



Small business in focus



Small business, franchising and industry codes Half year report no. 9

July-December 2014

Facts and figures

333 301 visits to the ACCC's business webpages over the last six months

7 031 small business and franchising related complaints and enquiries recorded by the ACCC Infocentre over the last six months

8 096 users of the ACCC's three free online education programs for small businesses, tertiary students and franchisees over the last six months

\$105 016 losses reported to the ACCC by small businesses for 'false billing' scams over the last six months

Enquiries and complaints

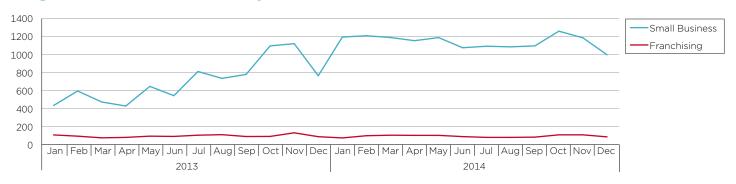
The ACCC receives a large number of small business and franchising related enquiries and complaints¹ about competition and consumer issues:

	This period: July-December 2014	Last period: January-June 2014	
Small business	4809 complaints and 1861 enquiries	5396 complaints and 1499 enquiries	
Franchising ²	239 complaints and 122 enquiries	282 complaints and 105 enquiries	

¹ The data provided reflects complaints 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 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.

Longer term trends—contacts by month



Complaints—by key issue³

Issues	Small business		Franchising	
	2014	2013	2014	2013
Consumer law related issues				
Misleading conduct/false representations	1626	1359	82	86
Product safety	337	99	3	2
Consumer guarantees	703	520	10	8
Unconscionable conduct	151	77	34	29
Unsolicited goods & services	90	82	-	-
Other Australian Consumer Law (ACL) issues	152	113	5	12
Unlikely to raise ACL issues	536	314	23	15
Competition related issues				
Misuse of market power	232	105	4	3
Exclusive dealing	145	103	7	10
Other competition issues	119	93	5	4
Unlikely to raise competition concerns	376	413	16	8
Franchising Code related issues				
Disclosure	-	-	77	96
Termination of franchise agreement	-	-	26	34

³ These figures do not correspond to the statistics on the previous page as multiple issues may be identified from a single complaint. Complaints not within the remit of the ACCC are excluded.

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:

- Following proceedings by the ACCC against Coles in May regarding its Active Retail Collaboration program, the ACCC took further action against Coles in October, alleging that it took advantage of its superior bargaining position by demanding money from suppliers that it was not lawfully entitled to. In December the Federal Court declared that Coles engaged in unconscionable conduct and ordered Coles to pay penalties of \$10 million and costs. Coles has entered into a court enforceable undertaking to provide redress options for over 200 suppliers.
- The ACCC issued proceedings in the Federal Court against five companies (including Olex Australia and Prysmian Power Cables & Systems Australia), six individuals and an industry association for alleged cartel and exclusionary conduct in the supply and acquisition of electrical cable, as there was potential for considerable harm to customers such as electricians and commercial contractors, and ultimately businesses and households.
- The ACCC instituted court proceedings against Informed Sources and several petrol retailers alleging that they contravened s. 45 of the CCA. The ACCC alleged that the information sharing arrangements between Informed Sources and the petrol retailers had the effect of substantially lessening competition in markets for the sale of petrol in Melbourne.
- The ACCC instituted proceedings in the Federal Court
 against A Whistle (1979) Pty Ltd (franchisor of Electrodry
 Carpet Cleaning) alleging that it was involved in the
 posting of fake online testimonials, including by inducing
 or attempting to induce its franchisees to make false or
 misleading representations by posting fake testimonials on
 the internet.

Franchising Code

The **new Franchising Code of Conduct** commenced on 1 January 2015. The new Code applies to franchise agreements entered into, extended, renewed or transferred on or after 1 October 1998 and has introduced a number of key changes, including:

- · an obligation for parties to act in good faith
- financial penalties and infringement notices for serious breaches of the Code.

To facilitate a smooth transition to the new Code, the ACCC has developed a range of guidance materials to help franchisors, franchisees and prospective franchisees

understand their rights and responsibilities, including an updated *Franchisee Manual* and *Franchisor Compliance Manual*. These are available at www.accc.gov.au/franchisingcode.

In December, the ACCC hosted a webinar to help franchisors, franchisees and professional advisers learn about the new Code. You can watch the webinar on the <u>ACCC YouTube</u> channel.

Regulator webinar

In October the ACCC hosted a webinar in partnership with the Australian Securities and Investments Commision, the Fair Work Ombudsman, the Australian Taxation Office, Small Biz Connect and Business Enterprise Centres Australia, titled 'Essential tips and tools for small business'. You can watch the webinar on the ACCC YouTube channel.

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 benefit of the arrangement or conduct outweighs the public detriment.

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 considered a number of collective bargaining proposals during the period. For example:

- The ACCC issued a draft determination proposing to grant authorisation to vegetable grower members of the Tasmanian Farmer and Graziers Association to collectively bargain with vegetable processors Simplot and McCain, and any future vegetable processor in Tasmania.
- The ACCC re-authorised the TAB Agents Association of NSW to collectively negotiate the terms and conditions of service with TAB Limited (Tabcorp) and to participate in the resolution of disputes between more than one of its members and Tabcorp.
- The ACCC issued a final determination allowing the Australian Newsagents' Federation to negotiate on behalf of its members with a range of suppliers. The ANF, through its affiliates and state branches, represents almost 2000 newsagents around Australia.

If you and other businesses are thinking about lodging an application for authorisation or notification, please contact the ACCC for an informal discussion.

Online programs

Did you know the ACCC has a number of free online education programs available for you and your staff?

Almost 3000 users accessed the ACCC's free online small business education program between 1 July and 31 December 2014. The ACCC's program for tertiary students—the business people of tomorrow—had more than 4000 users in the same period. The ACCC-funded free online franchising program, run by Griffith University, had around 1200 new enrolments this period.

These programs can be accessed via www.ccaeducationprograms.org

Publications

Between 1 July and 31 December 2014, the ACCC released a number of publications relevant to small businesses, including:

- Comparator websites: The comparator website
 industry in Australia report was compiled to provide
 industry, consumer groups and regulators with a better
 understanding of the industry.
- Cartel conduct: The ACCC immunity & cooperation policy for cartel conduct and ACCC immunity & cooperation policy: frequently asked questions set out the ACCC's policy in relation to applications for immunity from ACCC proceedings by those involved in cartel conduct.

Competition Policy Review

Following the release of the Competition Policy Review's Draft Report on 22 September 2014, the ACCC provided its <u>response</u> to the Draft Report on 26 November 2014. The Review Panel's final report is due with the Australian Government by March.

Scams

Keep an eye out for scammers! This period, the ACCC warned small businesses to be aware of:

- scammers taking advantage of tax time to target them
- scammers looking to take advantage of the carbon tax repeal to steal from them
- websites that charge for grant-related services, even though small businesses are able to apply for the same grants themselves and for free.

For more information about these and other scams, visit our SCAMwatch website.

Carbon tax repeal

The Clean Energy Legislation (Carbon Tax Repeal) Bill 2014 has been enacted, repealing the carbon tax. As a consequence, new provisions have been inserted into the CCA, providing the ACCC with new monitoring and enforcement powers for the purpose of ensuring that all cost savings from the repeal are passed on.

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

Email updates:

Stay in touch with the latest news, including changes to the law, new guidance material and ACCC enforcement action.

For small business updates, email your contact details to smallbusinessinfo@accc.gov.au

For franchising updates, email your contact details to franchisingcode@accc.gov.au

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The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

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