franchising sectors. We recently appointed new members after reviewing our membership for 2018–19, which now consists of 17 industry associations, five academics, four business advisors and three legal advisors.

## Excessive payment surcharging

The ban on excessive surcharges, which already applied to large businesses, was extended to small businesses on 1 September 2017. This ban restricts the amount a business can charge customers for using EFTPOS (debit and prepaid), MasterCard (credit, debit and prepaid), Visa (credit, debit and prepaid) and American Express cards issued by Australian banks.

**Red Balloon Pty Ltd**, recently paid a [\\$43 200 penalty](#) after we issued four infringement notices for allegedly charging four customers' excessive surcharges when they made either credit or debit card payments.



## Dr Michael Schaper

In May 2018, the ACCC will farewell Dr Michael Schaper who was first appointed as Deputy Chair of the Commission in July 2008.

For nearly 10 years, Michael has led our engagement with small businesses, franchisors and franchisees, industry associations and other regulators with an interest in business liaison. Michael has made a significant contribution in building and maintaining these relationships and ensuring small business is considered on the government agenda.

## Online programs

How well do you and your staff know your rights and obligations under Australia's competition and consumer laws? Find out now by checking out our free small business education program [www.accc.gov.au/ccaeducation](http://www.accc.gov.au/ccaeducation)

Since its launch in 2013, the small business program, together with a similar program for tertiary students, has been accessed by over 78 000 users.

## Current in-depth inquiries

[Dairy inquiry](#)

[Digital platforms inquiry](#)

[Electricity supply & prices inquiry](#)

[Gas inquiry 2017–2020](#)

[Northern Australia insurance inquiry](#)

[Residential mortgage products price inquiry](#)

## Publications and fact sheets

[Small business and the Competition and Consumer Act \(updated\)](#)

[Country of origin claims and the Australian Consumer Law](#)

[Country of origin labelling and the dairy industry](#)

[Payment surcharges—only charge what it costs you](#)

[Unfair contract terms: New protection for small businesses](#)

[How the Horticulture Code Helps You & Enforcement of the Horticulture Code of conduct](#)

[Gas inquiry December 2017 interim report](#)

[Business scams](#)

## Contact us

**ACCC Small Business Helpline:** 1300 302 021

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

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