



Media Code of Conduct

relating to the ACCC's enforcement activities

This Code of Conduct relates to the ACCC's enforcement activities (excluding mergers) which include actions the ACCC takes to identify, investigate, prosecute and resolve potential breaches of Part IV of the *Competition and Consumer Act 2010* and the Australian Consumer Law (Schedule 2 to the Act).

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Important notice

Please note that this guideline is a summary designed to give you the basic information you need. It does not cover all relevant legislation and general law principles, nor is it a substitute for professional advice.

Moreover, because this guideline avoids legal language wherever possible, it contains generalisations about the application of legislation. Some provisions referred to have exceptions or important qualifications. In most cases, the particular circumstances of the conduct need to be taken into account when determining the application of the law to that conduct.

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1. Principles

The ACCC plays an important national role as it strives to make markets work for consumers now and in the future by actively enforcing the *Competition and Consumer Act 2010* (Cth) (the **Act**) including the Australian Consumer Law.

Community confidence in the ACCC is of vital importance to the proper performance of its role. Such confidence includes both consumer and business confidence as well as that of government.

The ACCC has developed this Code of Conduct to balance fairness to individuals, companies and businesses involved in ACCC investigation and enforcement action with informing the public about the ACCC's enforcement work and being transparent about what action the ACCC is taking and why.¹

Informing the public about our enforcement work is an important part of our role as the competition and consumer regulator. It:

- promotes confidence in our market economy because consumers and business can see competition and consumer law working for them through the action we take against those who we believe, on reasonable grounds, are breaking the law
- deters companies, businesses and individuals from engaging in conduct that would contravene the Act
- promotes compliance with the law by informing the public about the standards required by the Act and the consequences of failing to meet those standards.

The ACCC engages in a wide range of communication activities to promote understanding of the law and to inform the public of its activities.² This includes engaging with the public through a wide range of media channels, publishing information on the ACCC's websites, giving speeches, presentations and seminars, and publishing reports and guidance materials.

Engagement with the media is a particularly important element of the ACCC's wider communications strategy. It enables us to communicate with and provide information to a broad public audience who may otherwise be unaware of the Act or the ACCC's work. Public comment plays an important role in achieving compliance with the Act, and media communication is one of the most effective ways of educating consumers and businesses about their rights and obligations under the Act.

Broad communication about the ACCC's activities provides transparency about our actions for which we are accountable to the public and to the government. In so doing, the ACCC will take a balanced and objective approach to ensure fairness and overall confidence in the ACCC.

¹ The principles have been developed with reference to Recommendation 52 of the Competition Policy Review, March 2015 (the Harper review) and those previously set out at page 190 of the Review of the Competition Provisions of the Trade Practices Act 2003 (the Dawson review).

² The public interest in the dissemination of information and the ACCC's role in publishing matters is recognised in section 28 of the Competition and Consumer Act (CCA).

2. Limits on informing the public of our activities

The use of the media by the ACCC should at all times promote confidence in the ACCC's law enforcement activities. There are a range of factors which limit our ability to comment on investigations. These include:

- fairness to individuals, companies and businesses being investigated for alleged contraventions of the Act
- in the case of proceedings, respecting the court or tribunal's processes to ensure a fair hearing of the issues in contention
- legislative restrictions (certain material cannot be disclosed)
- the need to safeguard confidential or sensitive information (such as commercial-in-confidence price or market sensitive information or the existence or details of whistle-blowers and witnesses)
- the potential to jeopardise investigations through the untimely release of information
- privacy legislation and guidelines.

3. Code of Conduct

Subject to the exceptions and clarifications set out in sections 4 to 6 below, in relation to the ACCC's enforcement activities which include actions the ACCC takes to identify, investigate, prosecute and resolve potential breaches of the Act, the ACCC will:

1. refrain from commenting on its investigations
2. publicise the commencement of court or tribunal proceedings
3. limit public comment during the course of proceedings to matters of fact
4. report and comment on the outcome of proceedings, or other formal resolution of investigations, in a factually accurate and balanced manner which is consistent with the objectives of ensuring public understanding of the outcome and promoting compliance with the Act.

4. Investigations

The ACCC does not comment on its enforcement investigations unless it is in the public interest. This is because of the potential detrimental effect that public commentary can have on the reputation of the parties under investigation.

However, in some circumstances it may be in the public interest to provide comment on an investigation. The ACCC will take a range of factors into account when considering whether making a statement about an investigation is in the public interest and outweighs the possible detrimental effect of public commentary. These include whether:

- information about an investigation is already in the public domain
- the ACCC has been publicly called upon to respond to an issue or undertake an investigation
- comment is necessary in order to maintain public confidence that the ACCC is fulfilling its responsibility by investigating issues of public concern
- comment is necessary for investigation purposes, for example, in order to encourage witnesses to come forward
- making a statement could prevent widespread misconduct, or allay public concern.

In considering these factors, the ACCC will take a balanced and objective approach and will limit public comment to confirming the existence of an investigation and, where necessary, seeking information relevant to its investigation.

In circumstances where the ACCC confirms the existence of an investigation, we will usually limit further comment until the investigation is concluded. However, we may provide updates on the progress of the investigation if it is in the public interest to do so, particularly where the conduct being investigated continues to be of considerable public comment and debate. Where an investigation is made public, the ACCC will usually make a statement at the conclusion of the investigation to report on the outcome.

The ACCC is not only accountable to the public but also to the Commonwealth Parliament through parliamentary committees. Where it is appropriate to answer questions or provide information in relation to our activities to parliamentary committees, including in relation to investigations, these too will form part of the public record.

5. Institution of legal proceedings

The ACCC will publicise the institution of proceedings by issuing a media release. The media release will be appropriately worded and factually accurate, and provide details of the matters alleged by the ACCC, the redress sought and the reasons the ACCC has taken the action.

We will generally issue a media release only after originating documents have been filed and served on or otherwise drawn to the attention of the other parties. In certain criminal matters, the ACCC may refrain from making comment until the first court appearance of the accused.

Following the institution of proceedings, the ACCC may explain its enforcement action to the public in media interviews, and will confine its comments to the matters alleged in filed court or tribunal documents and its reasons for pursuing the proceedings. The ACCC will seek to confine public comment to a period of 48 hours from the issue of its media release. This does not preclude the ACCC, at any time, from referring to the existence of the proceedings or clarifying issues of fact with the media.

We will make initiating documents filed in the court or tribunal available on request unless those documents are subject to confidentiality restrictions.

6. Finalisation of legal proceedings and other enforcement outcomes

Where we have publicised the institution of proceedings, we will publicise the outcome of those proceedings by media release and, where requested, media interviews. We may refer to the outcomes also in speeches, presentations and seminars.

This includes where the ACCC is successful, where the respondents are successful, or where the proceedings are withdrawn. In criminal proceedings, this includes where there is a successful prosecution or an acquittal.

If a matter is appealed, we will publicise the fact of the appeal and its outcome through a media release.

Media releases are published on our website. We also include media release content such as headlines and links in our social media activities.

The ACCC will also issue a media release for other formal enforcement outcomes, including where a party has paid a penalty following the issue of an infringement notice or provided the ACCC with a court enforceable undertaking.

In some circumstances, the ACCC may publicise an administrative resolution of an enforcement investigation after providing notice to the parties.

The ACCC may, at its discretion, give advance notice of a public statement about an enforcement outcome to the parties concerned.

7. Reporting and review

The ACCC will report on its compliance with this Code each year in its annual report.

From time to time, but at least once each five years, the ACCC will review the effectiveness of the Code in supporting the principles set out in Part 1 of this Code.

8. Spokespeople

The ACCC's authorised spokespersons are the ACCC Chairman, Deputy Chairs, Commissioners and the media unit. In matters involving a regional or specialised focus, a senior manager may also be authorised to speak for the ACCC.

9. Contact the ACCC media team

Journalists and media employees may contact the media team at:

Telephone: 1300 138 917

Email: media@acc.gov.au (link sends e-mail)

After hours: 0408 995 408

For other enquiries: [Contact the ACCC](#)

10. More information

[Media](#)