



Small business in focus



Small business, franchising and industry codes

Half year report no. 8

January–June 2014

The ACCC is committed to protecting the interests of small businesses. This twice-yearly report provides a summary of the ACCC’s work in the small business sector.

Facts and figures

315 296 visits to the ACCC’s business webpages over the last six months

7 282 small business and franchising related complaints and enquiries recorded by the ACCC Infocentre over the last six months

6 254 users of the ACCC’s three free online education programs for small businesses, tertiary students and franchisees over the last six months

Enquiries and complaints

The ACCC receives a large number of small business and franchising related enquiries and complaints¹ about competition and consumer issues:

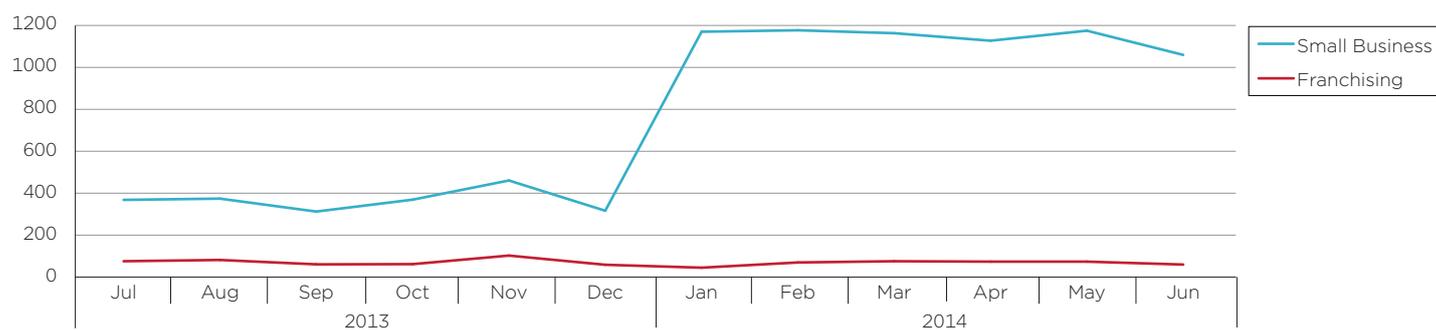
	This period: January–June 2014	Last period: July–December 2013
Small business	5396 complaints and 1499 enquiries	3580 complaints and 1650 enquiries
Franchising ²	282 complaints and 105 enquiries	309 complaints and 122 enquiries

Enhanced data collection procedures have resulted in an increase in the number of recorded contacts to the ACCC.

¹ The data provided reflects complaints and enquiries received from various sources and are posted as general guidance only. On further investigation, the conduct reported may not amount to a legislative breach. Care should be taken when drawing any conclusions based on this data.

² Primarily from franchisees but includes a small number from franchisors.

Contacts by month



Complaints—by key issue

Issues	Small business		Franchising	
	2013-14 financial year	2012-13 financial year	2013-14 financial year	2012-13 financial year
Consumer law related issues				
Misleading conduct/false representations	1560	1039	86	91
Consumer guarantees	959	373	10	8
Product safety	210	68	2	3
Unsolicited goods/services	82	64	0	0
Unconscionable conduct	77	72	23	33
Other Australian Consumer Law (ACL) issues	347	199	8	10
Unlikely to raise ACL issues	393	308	26	34
Competition related issues				
Misuse of market power	161	97	8	6
Exclusive dealing	99	87	8	13
Other competition issues	95	73	4	5
Unlikely to raise competition issue ^s	365	266	19	15
Franchising Code related issues				
Disclosure	-	-	69	122
Termination of franchise agreement	-	-	35	42

Most common complaints from/about small businesses —by sector

1. Advertising services
2. Store-based retailers
3. Health care services

Enforcement

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 ACCC action includes:

- The Federal Court ordered by consent that **Taxsmart** repay \$260 400 in franchise fees to five former franchisees. The Court found that Taxsmart engaged in misleading or deceptive conduct when it claimed that it was offering a graduate program and 12 months of employment to accounting graduates that would enable them to satisfy the requirements for registration as a tax agent.

- The Federal Court found that claims made by **Coles** that its 'Cuisine Royal' and 'Coles Bakery' bread was 'Baked Today, Sold Today' and 'Freshly Baked In-Store' were false, misleading and deceptive. These bread products were partially baked and frozen off site by a supplier, transported, and 'finished' at in-store bakeries within Coles supermarkets. When large businesses present their products as having a particular feature when they don't, it can undermine the unique selling point that small businesses who do offer that feature depend on to compete.
- The ACCC accepted a court enforceable undertaking from **Carlton & United Breweries** (CUB) in relation to ACCC concerns that it represented that Byron Bay Pale Lager was brewed by a small brewer in Byron Bay when this was not the case. CUB also paid two infringement notices to the value of \$20 400.
- The Federal Court found that **Woolworths** breached a court enforceable undertaking with a 4 + 4 cents fuel discount offer that was conditional on Woolworths supermarket purchases.
- The Federal Court found that **SensaSlim Australia** engaged in misleading or deceptive conduct by failing to disclose Peter Foster's involvement in the franchise system in its disclosure document, and also by making false representations about the 'worldwide clinical trial' of the SensaSlim Solution and the earning potential of franchises.
- The ACCC instituted proceedings in the Federal Court against **Coles**, alleging that it engaged in unconscionable conduct towards 200 of its smaller suppliers in relation to its Active Retail Collaboration program.

ACCC priorities

In February, the ACCC released its 2014 compliance and enforcement policy. Priority areas for the year include emerging online trading issues; complexity and unfairness in consumer or small business contracts; conduct in concentrated markets which impacts on small business consumers or suppliers; credence claims (such as organic and country of origin claims); and consumer guarantees, particularly in relation to the sale of extended warranties.

Franchising and industry codes

The ACCC is responsible for promoting and enforcing compliance with four mandatory industry codes: Franchising, Horticulture, Oilcode and Unit Pricing. We can audit businesses for compliance with these codes.

The ACCC has now served audit notices on 77 traders across Australia (62 franchisors and 15 horticulture traders) since the audit power was introduced in 2011. The majority of these traders have been found to be compliant with the relevant code.

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 benefits of the arrangement or conduct outweigh the public detriments.

Collective bargaining refers to an arrangement whereby competitors, typically small businesses, come together to negotiate terms, conditions and prices with a common supplier or customer.

The ACCC has considered and allowed a number of collective bargaining proposals during the period.

For example:

- The ACCC allowed **Office Choice Limited, Office Brands Limited, Office Products Depot**, as well as their current and future Australian members and franchisees, to continue to collectively bargain with office products suppliers for a further six years. This group represents over 250 retailers.
- The ACCC granted authorisation to enable members of the **NSW Farmers' Association** who grow chicken, turkey and duck meat to collectively bargain with processors.
- The ACCC authorised **Clubs Australia**, which represents 6500 licensed clubs, to negotiate and/or enter into agreements on behalf of its current and future members with suppliers of major goods and services.
- The ACCC granted authorisation to **Lottery Agents Queensland** (LAQ) to continue to negotiate lottery agent agreements on behalf of its members. The 10-year authorisation covers collective negotiations with Golden Casket Lottery Corporation and other potential future Queensland lottery providers. LAQ represents over 1000 agents in Queensland.
- The ACCC granted authorisation to the **Victorian Association of Newsagents**, which represents over 460 newsagents, to negotiate on behalf of its members with Tattersall's Sweeps, Intralot Australia and any other lottery providers who may become licensed during the term of the authorisation.

Businesses are encouraged to contact the ACCC for an informal discussion before lodging an application for authorisation or notification.

Online programs

More than 2600 users accessed the ACCC's free **online small business education program** between 1 January and 30 June 2014. The ACCC's **program for tertiary students**—the business people of tomorrow—had more than 2700 users in the same period. The ACCC-funded free online **franchising program**, run by Griffith University, had 882 enrolments this period.

These programs can be accessed via www.ccaeducationprograms.org.

Publications

This period, the ACCC released a number of publications relevant to small businesses, including:

- [Advertising & selling](#), a guide to help educate businesses about their rights and obligations when selling and promoting products and services
- [Country of origin claims and the ACL](#), a publication to assist businesses in complying with the ACL when making claims about the origin of their products and services
- [Consumer product safety online](#), a guide for Australian and overseas-based businesses that supply products to Australian consumers via the internet.

The ACCC and ASIC also released a revised [Debt collection guideline for collectors and creditors](#) on 8 July 2014.

Competition Policy Review

Last year, the Australian Government announced a comprehensive review of Australia's competition laws and policy (the "Harper Review"). The review panel released an issues paper in April 2014. The ACCC provided its [submission](#) to the review in June.

Scams

The 2013 [Targeting scams report](#), released in June, revealed that false billing scams continue to be the most common scam targeting small businesses, with more than 3600 reports in 2013 and more than \$700 000 reported lost. The ACCC implemented an education campaign to raise awareness about small businesses scams following the release of the report. The ACCC also worked with the Institute of Public Accountants to develop post-it notes for small businesses containing tips on how to avoid falling victim to billing scams—these can be ordered from the ACCC or the IPA.

Carbon tax repeal

On 17 July 2014 the Australian Government repealed the carbon tax, taking effect from 1 July 2014. This should see lower supply costs.

The repeal's focus is on regulated goods—electricity, natural gas and synthetic greenhouse gases (refrigerant gases).

The repeal gives the ACCC additional powers to ensure that businesses pass on benefits from the repeal as quickly as possible. Powers include:

- monitoring prices of regulated goods and liable entities
- taking action against businesses in the regulated industries that exploit other businesses and consumers by not passing through all of their cost savings from the repeal
- taking action against businesses that make false or misleading claims about the effect of the carbon tax repeal or scheme on the price for the supply of goods or services.

Certain suppliers in the regulated industries will, within a set timeframe, be required to:

- respond to a Carbon Tax Price Removal Substantiation Notice issued by the ACCC
- provide a Carbon Tax Price Removal Substantiation Statement to the ACCC which will be publicly accessible on its website.

These requirements won't apply to most small businesses, but small businesses still need to be careful not to make misleading claims about the impact of the carbon tax repeal.

Further information is available at www.accc.gov.au/carbon.

Contact us

ACCC Small Business Helpline: 1300 302 021

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

Small business publications: www.accc.gov.au/publications

Email updates:

Small Business Information Network:
For updates, email your contact details to smallbusinessinfo@accc.gov.au

Franchising Information Network:
For updates, email your contact details to franchisingcode@accc.gov.au

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