



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Small business in focus

## Small business, franchising & agriculture news—Report no. 20

January—June 2020



### In the last six months



**799 000**

page views of our small business resources



**\$4.5 million**

reported small business scam losses



**2** administrative resolutions<sup>1</sup> and **2** court outcomes<sup>2</sup> obtained on matters affecting small business and franchising

**27** mail outs through our Small Business, Franchising and Oil Information Networks

### A profile of the typical businesses contacting the ACCC<sup>4</sup>



Around one-third (35%) are established businesses that have operated for 10+ years

▼ **1%**

Around two-thirds are micro-sized businesses with 0-4 staff (69% of contacts)



▲ **3%**



Most commonly reported misleading or deceptive conduct (22% of contacts)

▼ **5%**

### Coming up this year

- Government response to the Franchising Inquiry
- Food and Grocery Code reforms
- Final report on Murray-Darling Basin water markets inquiry<sup>3</sup>
- First stage requirements of the quad bike safety standard become mandatory

<sup>1</sup> The ACCC obtained an administrative resolution from Bob Jane Corporation Pty Ltd in April 2020 and 1300 Australia Pty Ltd in March 2020.

<sup>2</sup> In proceedings taken by the ACCC against former car wash franchisor Geowash Pty Ltd and Quantum Housing Group Pty Ltd.

<sup>3</sup> Submissions in response to ACCC's Murray-Darling Basin water markets inquiry—[interim report](#) close on 30 October 2020.

<sup>4</sup> ACCC data of contacts where business size and age was stated (excludes scam reports). Percentage increases are based on comparisons with the previous Small business in focus (July–December 2019).

## Who's contacting us<sup>5</sup>

Contact type	Small business		Franchising		Agriculture	
	Jul-Dec 2019	Jan-Jun 2020 <sup>6</sup>	Jul-Dec 2019	Jan-Jun 2020	Jul-Dec 2019	Jan-Jun 2020
Reports	2 586	2 058	236	166	76	112
Enquiries	792	1 124	51	48	26	40
Total	3 378	3 182	287	214	102	152

## Reports by key issue<sup>7</sup>

Issues	Small business		Franchising		Agriculture	
	Jul-Dec 2019	Jan-Jun 2020	Jul-Dec 2019	Jan-Jun 2020	Jul-Dec 2019	Jan-Jun 2020
<b>Consumer law related issues</b>						
Misleading conduct/false representations	910	708	37	24	13	5
Consumer guarantees	489	351	1	0	3	3
Product safety	31	11	0	0	1	0
Unconscionable conduct	38	35	10	15	3	0
Wrongly accepting payment	151	164	5	1	1	0
Unsolicited goods and services	19	10	0	1	0	0
Business-to-business unfair contract terms	231	178	2	4	6	0
Other Australian Consumer Law (ACL) issues	74	47	5	1	0	0
<b>Competition related issues</b>						
Misuse of market power	97	60	2	0	5	3
Exclusive dealing	58	22	0	0	2	3
Other competition issues	40	24	2	0	3	4
<b>Franchising Code related issues</b>						
Inadequate disclosure	-	-	34	18	-	-
Not acting in good faith	-	-	50	71	-	-
Improper termination of agreement	-	-	5	2	-	-

## Impact of COVID-19

The ACCC is highly conscious of the impact of COVID-19 on Australian small businesses. In March the ACCC moved quickly to reprioritise work and direct resources towards delivering on issues caused by COVID-19.

Actions we undertook included:

- Establishing a COVID-19 Taskforce to respond rapidly to competition and consumer issues impacting Australian consumers and businesses. Small business protection interventions by the Taskforce include:
  - engaging with franchisors regarding allegations that they are continuing to collect franchising fees when businesses had minimised their operations; and
  - investigating allegations that large businesses are deliberately choosing not to pay their suppliers, or demanding large discounts on goods already delivered.
- Granting a number of interim authorisations to support coordination between competitors that might otherwise raise concerns under the competition provisions of the *Competition and Consumer Act 2010* but which are necessary and in the public interest at this time. An example is our authorisation allowing retailers to **collectively bargain** with landlords about rent relief during the pandemic.

<sup>5</sup> 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 this 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.

<sup>6</sup> Contacts include those from small businesses reporting COVID-19 related issues and requesting information about their obligations to consumers during the COVID-19 pandemic. The ACCC began receiving contacts regarding COVID-19 in March 2020.

<sup>7</sup> Some reports are categorised as having more than one issue. Excludes reports not within the remit of the ACCC.

- Publishing information to raise awareness of [consumer](#) and [small business rights](#), for example, regarding travel, event cancellations and delivery delays.
- Enhanced efforts to address behaviour that sought to exploit the COVID-19 crisis, such as commencing targeted scams analysis to identify COVID-19 scam trends.
- Working with international counterpart agencies to share experiences and responses to the COVID-19 pandemic.

## Enforcing the law

Responding to issues arising from natural disasters and pandemic events (drought, bushfires and COVID-19 pandemic) to assist small business to receive the protections under the *Competition and Consumer Act 2010* is a priority for the ACCC in 2020. In the first six months of the year the ACCC issued the [2020 Compliance and Enforcement Priorities](#) and [revised priorities](#) designed to respond to the impact of COVID-19.

In the last six months, we have enforced laws designed to protect small businesses, including:

- The Federal Court ordering \$4.2 million in [penalties](#) against former carwash and detailing franchisor **Geowash Pty Ltd**, its director Sanam Ali and its franchising manager Charles Cameron for breaches of the Australian Consumer Law and the Franchising Code of Conduct. This included penalties of \$1.045 million against Ms Ali and \$656 000 against Mr Cameron. The Court found Geowash made false or misleading representations, acted unconscionably towards franchisees and failed to act in good faith in relation to the sale and marketing of its franchises. The two executives of Geowash have appealed this ruling.
- **Bob Jane Corporation Pty Ltd** giving the ACCC a [court-enforceable undertaking](#) to comply with its obligations under the Franchising Code of Conduct in relation to renewal and extension of franchise agreements.
- The Federal Court ordering **Quantum Housing Group Pty Ltd** to pay \$700 000 in [penalties](#) for making false or misleading representations relating to the National Rental Affordability Scheme. Quantum pressured investors to terminate their arrangements with their existing property managers and instead use property managers approved or recommended by Quantum.
- **Outdoor Supacentre Pty Ltd** paid \$63 000 in [penalties](#) after the ACCC issued it with five infringement notices for allegedly misleading consumers with 'was/now' price comparisons advertised on its website. Between December 2018 and January 2019, the retailer advertised some of its most popular products with a high 'was' price and a low 'now' price, despite these products never being advertised or sold at the 'was' price at any time during the previous three months. We also accepted a court-enforceable undertaking that it will publish corrective advertising, implement a compliance program, and not engage in similar conduct in the future.
- In a [court-enforceable undertaking](#), **1300 Australia Pty Ltd** has acknowledged that some of the terms in its contracts may have been unfair, and committed to

amend its contracts. 1300 Australia has undertaken to amend current and future contracts with small businesses, and will refund part of the termination fees paid by specific small business customers. It has also committed to review previous complaints, refund excessive termination fees and implement an Australian Consumer Law compliance program.

- Following the announcement of **General Motors Holden Australia NSC Pty Ltd** withdrawal from Australia, the ACCC received numerous complaints regarding Holden's proposed compensation package for Holden dealers. The complaints of Holden's conduct with dealers in the lead up to the announcement raised concerns relating to the good faith obligations of the Franchising Code of Conduct and the unconscionable conduct and misleading and deceptive conduct provisions of the Australian Consumer Law. Following [pressure from the ACCC](#), Holden agreed to extend the deadline for acceptance of its compensation package and to engage in a mediation process with dealers. We had been preparing for court action had Holden not changed its position and we are continuing our broader investigation into Holden's engagement with dealers in relation to its withdrawal from Australia.

## Exemptions

Sometimes conduct that may breach Australia's competition laws can have some wider public benefits that outweigh the harm to competition. In those cases, businesses can lodge an application for authorisation or notification seeking an exemption from the ACCC to be able to engage in the conduct.

The ACCC granted urgent interim authorisation in respect of a wide range of arrangements, as businesses and industry associations sought to deal with the COVID-19 pandemic. The applications for authorisation fell into five broad categories:

- **response to medical needs arising from treating patients**—conduct to secure supply of COVID-19 related medicines and medical equipment
- **hospital capacity management between governments and private providers**—arrangements to allocate hospital capacity efficiently in the event of a surge of COVID-19 cases
- **adjusting supply chains and market operation, especially to respond to economic and social disruption from adjusting to lockdown**—broad sector responses to changes in business and consumer behaviour, particularly with more people working from home
- **promoting consistent relief or benefits for economic issues and hardship**—competitors agreeing on standard minimum relief to alleviate financial hardship caused by the economic fallout from the pandemic, or standard extensions of health-related coverage
- **conduct responding to issues resulting from the medical, economic or social consequences of COVID-19**—collaboration to promote efficient actions in response to the financial issues caused by COVID-19, such as collective bargaining by tenants with landlords.

More broadly, during the last six months we allowed exemptions for:

- Liquor Accord members and Safe Night Precinct local board members in Queensland to make liquor accord agreements containing highlighted supply or price control provisions, subject to conditions designed to ensure transparent and independent oversight
- an independent supermarkets collective bargaining group to collectively negotiate with a range of suppliers of goods and services to the Australian grocery industry, and allow information sharing between Co-Operative Supermarkets Australia Limited and its members regarding terms of supply to support these negotiations. The authorisation was granted subject to a condition that the group not impose any minimum value or volume requirements on members without the prior approval of the ACCC.

We are continuing with our work to develop a [collective bargaining class exemption](#), to allow:

- small businesses including agribusinesses (with turnover of less than \$10 million) to form collective bargaining groups to negotiate on the supply or acquisition of goods or services; and
- all franchisees to collectively bargain with their franchisor.

## Franchising Code

On 1 June the Federal Government implemented reforms to improve the transparency and fairness of new vehicle dealership agreements. Under the reforms all new vehicle dealership agreements will have to take into account additional considerations regarding end of term arrangements, capital expenditure and multi-party dispute resolution.

The ACCC continues to explore ways to support small businesses in the franchise sector in line with our [Compliance and Enforcement Policy](#), using a range of tools to encourage compliance with the Franchising Code.

## Agriculture

In the last six months the ACCC's key outcomes in the agriculture sector have included:

- The new mandatory Dairy Code of Conduct (the Code), came into effect on 1 January 2020. We have produced extensive guidance including a [fact sheet](#) and [webpages](#) and established the [Dairy Consultative Committee](#). The Dairy Consultative Committee is a forum for industry representatives to discuss code implementation issues and to increase industry education and awareness. The ACCC has been reviewing code compliance including whether processors met their publishing obligations under the Code. The Code is a 2020 compliance and enforcement priority for the ACCC. The introduction of a mandatory code was a key recommendation of the ACCC's 2018 dairy inquiry, which found significant imbalances in bargaining power between dairy processors and farmers.

- Some of Australia's biggest winemakers [agreed to change their supply agreements](#) with grape growers after the ACCC raised concerns that the contracts contained terms which were likely to be unfair. Following the ACCC's investigation, several winemakers agreed to change contract terms covering contractual disputes with growers, as well as terms relating to wine grape quality assessments. Some winemakers will also amend terms that allowed them to make unilateral changes to supply contracts, including onesided termination rights. Several winemakers have agreed to attach conditions to their rights to enter growers' vineyards for inspections, and to not prevent growers from seeking legal or financial advice through confidentiality clauses in the contracts. However, the ACCC remains concerned about the lengthy payment periods specified in grape supply agreements, which mean that growers are waiting for long periods before being paid for their grapes.
- On 28 February, the ACCC released its [Agricultural machinery: after-sales markets discussion paper](#). The discussion paper identifies a number of initial concerns relating to competition and fair trading issues.

## Country of origin food labelling

The ACCC has continued to ensure businesses are presenting accurate information about country of origin to their consumers in line with the *Country of Origin Food Labelling Information Standard 2016* (the Standard). In the first half of 2020, the ACCC conducted a series of compliance checks to monitor compliance with the Standard. Further information is available in the ACCC's [compliance and enforcement approach for country of origin labelling](#).

The ACCC has developed [guidance](#) for businesses who have experienced changes in their supply chains as a result of the COVID-19 pandemic. The ACCC has worked closely with food manufacturers and sellers to help them manage compliance with the Standard while ensuring the continued availability of food and grocery products for consumers. To this end, the ACCC recognises that many businesses have experienced disruptions to their normal operations, and will take a proportionate approach to potential non-compliance with the Standard. The ACCC's guidance suggests a number of measures which businesses may consider implementing to correct any country of origin claims that become incorrect. We encourage affected businesses to review the guidance and [contact us](#) to report issues.

## Scams

Between 1 January and 30 June 2020, small businesses reported 1 200 scams with \$4.5 million in losses. While this is fewer reports than in the previous six-month period (2 021 reports), it is a significant increase in losses (up from \$1.4 million). This means that when scams were successful, small businesses have been losing more money.

Key scams impacting small businesses in 2020 include business email compromise, overpayment scams, and scammers extorting small businesses with the threat of leaving bad online reviews. These extortion scams can be particularly damaging to small businesses who rely on word of mouth to attract customers, meaning they may be more willing to pay the money than risk an unfounded bad review.

Small businesses have also reported scams exploiting the COVID-19 pandemic, with \$185 000 in losses so far. An example of a COVID-19 themed overpayment scam involved a restaurant that received an order for 100 takeaway meals to donate during the height of the pandemic. The scammer advised they were unable to talk on the phone because they were in hospital awaiting surgery, so all communication was to be over email. The scammer wanted to pay by credit card and have the restaurant provide cash to the driver as they were unable to pay the driver personally. After the restaurant owner provided the meals and the payment to the driver, they discovered that the credit card payment had been fake.

Australian businesses are encouraged to visit [www.scamwatch.gov.au](http://www.scamwatch.gov.au) to learn more about scams targeting them and how to protect themselves. They can follow [@scamwatch\\_gov](https://twitter.com/scamwatch_gov) on Twitter and subscribe to [Scamwatch radar alerts](#).

## Consumer Data Right

The ACCC is progressing work on the **Consumer Data Right** (CDR), which will provide individuals and businesses (consumers) with a right to access specified data about them held by businesses, and allow consumers to authorise the secure disclosure of that data to accredited third parties. The first sector to be part of CDR is the banking sector with consumer data relating to credit and debit cards, deposit accounts and transaction accounts. The CDR website was launched on [1 July 2020](#). Consumers are now able to choose to share their banking data to access more personalised financial products and services. The website contains helpful resources for consumers, small businesses and for providers offering services under CDR.

On 29 June 2020, the Australian Government announced the formal designation of the energy sector as the next sector to join the CDR ecosystem. The ACCC will consult on the proposed rules for the energy sector.

## Recent in-depth inquiries

- [Digital advertising services inquiry](#)
- [Digital platform services inquiry 2020–2025](#)
- [Gas Inquiry 2017–2025 \(see January 2020 interim report\)](#)
- [Northern Australian insurance inquiry](#)
- [Water markets inquiry](#)
- [Financial performance of the Australian downstream petroleum industry 2002 to 2018](#)
- [Quarterly report on the Australian petroleum market—December quarter 2019](#)
- [Private health insurance report 2018–19](#)
- [Airport monitoring report 2018–19](#)

## 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](http://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 100 000 users since their launch in 2013.

We also support the provision of a free [pre-entry franchise education program, delivered by FranchiseED](#), to help prospective franchisees assess business opportunities and understand what is involved in buying a franchise business.

## Small Business & Franchising Consultative Committee—membership review

Our [Small Business and Franchising Consultative Committee](#) keeps us updated on issues affecting the small business and franchising sectors. We recently appointed new members after reviewing our membership for 2020–21, which now consists of 19 industry associations, four academics, four business advisors and three legal advisors, who have relevant experience and an understanding of issues affecting the small business and franchising sectors. The first SBFCC meeting with the new membership was held in May.

## Publications and fact sheets

### New and updated resources:

[COVID-19 \(coronavirus\) information for business](#)  
[COVID-19: Supplying safe goods](#)  
[COVID-19: Supplying face masks](#)  
[COVID-19: Supplying and installing bidet products](#)  
[What the dairy code means for farmers—fact sheet](#)  
[Targeting scams 2019: a review of scam activity since 2009](#)  
[Guide to the Electricity Retail Code](#)

### Other franchising and small business resources:

[Buying a franchise? Know the risks \(website\)](#)  
[Franchising: what you need to know](#)  
[The franchisee manual](#)  
[Country of origin food labelling](#)  
[Small Business & the Competition and Consumer Act](#)

## 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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