



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Small business in focus

Small business, franchising & agriculture news—Report no. 16

January–June 2018



In the last six months



615 000
page views of our small business resources



\$2.3 million
reported small business scam losses



14
compliance checks (franchising, horticulture + food & grocery codes)

Coming up this year

- Country of origin food labelling requirements mandatory from 1 July 2018
- Review of the Food & Grocery Code
- Franchising Inquiry

A profile of the typical business contacting the ACCC¹



Two out of five are established businesses that have operated for 10+ years (40% of contacts)

▲ 5%

Majority are micro-sized businesses with 0–4 staff (68% of contacts)

▲ 5%



Most commonly reported misleading or deceptive conduct (28% of contacts)

▲ 7%

¹ Based on data of small business contacts where businesses stated their size and age (excludes scam reports). Percentage increases are based on comparisons with the previous *Small business in focus* (July–December 2017).

Who's contacting us²

Contact type	Small business		Franchising		Agriculture	
	Jan-Jun 2018	Jul-Dec 2017	Jan-Jun 2018	Jul-Dec 2017	Jan-Jun 2018	Jul-Dec 2017
Reports	2463	2590	199	185	127	161
Enquiries	1321	2356	64	94	52	94
Total	3784	4946	263	279	179	255

Reports by key issue³

Issues	Small business		Franchising		Agriculture	
	Jan-Jun 2018	Jul-Dec 2017	Jan-Jun 2018	Jul-Dec 2017	Jan-Jun 2018	Jul-Dec 2017
Consumer law related issues						
Misleading conduct/false representations	1072	1057	43	49	49	77
Consumer guarantees	488	464	2	2	16	22
Product safety	28	36	0	1	3	1
Unconscionable conduct	48	40	10	9	5	4
Wrongly accepting payment	221	196	2	1	6	10
Unsolicited goods and services	34	34	0	0	0	0
Other Australian Consumer Law (ACL) issues	295	237	5	8	5	12
Competition related issues						
Misuse of market power	127	123	1	-	8	6
Exclusive dealing	68	87	3	8	5	4
Other competition issues	57	79	2	4	7	5
Franchising Code related issues						
Inadequate disclosure	-	-	29	31	-	-
Not acting in good faith	-	-	20	84	-	-
Improper termination of agreement	-	-	11	6	-	-

² Refers to contacts received from various sources, disaggregated by reports (of potential misconduct) and enquiries. Further investigations of these reports may not reveal a legislative breach. Care should be taken when drawing any conclusions from these data and when making comparisons with other ACCC data, as records may be modified after this time period resulting in differences over time. Small business, Franchising and Agriculture contacts are separate datasets which are not a sub-set of each other.

³ Some reports are categorised as having more than one issue. Excludes reports not within the remit of the ACCC. Small business, Franchising and Agriculture reports are separate datasets which are not a sub-set of each other.

Enforcing the law

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

- [Court ordered penalties](#) totalling \$300 000 against **ABG Pages Ltd** for engaging in systemic unconscionable conduct, undue harassment, and making false and misleading representations in relation to its online advertising services.
- [A court-enforceable undertaking](#) from ATM provider **Cardtronics Australasia Pty Ltd** to change terms that may be unfair for small businesses under existing contracts.
- [A court-enforceable undertaking](#) from **HP PPS Australia Pty Ltd** for failing to disclose to consumers that certain HP inkjet printers had been installed with technology intended to prevent those printers from working with non-HP ink cartridges.
- [A court-enforceable undertaking](#) from **Wilson Security Pty Ltd** in relation to charging customers for internal premise security patrols which were not provided.
- [Court ordered penalties](#) totalling \$1.95 million against **Domain Corp Pty Ltd** and **Domain Name Agency Pty Ltd** (also trading as Domain Name Register) for making false and misleading representations and engaging in misleading and deceptive conduct.
- [Proceedings commenced](#) against **Mitolo Group Pty Ltd** and a related entity (together, Mitolo) alleging that several terms in Mitolo's standard form contracts with potato farmers are unfair contract terms, and that Mitolo has breached the Horticulture Code in its dealings with farmers.

Exemptions

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

- Independent Cinemas Australia, and its current and future members, to share information and collectively bargain with film distributors on the terms and conditions of film licensing agreements.
- a group of seven removalists to collectively negotiate with Pacific National for the provision of rail linehaul freight services.
- a Tyre Stewardship Scheme, which involves businesses across the entire tyre supply chain and includes tyre retailers, importers, recyclers and collectors, fleet operators and local governments across Australia. The scheme is designed to increase the recycling of tyres and use of products made from recycled tyres. A levy of \$0.25 per tyre is imposed on imported tyres and participants are required to only deal with accredited businesses along the tyre supply chain.

We have a new power to grant 'class exemptions' for conduct that poses very little risk to competition, or is likely to result in a net public benefit. We are about to start public consultation on a possible class exemption for collective bargaining by businesses below a certain size or threshold. A class exemption would provide a 'safe harbour' for eligible businesses, allowing them to engage in specified conduct without the need to lodge a specific authorisation or notification.

B2B Unfair contract terms

One of our compliance and enforcement priorities for 2018 focuses on ensuring small businesses receive the protections of the unfair contract terms law, which was introduced in November 2016.

In addition to our recent action against **Cardtronics** and **Mitolo**, we have also raised our concerns with other companies regarding unfair contract terms, including:

- **Wisdom Properties Group Pty Ltd** who accepted a court enforceable undertaking to remove contract terms contained in its standard home building agreements. These agreements included non-disparagement clauses that allowed it to control or prevent any public statements made by customers about its services.
- **AWB Harvest Finance Pools Pty Ltd** who cooperated with the ACCC to amend the terms of its standard form grain pool contracts entered into with growers.

We also continue to assess and investigate standard form contracts given to small businesses in the agriculture sector for potentially unfair contract terms.

Food and Grocery Code

Earlier this year, the Government released the terms of reference for the independent review of the Food and Grocery Code led by Prof. Graeme Samuel. The draft report was recently released for public consultation and includes 14 recommendations. The final report is due to be submitted to the Government in September this year.

Retail Electricity Pricing Inquiry

We recently released our [Retail Electricity Pricing Inquiry - Final Report](#) with 56 recommendations to significantly improve electricity affordability for Australian consumers and businesses. We have made a number of recommendations to assist small business, including:

- abolishing the standing offer for SME customers and replacing it with a 'default offer' at or below a price set by the Australian Energy Regulator
- improved and targeted information for small business from governments and energy agencies
- ongoing price reporting of small business outcomes and the effect of reforms on the small business market.

Agriculture

In April, we released our [Dairy inquiry - Final report](#) and a [Dairy inquiry - farmers' guide to the final report](#) which include our key recommendation that a mandatory code of conduct be implemented to improve contracting practices between dairy processors and farmers.

Horticulture Code

The new Horticulture Code of Conduct came into full effect on 1 April 2018. All Horticulture Produce Agreements must comply with the new Code which applies to transactions between growers and traders of horticulture produce (i.e. unprocessed fruit, vegetables, nuts, herbs and other edible plants). We are continuing to assess Horticulture Code compliance across the wholesale central markets.

Recent court action against **Mitolo** is our first under the new Horticulture Code, and our first unfair contract terms action in the agriculture industry.

Franchising Inquiry

A Parliamentary Joint Committee inquiry is currently being held into the operation and effectiveness of the Franchising Code and Oil Code.

Our submission to this inquiry was based on our experience in regulating the Codes and contains 10 recommendations, including:

- making penalties (and thereby infringement notices) available for all breaches of the Franchising Code, and introducing them for the Oil Code
- increasing penalties to reflect those currently available under the ACL
- introducing penalties and infringement notices for non-compliance with s. 51ADD notices
- making the inclusion of unfair terms in standard form contracts illegal and providing for penalties and infringement notices for such breaches
- introducing a requirement for franchisors to disclose certain financial information to prospective franchisees.

[Submissions received by the Committee](#) are available on the Parliament of Australia website (see submission 45: Australian Competition and Consumer Commission). The Committee is due to report its findings by 6 December 2018.

Country of origin food labelling

Since 1 July, all businesses (including manufacturers, processors and importers) that offer food for retail sale in Australia have had to comply with the *Country of Origin Food Labelling Information Standard 2016*.

The new requirements apply to most food offered for retail sale in Australia, including food sold in stores or markets, online or from a vending machine. This excludes food sold in restaurants, cafes, take-away shops or schools.

Over the past two years, we have undertaken a range of activities to educate and inform food businesses about the new labelling system and how to apply and interpret the Standard.

We will continue to provide information and guidance to businesses, and will be undertaking market surveillance activities to monitor compliance with the Standard.

Targeting scams report

In May, we released our [Targeting scams: report of the ACCC on scam activity 2017](#) during Scams Awareness Week. The report revealed that in 2017, the ACCC received nearly 5500 reports from businesses about scams and reported financial losses totalled almost \$4.7 million. Businesses were most commonly targeted by false billing scams, and employment and investment scams caused the highest financial losses of nearly \$1.7 million.

Tip:

Protect your business against scams by considering what business information you post on social media and networking sites, as scammers use publicly available information to target businesses.

Webinar

In June, we held the annual [small business webinar](#) hosted by business and finance reporter, Elysse Morgan, with representatives from the ACCC, ATO, ASIC, Fair Work Ombudsman and the Australian Small Business and Family Enterprise Ombudsman. The webinar discussed recent initiatives and provided useful tips and guidance for small businesses on their rights and obligations, including information on changes to laws affecting them.

New ACCC Deputy Chair: Mick Keogh

In May, we welcomed Mick Keogh into the role of Deputy Chair for Small Business for a term of five years. Mr Keogh continues to lead the work of the ACCC's Agriculture Unit and was the Executive Director of the Australian Farm Institute from 2003 to 2018.

Mr Keogh brings with him experience from operating small businesses and his involvement in our work on agriculture matters and the Horticulture Code, including engagement with key industry associations.

Online programs

How well do you and your staff know your rights and obligations under Australia's competition and consumer laws? Take advantage of our free online education programs to find out more or refresh your knowledge at www.accc.gov.au/ccaeducation. To date, the small business education program, together with a similar program for tertiary students, has been accessed by over 82 000 users since their launch in 2013.

FranchiseED also delivers a free [pre-entry franchise education program](#) to help prospective franchisees assess business opportunities and understand what's involved in buying a franchise business.

Publications and factsheets

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

[Small business 2017 snapshot](#)

[Country of origin food labelling guide](#)

[How to display the Standard marks](#)

[Country of origin food labels sign](#)

[Advertising & selling guide](#)

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

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

[Franchising: what you need to know](#)

[How the Horticulture Code helps you](#)

[Business scams](#)

Contact us

ACCC Small Business Helpline: 1300 302 021

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

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