



Australian
Competition &
Consumer
Commission

Small business in focus

Small business, franchising and agriculture news

Report no. 12

January–June 2016



In the last six months



513 390

visits to the ACCC business web pages



12 640

users of the ACCC's three free online education programs for small businesses, tertiary students and franchisees



3709

views of the ACCC's small business videos on YouTube



\$1 616 055

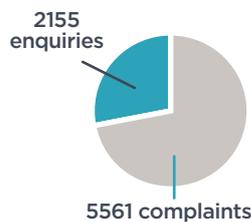
losses reported to the ACCC by small businesses from scam activities

Complaints and enquiries¹

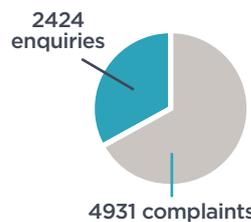
The ACCC receives a large number of small business, franchising and agriculture contacts about competition and consumer issues.²

Small business

This period:
January to June 2016

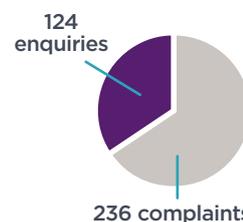


Last period:
July to December 2015

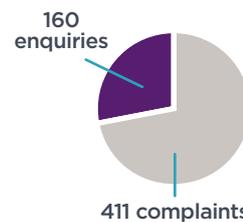


Franchising³

This period:
January to June 2016

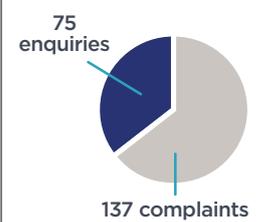


Last period:
July to December 2015



Agriculture

This period:
January to June 2016



Last period:
July to December 2015

N/A⁴

¹ A complaint is a statement of dissatisfaction, grievance or wrong, often but not always referring to an alleged contravention of the *Competition and Consumer Act 2010* (CCA). An enquiry refers to the seeking of information which may relate to the operation of the CCA or the ACCC.

² The data provided is posted as a general guidance only. Care should be taken when drawing any conclusions based on this data.

³ Primarily from franchisees but includes a small number from franchisors.

⁴ No Agriculture statistics were recorded for this period.

Complaints—by key issue⁵

Issues	Small business		Franchising		Agriculture
	2015-16	2014-15	2015-16	2014-15	Jan-Jun 2016
Consumer law related issues					
Misleading conduct/false representations	1435	1410	58	62	62
Consumer guarantees	817	689	5	9	7
Product safety	277	375	1	2	5
Unconscionable conduct	180	168	20	35	8
Unsolicited goods and services	102	81	-	-	-
Other Australian Consumer Law (ACL) issues	516	328	5	6	3
Competition related issues					
Misuse of market power	197	270	1	1	4
Exclusive dealing	162	205	6	12	3
Other competition issues	132	158	3	4	9
Franchising Code related issues					
Disclosure	-	-	44	40	-
Termination of agreement	-	-	15	6	-

Enforcing the law

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 outcomes of ACCC action include:

- The Federal Court declared that Multimedia International Services Pty Ltd, trading as **The Community Network (TCN)**, engaged in unconscionable conduct in its dealings with one small business by refusing to release it from its contract for advertising services when TCN was not providing those advertising services, then pursuing it for non-payment, threatening legal action and engaging debt collectors. The court also declared that TCN made false and misleading representations to two other small businesses and wrongly accepted payments from them. The court ordered TCN to pay penalties of \$230 000.
- The Federal Court ordered that **SensaSlim Australia Pty Ltd** (in liquidation) and individuals pay total penalties of \$4.34 million for engaging in misleading and deceptive conduct and making false representations in relation to weight loss products sold through franchises. The Court also ordered that the individual respondents be disqualified from managing corporations for specified periods of time.

Franchising, Horticulture and Food & Grocery Industry Codes

The ACCC is responsible for promoting compliance with industry codes prescribed under the CCA.

Code-related updates for this period include:

- The ACCC audited five franchisors for compliance with the **Franchising Code**. Where issues have been identified through the audit program (compliance checks), the ACCC has taken steps to ensure that the franchisor complies with the code going forward.
- The independent review of the **Horticulture Code**, which governs the relationship between growers and wholesalers, has been completed. The final [report](#) was released on 8 February 2016
- The transition period for each of the signatories of the **Food and Grocery Code**, which governs the relationship between grocery retailers and wholesalers in their dealings with suppliers, is now over. This means that Coles, Woolworths, Aldi and About Life are now bound by the full extent of the code.

Agriculture Unit

A new Agriculture Unit was formed at the ACCC in October 2015. In February 2016, an additional ACCC Commissioner was appointed and will play a key role in the work of the Unit. The Unit's focus is on:

- investigating potential breaches of the CCA and, where appropriate, taking enforcement action
- increased engagement with the agricultural sector, including conducting regional workshops on key industry issues, and
- advocacy on agriculture issues, including through the use of market studies.

⁵ 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.

The Agriculture Unit is conducting a market study into the cattle and beef industry and has held forums in rural areas across Australia, speaking with farmers about competition and fair trading issues. The Unit has also been conducting workshops in regional towns to talk with farmers to learn about the various supply chains and competition and fair-trading issues impacting the horticulture and viticulture industries. Contact details and further information about the unit and upcoming workshops is available at www.accc.gov.au/agriculture.

Excessive payment surcharging

Do you charge your customers a surcharge when they use a **credit or debit card**? Earlier in the year, the Competition and Consumer Act was amended to ban excessive payment surcharges by merchants when charging customers for the use of a credit or debit card.

The Reserve Bank of Australia Payments System Board has published its Standard which defines what businesses are able to include in setting a surcharge and who the ban will apply to. The Standard will apply to six card systems—EFTPOS, Debit MasterCard, MasterCard Credit, Visa Debit, Visa Credit and American Express cards issued by Australian banks. The ACCC will begin enforcing the ban on large merchants from 1 September 2016 and 1 September 2017 for all other merchants.

Surcharges will be excessive where they exceed the permitted cost of acceptance, as defined in the Standard. The limit will be linked to the direct costs of the payment method such as bank fees and terminal costs. For example, if your average cost of acceptance for Visa Credit is 1 per cent, you would only be allowed to charge your customers up to 1 per cent, of the transaction value.

The ACCC has released online guidance for [consumers](#) and [businesses](#), which includes links to material on the RBA's website providing detailed information about the Standard.

Business-to-business unfair contract terms

Have you been offered a written contract on a take it or leave it basis by a bigger business? From 12 November 2016, the Australian Consumer Law will prohibit unfair contract terms in small business standard form contracts. The law will apply to contracts where one party has less than 20 employees and the upfront price of the contract is no more than \$300 000 (or \$1 million if the contract runs for more than 12 months). A term will be unfair if it causes a significant imbalance in the rights and obligations of the parties, would cause detriment if relied upon, and is not reasonably necessary to protect a business' legitimate interests.

Things to think about:

- Can I delay signing a contract until after the law comes into effect?
- If not, can I get it renewed for a short period of time?
- Always get someone to look over the contract before you sign.

The ACCC is undertaking a review of standard form contracts used in the franchising, retail leasing, telecommunications, advertising and independent contracting sectors. The ACCC will report on the outcomes of the review later this year.

The ACCC has more information on the new law, available at www.accc.gov.au/uct. The ACCC and ASIC also held a webinar on the law, which can be viewed on the [ACCC's YouTube channel](#).

Country of origin labelling

Do you make, sell or import food products suitable for retail sale in Australia? A new country of origin food labelling system commenced on 1 July 2016. The [Country of Origin Food Labelling Information Standard 2016](#) will regulate the type and amount of information that businesses will have to provide to consumers about the food they buy. Businesses will have time to change their labels over a two-year transition period.

During the transition period, businesses must either:

- adopt the new labelling requirements of the Standard or
- continue to comply with the existing country of origin labelling requirements in the [Australia New Zealand Food Standards Code](#).

Labelling requirements will vary depending on whether a food is a priority or non-priority food item, and whether it was grown, produced, made or packed in Australia or another country. The ACCC has released a new guide, *Country of origin food labelling*, to help businesses transition to the Standard. This guide and other resources are available at www.accc.gov.au/cool.

Scams

The ACCC's 2015 *Targeting Scams* report was released in May 2016 as part of the National Consumer Fraud Week. The report showed that the most significant scams affecting small businesses in 2015 included false billing, overpayment and ransomware scams. This trend looks to be continuing into 2016.

An emerging scam posing a threat to businesses is the **business email compromise scam (fake CEO scam)**.

It usually involves a fake instruction from someone pretending to be the CEO or other senior staff member, advising changes to payment arrangements for a supplier and redirecting invoice payments to the scammer.

Protect your business by:

- limiting how many people have authority to buy or order something for your business
- keeping your filing and accounting systems well organised—this will make it easier for you to detect bogus accounts and invoices
- keeping your office networks, computers and mobile devices secure
- updating your security software, change passwords and back up your data regularly.

For more information visit the [Scamwatch](#) website.

Exemptions for small business

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 is one such exemption. It is an arrangement whereby competitors, typically small businesses and farmers, 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 allowed:

- the **WA Broiler Growers Association** (representing 30 chicken growers) to collectively bargain with the chicken processor they supply for 10 years
- the **Victorian Farmers Federation** (representing 258 chicken growers) to collectively bargain with the chicken processors they supply for 10 years
- **Plumbing Plus** to collectively bargain and negotiate trading terms and supply arrangements on behalf of its members with domestic and offshore suppliers of plumbing and hardware materials for 10 years. The authorisation also includes exclusive supply arrangements and a catalogue program where members may elect to take part in joint promotions involving recommended prices.

The ACCC recently issued a [new guide for small business](#) on the potential benefits of collective bargaining. If you and other businesses are thinking about lodging an application for authorisation or notification, please contact the ACCC for an informal discussion.

Consultative committees

The **Small Business and Franchising Consultative Committee** (previously separate committees) chaired by ACCC Deputy Chair Dr Michael Schaper and the **Agricultural Consultative Committee**, chaired by ACCC Commissioner Mick Keogh, held their inaugural meetings in May 2016. Both committees provide a forum for the discussion of competition and fair trading concerns related to their respective sectors. Members of both committees are from a range of backgrounds and industries within the small business, franchising and agriculture sectors including industry associations and advisors. The committee meetings will be held twice a year.

Preparing your business for 2016–17

In June, the ACCC, ASIC, ATO and the Fair Work Ombudsman presented a **joint webinar**—‘Preparing your business for the 2016–17 financial year’—which provided tips and information about new laws relating to small business and new online tools. The webinar is now on the [ACCC YouTube channel](#).

Online programs

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

To date, the ACCC's **free online small business education program** and the program for **tertiary students** have been accessed by over 54 000 users combined since their launch in 2013. The ACCC-funded **free online franchising program**, run by Griffith University since 2010, has had over 10 600 enrolments.

You can access these programs via www.ccaeducationprograms.org.

Publications

The ACCC, together with ASIC and the state and territory consumer protection agencies, has released a number of guides relevant to small businesses over the last six months, including:

- [A guide to the unfair contract terms law](#)
- [Avoiding unfair business practices—a guide for businesses and legal practitioners](#)
- [Consumer guarantees—a guide for businesses and legal practitioners](#)
- [Sales practices—a guide for businesses and legal practitioners](#).

Have you installed any recalled Infinity cables in the last six years?

There is faulty electrical cabling in thousands of Australian homes and businesses. Time is running out before the cables become a fire or electrocution risk.

You could be liable for damages or fines if you haven't taken steps to remediate the faulty cable. The ACCC has developed a [guide](#) to help builders and electricians to know what to do to fix the problem.

Contact us

ACCC Small Business Helpline: 1300 302 021

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

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

The ACCC has a number of **free newsletters** that you can sign up to. Subscribe online by visiting the [ACCC's website](#).