

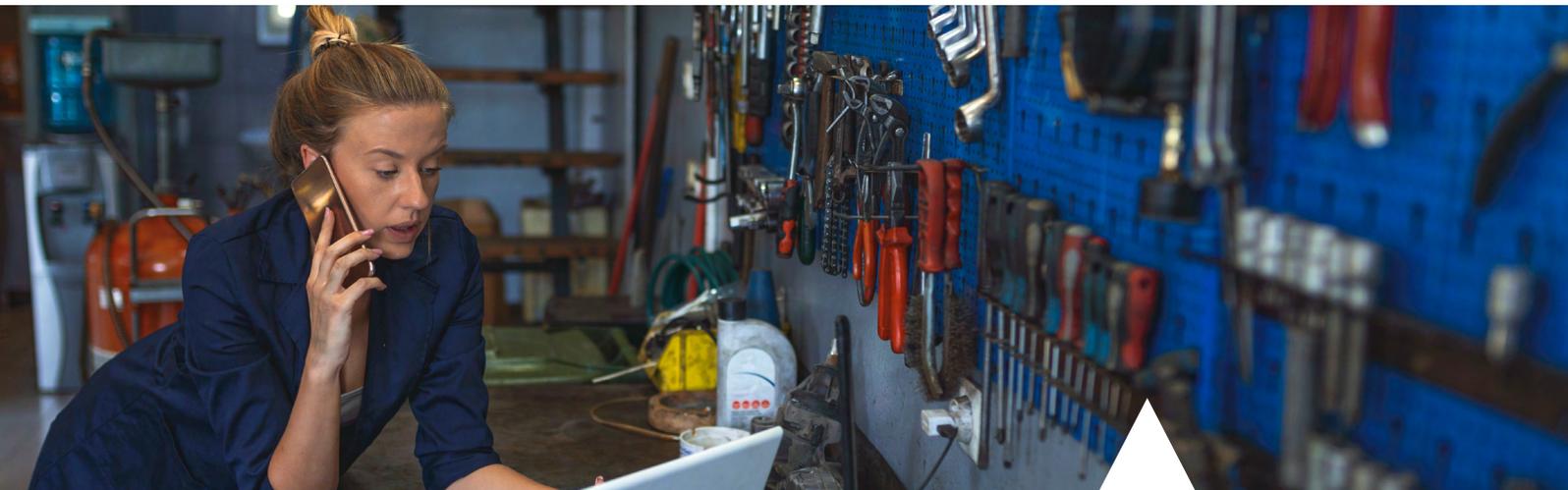


AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Small business in focus

## Small business, franchising & agriculture news—Report no. 18

January–June 2019



### In the last six months



**758 679**

page views of our small business resources



**\$2.5 million**

reported small business scam losses



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

**15** compliance checks (franchising and horticulture)

**23** mail outs through our Small business, Franchising and Oil Information Networks

### Coming up this year

- Gift card requirements mandatory from 1 November 2019
- Collective bargaining class exemption
- DPI Final Report (released 26 July 2019)

### A profile of the typical businesses contacting the ACCC<sup>3</sup>



Over one third (41%) are established businesses that have operated for 10+ years

▲ **8%**

Majority are micro-sized businesses with 0–4 staff (70% of contacts)

▲ **2%**



Most commonly reported misleading or deceptive conduct (26% of contacts)

▼ **1%**

<sup>1</sup> The ACCC obtained a court-enforceable undertaking from Hutchinson Ports Australia Pty Ltd, administrative resolutions from two container stevedore companies: DP World Australia and Victoria International Container Terminal and one administrative resolution from M.V. Napoleone & Co Pty Ltd under the Horticulture Code.

<sup>2</sup> In proceedings taken by the ACCC against Ultra Tune Australia and Geowash (former franchisor).

<sup>3</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 to December 2018).

## Who's contacting us<sup>4</sup>

Contact type	Small business		Franchising		Agriculture	
	Jul-Dec 2018	Jan-Jun 2019	Jul-Dec 2018	Jan-Jun 2019	Jul-Dec 2018	Jan-Jun 2019
Reports	2 586	2 433	206	229	97	97
Enquiries	1 143	815	68	56	17	32
Total	3 729	3 248	274	285	114	129

## Reports by key issue<sup>5</sup>

Issues	Small business		Franchising		Agriculture	
	Jul-Dec 2018	Jan-Jun 2019	Jul-Dec 2018	Jan-Jun 2019	Jul-Dec 2018	Jan-Jun 2019
<b>Consumer law related issues</b>						
Misleading conduct/false representations	1 023	846	50	36	25	14
Consumer guarantees	514	405	1	1	23	6
Product safety	28	25	1	0	1	4
Unconscionable conduct	52	38	6	7	1	3
Wrongly accepting payment	220	151	5	0	4	2
Unsolicited goods and services	21	38	0	0	0	0
Other Australian Consumer Law (ACL) issues	408	279	19	4	5	2
<b>Competition related issues</b>						
Misuse of market power	83	68	2	0	7	5
Exclusive dealing	71	36	5	4	2	1
Other competition issues	55	45	2	1	3	1
<b>Franchising Code related issues</b>						
Inadequate disclosure	-	-	51	25	-	-
Not acting in good faith	-	-	107	49	-	-
Improper termination of agreement	-	-	7	5	-	-

## Enforcing the law

Ensuring that small and agricultural businesses receive the protections under the *Competition and Consumer Act 2010* continued to be a priority as outlined in our [2019 Compliance and Enforcement Policy](#).

This year we have a focus on: issues in the Agriculture sector including, unfair contract terms in supply agreements and the viticulture sector; practices affecting competition in the commercial construction markets; and compliance with the Franchising Code of Conduct.

In the last six months, we have worked to protect small businesses through our enforcement action, including:

### Franchising action:

- [Judgment and penalties](#) against **Ultra Tune Australia Pty Ltd** (Ultra Tune). The Court found that Ultra Tune had failed to act in good faith in breach of the Franchising Code, and had made false or misleading representations in breach of the ACL in dealing with a prospective franchisee. This matter is currently under appeal.
- [Judgment](#) against former hand car wash and detailing franchisor **Geowash** for acting unconscionably, making

<sup>4</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 breach of legislation. 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>5</sup> Some reports are categorised as having more than one issue. Excludes reports not within the remit of the ACCC. Small business, Franchising and Agriculture reports are separate datasets, which are not a sub-set of each other.

false or misleading representations in breach of the ACL and for breaching the Franchising Code for failing to act in good faith in relation to the sale and marketing of its franchises.

- [Proceedings instituted](#) against **Jump Loops Pty Ltd** and its parent company **Swim Loops Holdings Pty Ltd** for allegedly misleading prospective franchisees that swim schools would be operational within 12 months of signing a franchise agreement.

#### Unfair Contract Terms action:

- A Melbourne fruit wholesaler, **M.V Napoleone & Co Pty Ltd**, (trading as Red Rich Fruits), [amended its horticulture produce agreements](#) with its growers after the ACCC raised concerns that their agreements contained contract terms that may have been considered unfair under the ACL. We were concerned about a term that allowed them to obtain a credit from the grower when produce was rejected by another party, with the credit potentially exceeding the amount the grower would have been paid. The agreement also contained clauses that may not have complied with the Horticulture Code of Conduct.
- [Administrative resolutions](#) from two container stevedore companies, DP World Australia and Victoria International Container Terminal (VICT), and [a court-enforceable undertaking](#) from Hutchison Ports Australia to amend their contracts with land transport businesses in response to concerns raised by the ACCC that they may contain unfair contract terms. DP World and Hutchison had contract terms that allowed them to unilaterally vary terms in the agreements without notice, including fees paid by the land transport operators. It also included terms that limited their liability for loss or damage. VICT's contract had a term requiring transport businesses to indemnify VICT for loss or damage, with no reciprocal obligation on VICT.

According to our [Container stevedoring monitoring report 2017-18](#), a record 5.1 million containers were lifted at the monitored ports last financial year. These stevedoring companies have standard form contracts with thousands of transport businesses around Australia and the handling of these containers can have a direct effect on running a small business and the cost of goods in Australia.

## Exemptions

Where conduct that breaches Australia's competition laws has wider public benefits that outweigh the harm to competition, businesses can lodge an authorisation or notification seeking an exemption from us to engage in the conduct.

During the last six months, we allowed exemptions for:

- **Myer** and **David Jones** to continue to invite concession stores, which are separate businesses operating in its stores, to participate in a variety of promotions, and
- groups of councils in southern Sydney, and separately in south east and central Queensland to collectively tender for the procurement of waste management services.

In some cases, proposed arrangements that may breach the competition law will not result in a net public benefit. In June 2019, we [revoked a notification](#) for resale price maintenance lodged by Meredith Dairy, which would have allowed them to set a minimum price for its products that would apply to all retailers. We objected to the proposal as we considered that it would reduce or eliminate retailers' ability to compete on price and that there was unlikely to be any offsetting benefit to the public.

We are continuing our work to [develop a class exemption](#), that will 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.

## Australasian Performing Right Association's licence reauthorisation

The Australian Performing Right Association (APRA) is [seeking re-authorisation from the ACCC](#) of certain arrangements for the acquisition and licensing of performing rights in musical works. On 27 June 2019 the ACCC granted an interim authorisation to enable APRA to continue such arrangements while the ACCC considers APRA's application for re-authorisation. On 5 June 2019, the ACCC released a draft determination proposing to re-authorise APRA's arrangements, subject to conditions, for five years.

## Franchising Code

The Federal Government approved the establishment of the Franchising Taskforce on 10 April 2019. The taskforce will examine the recommendations of the *Fairness in Franchising* report published on 14 March 2019 and will provide advice to the Minister for Employment, Skills, Small and Family Business and the Treasurer in the second half of 2019, which will inform the Government's response to the report.

We have released an education campaign webpage titled '[Buying a franchise? Know the risks](#)'. The campaign aims to educate prospective franchisees and raise awareness of the importance of reading and understanding information prior to buying a franchise. The campaign consists of new and existing online resources including three videos on specific aspects of buying and operating a franchise. These videos and two fact sheets have also been translated to Simplified Chinese (Mandarin), Traditional Chinese (Cantonese) and Hindi.



Click the image above to view the *Buying a franchise: key steps* Youtube video.

## Agriculture

Over the last six months, the ACCC has:

- Released the [interim report](#) of the **Wine Grape Market Study**. The market study on the Australian wine grape industry focusses on identifying market failures or trade practices that prevent the functioning of competitive markets or result in detriment to industry participants. The ACCC has identified a range of concerning practices resulting from the bargaining power imbalance and information asymmetry in grower-winemaker relationships. The final report is due for release in September 2019.
- Continued to advocate for and assist with the development of a **mandatory code of conduct for the dairy industry** as a key recommendation arising out of the report following the release of the ACCC's [Dairy inquiry final report](#).
- Continued to advocate for implementation of our [Cattle and beef market study](#) recommendations. The ACCC are concerned that practices, which impede the greater efficiency of the industry, will become further entrenched if our recommendations are not implemented. We are engaging with the Department of Agriculture on certain recommendations that will require legislative reform.
- Undertook a research project into potential competition and consumer issues in the agricultural machinery industry.

## Country of origin food labelling

The *Country of Origin Food Labelling Information Standard 2016* became mandatory on 1 July 2018. To increase awareness of country of origin labelling requirements across a wider range of consumers and businesses, we have translated our [Country of Origin Food Labelling factsheet into](#): Simplified Chinese (Mandarin), Traditional Chinese (Cantonese), Vietnamese, Korean and Arabic.

## Targeting scams report

Between January 1 and June 30, the ACCC's Scamwatch website received 2800 scam reports from Australian small businesses with over \$2.5 million in reported losses. The reports indicated small businesses are targeted with a range of scams including false billing scams, fake offers for website or IP renewal and even threats to ruin a business with negative online reviews unless a payment is made to the scammers via Bitcoin.

Scamwatch data also shows that in 2019, Business Email Compromise (BEC) scams continue to pose a threat with over \$5.4 million reported lost so far this year. This represents a 42 per cent increase over total BEC losses reported to the ACCC in 2018.

BEC scams occur when a hacker gains access to a business' email accounts, or 'spoofs' a business' email so that their emails appear to come from within the company. The hacker then sends emails to customers claiming that the business' banking details have changed and that future invoices should be paid to a new account.

**TIP:** 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](#) on Twitter and subscribe to [Scamwatch radar alerts](#).

## Recent in-depth inquiries

[Digital platforms inquiry](#)  
[Electricity market monitoring 2018–2025](#)  
[Feminine hygiene products price monitoring](#)  
[Gas Inquiry 2017–2020](#)  
[Northern Australia insurance inquiry](#)  
[Wine grape market study](#)

## 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 91 000 users since their launch in 2013.

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

## Publications and fact sheets

### New resources:

[2019 Compliance and Enforcement Priorities](#)  
[Targeting scams: report of the ACCC on scam activity 2018](#)  
[Gun jumping risks for merger transactions](#)  
[DIY Car Safety Product Safety Webpage](#)

### Updated resources:

[Section 155 notices - a basic guide for individuals and small businesses](#)  
[Franchising: what you need to know](#)  
[Franchising information statement](#)  
[The franchisee manual](#)  
[Franchisor compliance manual](#)  
[Country of origin food labelling](#)  
[Country of origin claims and the Australian Consumer Law](#)  
[Country of origin food labelling fact sheet](#)  
[Country of origin labelling for complementary healthcare products - a guide for business](#)  
[Country of origin labelling and the dairy industry](#)

## Contact us

**ACCC Small Business Helpline:** 1300 302 021

**ACCC website**, including where to go for advice and dispute resolution: [www.accc.gov.au/smallbusiness](http://www.accc.gov.au/smallbusiness)

**Email updates:** Would you like to keep up with the latest news and events relevant to small business?

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