



# Small business in focus



## Small business, franchising and industry codes Half year report no. 10 January–June 2015

### Facts and figures

- 376 427** visits to the ACCC's business webpages over the last six months
- 7 834** small business and franchising related complaints and enquiries recorded by the ACCC Infocentre over the last six months
- 12 729** users of the ACCC's three free online education programs for small businesses, tertiary students and franchisees over the last six months
- \$33 808** losses reported to the ACCC by small businesses for 'false billing' scams over the last six months

### Complaints and enquiries<sup>1</sup>

The ACCC receives a large number of small business and franchising related complaints and enquiries<sup>2</sup> about competition and consumer issues:

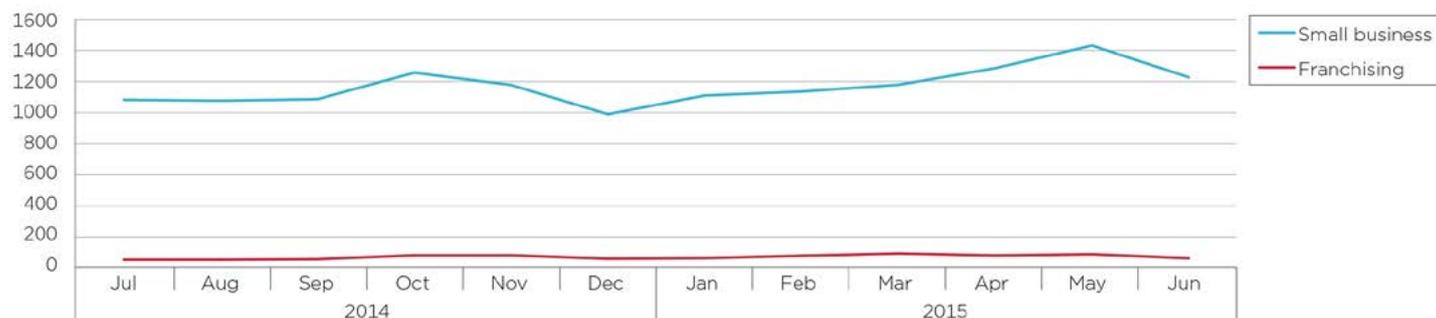
	This period: January–June 2015	Last period: July–December 2014
Small business	5020 complaints and 2366 enquiries	4809 complaints and 1861 enquiries
Franchising	249 complaints and 199 enquiries	239 complaints and 122 enquiries

<sup>1</sup> 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, but does not have to, relate to the operation of the CCA or the ACCC.

<sup>2</sup> 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.

## Longer term trends

### Contacts by month



### Complaints—by key issue<sup>3</sup>

Issues	Small business		Franchising	
	2014-15 financial year	2013-14 financial year	2014-15 financial year	2013-14 financial year
Consumer law related issues				
Misleading conduct/false representations	2518	1560	87	86
Product safety	1667	210	3	2
Consumer guarantees	1320	959	17	10
Unconscionable conduct	247	77	42	23
Unsolicited goods & services	123	82	1	0
Other Australian Consumer Law (ACL) issues	281	347	8	8
Competition related issues				
Misuse of market power	367	161	1	8
Exclusive dealing	324	99	20	8
Other competition issues	302	95	9	4
Franchising Code related issues				
Disclosure	-	-	51	69
Termination of franchise agreement	-	-	19	35

## 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 Hon. Jeff Kennett AC has, as an independent arbiter, instructed **Coles** to refund over \$12 million to suppliers. This process arose out of legal action by the ACCC against Coles.
- The Federal Court has ordered **Coles** to pay penalties of \$2.5 million for making false or misleading representations and engaging in misleading conduct in relation to the promotion of its par baked bread products in a case brought by the ACCC.

- The Federal Court has ordered a \$500 000 penalty against a franchisor, **Coverall Melbourne**, in proceedings brought by the ACCC. The Court declared that Coverall Melbourne had engaged in unconscionable conduct, made false or misleading representations, and had contravened the Franchising Code in its dealings with two people who subsequently signed up to the franchise.
- The Federal Court has declared that **Safety Compliance Pty Ltd** contravened the CCA by engaging in misleading or deceptive conduct and making false or misleading representations towards small businesses in connection with the supply of safety wall charts and first aid kits in a matter brought by the ACCC.

<sup>3</sup> 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.



## Industry codes

The ACCC is responsible for promoting and enforcing compliance with industry codes prescribed under the CCA. We can also audit businesses for compliance with these codes.

The **Food and Grocery Code of Conduct** came into effect in March. It prohibits specific types of unfair conduct by retailers and wholesalers in their dealings with suppliers. The code is voluntary—it only applies to companies that agree to be bound by the code. To date, Coles Supermarkets Australia, Woolworths Limited, Aldi and About Life Pty have signed up to the code. The ACCC has developed [guidance on the code](#).

A [review of the Horticulture Code](#), which regulates trade in horticultural produce between Australian fresh fruit and vegetable growers and traders, was initiated by the Australian Government in June.

This period, the ACCC **audited 12 franchisors** for compliance with the Franchising Code. The ACCC has now audited 74 franchisors and 15 horticulture traders (for compliance with the Horticulture Code) since the audit power was introduced in 2011. The majority of these traders have been found to be compliant with the relevant code.

## B2B unfair contract terms

In June the Australian Government introduced a Bill into Parliament intended to extend the unfair contract term laws that currently protect consumers to cover businesses with less than 20 employees and for transactions under \$100 000 or for multi-year contracts totalling less than \$250 000. The ACCC will be running an educational campaign to inform businesses about the new law once it is introduced.

## Competition Policy Review

The Competition Policy Review [Final Report](#) was released in March, making 56 recommendations, including:

- removing remaining restrictions on retail trading hours, subject to some conditions
- removing pharmacy ownership and location rules
- developing a more effective misuse of market power provision
- the ACCC connecting small businesses to alternative dispute resolution services.

## ACCC 2015 priorities

In February, the ACCC released its 2015 [Compliance and Enforcement Policy](#). Priorities relevant to small business include:

- ensuring compliance with new or amended industry codes of conduct
- unconscionable conduct, particularly when involving large national traders
- conduct in concentrated markets which impacts on small businesses.

## Energy Made Easy website

The Australian Energy Regulator has redeveloped its Energy Made Easy website, which includes a [page for small businesses](#) offering:

- information on small businesses' rights as energy customers
- tools to help small businesses find a great energy deal
- tips on how small businesses can use less energy and save money.

## 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 granted authorisation to vegetable grower members of the **Tasmanian Farmer and Graziers Association** to collectively bargain with vegetable processors Simplot and McCain, as well as any future vegetable processor in Tasmania.
- The ACCC allowed the **NSW Mid-Coast and SA Barossa Mid North Co-operative Dairymen Ltd Collective Bargaining Groups** to collectively negotiate the terms and conditions of raw milk supply agreements with Woolworths.

The ACCC also authorised the **Association of Magazine Publishers of Australia** to run a pilot magazine distribution program with 40 newsagents attempting to address longstanding problems with the oversupply of magazines to newsagents.

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?

Over 5000 users accessed the ACCC's free **online small business education program** between 1 January and 30 June 2015. The ACCC's **program for tertiary students**—the business people of tomorrow—had more than 6000 users in the same period. The ACCC-funded free online **franchising program**, run by Griffith University, had around 1100 new enrolments this period.

You can access these programs via [www.ccaeducationprograms.org](http://www.ccaeducationprograms.org).

## Publications

In May, the ACCC released the [Research into the Australian debt collection industry](#) report, aiming to provide greater understanding of the debt collection industry and identify structural issues or operational practices that may lead to problematic behaviours within the sector. Issues of particular concern identified in the report included some in the sector not abiding by the joint ACCC/ASIC [Debt collection guideline for collectors and creditors](#) and the law causing considerable detriment to vulnerable and disadvantaged consumers, and debt collection practices within the energy sector.

## Scams

This period, our Scamwatch alerts warned small businesses to be aware of:

- scammers pretending to be legitimate suppliers advising changes to payment arrangements by email
- malware that infects a computer system by restricting access unless a ransom is paid.

The ACCC launched its redeveloped Scamwatch website which has all the latest news and tips to help consumers and small businesses identify, avoid and report scams. For more information see the new [Protect your small business](#) page.

In May, the ACCC and the Institute of Public Accountants hosted a small business scams and cybercrime forum in Melbourne. A video of the forum is now available on the [ACCC YouTube channel](#).

## Contact us

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

ACCC website: [www.accc.gov.au/smallbusiness](http://www.accc.gov.au/smallbusiness).

Email updates:

For small business updates, subscribe to our Small Business Information Network at [www.accc.gov.au/sbin](http://www.accc.gov.au/sbin).

For franchising updates, email your contact details to [franchisingcode@acc.gov.au](mailto:franchisingcode@acc.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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