



Small business in focus



Small business, franchising and industry codes

Half year report no. 7

July–December 2013

The Australian Competition and Consumer Commission is committed to protecting the interests of small businesses. This twice-yearly report provides a summary of the ACCC's work and activities in the sector.

Facts and figures

6 562 visitors to the ACCC's small business webpage over the last six months

5 661 complaints and enquiries recorded by the ACCC Infocentre from small businesses, franchisees and franchisors over the last six months

\$719 227 losses reported to the ACCC for 'false-billing' scams throughout 2013

58 small business presentations, expos and field days that the ACCC participated in over the last six months

987 enrolments in the ACCC-funded online franchising program over the last six months

Enquiries and complaints

The ACCC receives a large number of enquiries and complaints¹ from small businesses about competition and consumer issues:

	This period: July–December 2013	Last period: January–June 2013
Small business	3580 complaints and 1650 enquiries	1950 complaints and 957 enquiries
Franchising ²	309 complaints and 122 enquiries	286 complaints and 67 enquiries

¹ The data provided reflects complaints and enquiries received by the ACCC from various sources and are provided 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 (enquiries and complaints)



Complaints—by key issue³

Issue	Small Business		Franchising	
	2013	2012	2013	2012
Consumer law related issues				
Misleading conduct/false representations	1359	1067	86	124
Consumer guarantees	520	442	8	22
Unsolicited goods/services	82	75	0	0
Unconscionable conduct	77	139	29	78
Product safety standards	99	79	2	6
Other Australian Consumer Law (ACL) issues	113	133	12	11
Unlikely to raise ACL issues ⁴	314	492	15	49
Competition related issues				
Exclusive dealing	103	101	10	24
Misuse of market power	105	149	3	4
Other competition issues	93	77	4	9
Unlikely to raise competition issues ⁵	413	135	8	13
Franchising Code related issues				
Disclosure	-	-	96	105
Termination of franchise agreement	-	-	34	38

Most common complaints from/about small businesses—by sector

1. **Advertising services**
2. **'Non-store' retailers** e.g. online retailer, milk vendor
3. **'Other' store-based retailers** e.g. musical instrument stores, pet shops

Note: Only those cases where the ACCC was able to identify the relevant sector are included.

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.

⁴ The nature of the contacts within this category primarily concern issues related to disputes that are better resolved under the terms and conditions of the specific contractual arrangements and other matters where it is evident that no breach of ACL provisions exist.

⁵ The nature of contacts within this category primarily concern issues where it is evident that no breach of competition provisions exists, including refusal to deal/supply.

Enforcement

The ACCC aims to make markets work for everyone—including small businesses. The ACCC uses a range of tools to encourage compliance with the Competition and Consumer Act (CCA), such as seeking court orders and obtaining undertakings enforceable in court. Examples of recent enforcement action include:

- The Federal Court found that **Artorios Ink** engaged in misleading or deceptive conduct, made false or misleading representations to small businesses and asserted a right to payment for unsolicited goods by sending demands for payments for ink cartridges which the small businesses had never agreed to purchase.
- The Federal Court ordered that group buying site **Scoopon** pay penalties of \$1 million for making false or misleading representations to both consumers and businesses. Scoopon made false or misleading representations to small businesses that there was no cost or risk involved in running a deal with Scoopon, when this was not the case; and that 30 per cent of vouchers that would be sold would not be redeemed, when there was no reasonable basis for this claim.
- The Federal Court found that **Excite Mobile** engaged in false, misleading and unconscionable conduct, and used undue coercion in relation to the selling and obtaining of payment for mobile phone services. Excite Mobile was ordered to pay \$455 000 and its two directors were ordered to pay penalties totalling \$100 000 and disqualified from managing a corporation for three and 2.5 years respectively.
- The Federal Court ordered **five Harvey Norman franchisees** to pay a total of \$148 000 in penalties for making false or misleading representations to consumers about consumer guarantee rights. The franchisees still trading were ordered to display in-store corrective notices and implement a consumer law compliance program.

*The ACCC has a downloadable **point-of-sale sign** available on our website (www.accc.gov.au/publications/refunds-remedies), which clearly explains to consumers their rights to refunds and other remedies. Small businesses are encouraged to display this sign, to make it easier to resolve issues when consumers have a problem with goods or services they have purchased.*

- On appeal, the Full Federal Court upheld the decision that the **Jewellery Group (Zamel's)** made false or misleading representations through its use of two price advertising, as it had not sold items at or near the higher price (the 'was' or 'strikethrough' price), or had sold items in limited numbers at or near the higher price, in the four months prior to the sale period. Zamel's was ordered to pay a penalty of \$250 000. This case serves as a warning to all businesses that the inappropriate use of two price advertising can breach the CCA.
- **Euro Solar** and **Worldwide Energy and Manufacturing** were ordered to pay combined penalties of \$125 000 for making false or misleading representations about the country of origin of their solar panels, and for publishing testimonials that were not made by genuine customers.

Franchising and industry codes

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

The ACCC can audit businesses for compliance with prescribed industry codes. Where an audit reveals shortcomings, the ACCC has a range of tools to bring about compliance. In October 2013, the ACCC announced that it would be auditing franchisors operating in the take away food and fitness industries.

The ACCC issued **audit notices on 11 traders** across Australia in the last six months—seven from the franchising sector and four from the horticulture sector. The majority of traders that the ACCC has audited have been found to be compliant with the relevant code.

Consultative committees

The ACCC's Small Business Consultative Committee (SBCC) and Franchising Consultative Committee (FCC) meet regularly to provide advice to the ACCC on small business and franchising issues. The ACCC recently reviewed the membership of both committees, calling for nominations in November and appointing new members for 2014–15 in December.

Committee members reflect a diverse range of stakeholders, including industry associations and business advisers, and the ACCC works with these members to deliver tangible outcomes. For example, in conjunction with SBCC member the Optometrists Association Australia, the ACCC released an online tool to help consumers choose which sunglasses are safest for their eyes.

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.

The ACCC granted authorisation to the **AMA** for general practitioners to engage in intra-practice price setting and collective bargaining by single practices in relation to engagement of Visiting Medical Officers to public hospitals and by single practices in relation to the provision of services to Medicare Locals.

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

The most frequently asked questions about the authorisation process are answered in the ACCC's new guide ***What you need to know about: Authorisation***, available from the ACCC website.

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. Businesses may negotiate as a group or appoint a representative to negotiate on their behalf.

The ACCC has considered and allowed a number of collective bargaining proposals during the period. For example, members of the **Queensland Newsagents Federation** were authorised to collectively negotiate distribution services for lottery and instant lottery products with the Tatts Group.

Online programs

The ACCC's free **online education program for small businesses** has been running since April 2013. More than 3000 visitors accessed the program between July and December 2013.

The ACCC also released a **program for tertiary students** in November 2013, which has had more than 1000 unique visitors since its launch. We also fund a free online **franchising program** run by Griffith University.

All of these programs can be accessed via www.ccaeducationprograms.org

Publications

The ACCC released a number of publications between July and December 2013 that provide advice on issues relevant to small business. These include:

- ***Online reviews: a guide for business and review platforms***, which provides suggestions to help businesses reduce the risk of misleading consumers when using online reviews.
- ***What you need to know about: Competition issues in franchising supplier arrangements***, which covers third line forcing and other competition issues in franchising arrangements.
- ***Fairstore***, a best practice guide for retail stores servicing indigenous communities.

The Australian Consumer Law (ACL) regulators (including the ACCC) also released five joint **ACL industry guides**, covering motor vehicle sales and repairs, rental cars, electrical and whitegoods, personal services and travel and accommodation.

All publications are available from the ACCC website.

Contact us

ACCC Small Business Helpline **1300 302 021**

ACCC website www.accc.gov.au/smallbusiness

Small business publications

www.accc.gov.au/publications/small-business-in-focus

Email updates:

Small Business Information Network:

email your contact details to smallbusinessinfo@acc.gov.au

Franchising Information Network:

email franchisingcode@acc.gov.au

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