



Australian  
Competition &  
Consumer  
Commission

# Small business in focus

## Small business, franchising and industry codes

### Report no. 11

July–December 2015



#### In the last six months



**456 015**

visits to the ACCC  
business webpages

**11 540**



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



**9813**

views of the ACCC's business-to-business  
unfair contract terms videos since their  
release in November 2015

**\$2 284 798**



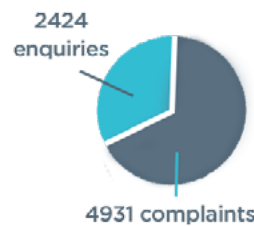
losses reported to the ACCC by  
small businesses from scam activities

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

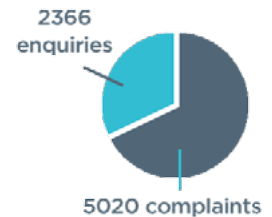
The ACCC receives a large number of small business and franchising related complaints and enquiries about competition and consumer issues.<sup>2</sup>

##### Small business

This period:  
July to December 2015

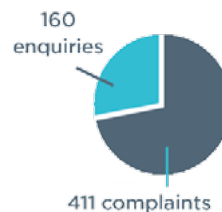


Last period:  
January to June 2015

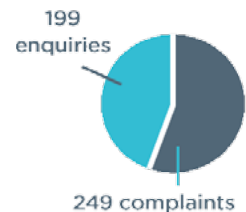


##### Franchising<sup>3</sup>

This period:  
July to December 2015



Last period:  
January to June 2015



<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 relate to the operation of the CCA or the ACCC.

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

<sup>3</sup> Primarily from franchisees but includes a small number from franchisors.

## Complaints—by key issue<sup>4</sup>

Issues	Small business		Franchising	
	2015	2014	2015	2014
<b>Australian Consumer Law related issues</b>				
Misleading conduct/false representations	1432	1626	63	82
Consumer guarantees	834	703	6	10
Product safety	380	337	2	3
Unconscionable conduct	156	151	28	34
Unsolicited goods & services	110	90	-	-
Other issues	178	152	5	5
<b>Competition related issues</b>				
Misuse of market power	262	232	1	4
Exclusive dealing	212	145	11	7
Other competition issues	165	119	5	5
<b>Franchising Code related issues</b>				
Disclosure	-	-	75	77
Termination of agreement	-	-	26	26

## Enforcing the law

The ACCC aims to make markets work for everyone. We use a range of tools to encourage compliance with the CCA, such as seeking court orders and obtaining undertakings enforceable in court.

Recent actions include:

- The Federal Court ordered **A Whistle & Co (1979) Pty Ltd**, the franchisor of the **Electrodry Carpet Cleaning** business, to pay total penalties of \$215 000 for its involvement in the publishing of fake online testimonials, [following legal proceedings](#) by the ACCC.
- The Federal Court ordered **Safety Compliance Pty Ltd** to pay penalties of \$515 000 for making false or misleading representations to small businesses in connection with the supply of safety wall charts and first aid kits, [following legal proceedings](#) by the ACCC.
- The ACCC [initiated legal proceedings](#) against **Multimedia International Services Pty Ltd**, trading as **The Community Network**, for allegedly engaging in unconscionable conduct, making false or misleading representations and wrongly accepting payments from small businesses. The Community Network sells digital advertising services to small businesses throughout Australia.

## Industry codes

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

Code-related activities by the ACCC this period include:

- **Nine franchisors were audited** for compliance with the **Franchising Code**. Where issues have been identified through the audit program, the ACCC has taken steps to ensure that the franchisor complies with the Code going forward.
- Made a [submission](#) to the independent review of the **Horticulture Code**. The **ACCC made seven recommendations**, including that the Code be amended to introduce civil penalties and infringement notices for breaches of the Code. The [reviewer's report](#) is now publically available.
- Woolworths and ALDI were contacted about concerns over their **implementation of the Food and Grocery Code**. In response, both retailers wrote to their suppliers to clarify that suppliers are able to negotiate the terms of their Grocery Supply Agreements. The retailers also clarified the effect of the Code on their agreements and the circumstances in which certain payments may arise.

<sup>4</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.



## Business-to-business unfair contract terms

In November, a new law was passed to protect small businesses from unfair contract terms offered by other (usually larger) firms.

The law applies to **standard form contracts between businesses** where one of the businesses employs less than 20 people and the contract is worth up to \$300 000 in a single year or \$1 million if the contract runs for more than a year.

The law will take effect on 12 November 2016 and will apply to contracts offered on a 'take it or leave it' basis (i.e. standard form contracts) entered into or renewed on or after this date.

Guidance on the new law is available at [www.accc.gov.au/uct](http://www.accc.gov.au/uct). Education videos are also available on the [ACCC's YouTube channel](#).

The ACCC encourages businesses to closely review the standard form contracts they use when dealing with other firms. During 2016, the ACCC will be working with businesses in certain sectors (franchising, retail leasing, advertising, telecommunications and independent contracting) to encourage those firms to remove or amend terms that raise concerns before the new law takes effect.

### Find out more

The ACCC and the Australian Securities and Investments Commission (ASIC) will hold a **free interactive webinar** on the new unfair contract terms law on 16 March 2016. [Register online](#) to participate.

## Agriculture Enforcement and Engagement Unit

In July, the ACCC announced that a **new Agriculture Unit** would be established to conduct investigations and engagement in rural and regional areas. A newly established **Agriculture Consultative Committee** will also provide a forum through which competition concerns related to the agriculture sector can be considered and addressed collaboratively. A new Commissioner with responsibility for agriculture issues will be appointed by the Government in 2016, with further announcements about the work of the Unit to follow this appointment.

## Small Business and Franchising Consultative Committee

The ACCC hosts a number of consultative committees and forums to encourage a discussion about issues relevant to our work. After a membership review we decided to merge the pre-existing franchising and small business committees into a single body—the [Small Business and Franchising Consultative Committee](#). This combined body will discuss issues that relate to the small business sector more broadly, as well as any specific issues that relate to the franchising sector as they arise. The new 26-member committee includes 13 industry associations.

## Competition policy review

In November, the Federal Government released [its response](#) to the Harper competition policy review [final report](#).

The Government has announced that it will implement the majority of the Harper recommendations, including:

- introducing greater flexibility into the notification process for collective bargaining by small business
- encouraging state and territory governments to consider removing remaining restrictions on retail trading hours.

The Government has also committed to retain a small business specific ACCC commissioner who can provide small business insights and experience.

Given the importance of the CCA's misuse of market power provision, the Government will consult further on options for reform and will release a discussion paper on the topic. Further information is available at [www.competitionpolicyreview.gov.au](http://www.competitionpolicyreview.gov.au).

## What's new for small business?

In August, the ACCC participated in a **joint webinar** with ASIC, the Australian Taxation Office and the Fair Work Ombudsman. The webinar provided tips and information about current key issues including new laws that protect small business, new online tools and digital services, cutting red tape and 2015 federal budget measures. You can watch it 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 each been accessed by over 20 000 users since their launch in 2013. The ACCC-funded free online **franchising program**, run by Griffith University since 2010, has had more than 9500 enrolments.

### Access the programs

Visit [www.ccaeducationprograms.org](http://www.ccaeducationprograms.org)

## 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 allowed:

- the **Tasmanian Chicken Growers Association** (representing eight Tasmanian chicken farms) to collectively negotiate the terms and conditions of chicken grower contracts, including a grower fee, with Inghams Enterprises Pty Ltd
- **PaintRight Ltd** (representing 57 independently owned and operated paint retailers across Australia) to collectively bargain as a group with suppliers
- the **Victorian Off-Course Agents Association Inc** (representing TAB agents who have been appointed by Tabcorp Wagering (Vic) Pty Ltd) to collectively negotiate the terms of a Distribution Services Agreement with Tabcorp on behalf of TAB agents.

If you and other businesses are thinking about lodging an application for authorisation or notification, please contact the ACCC for an informal discussion.

## Publications

The ACCC released a number of publications relevant to small businesses over the last six months, including:

- **Sharing economy:** the ACCC commissioned Deloitte Access Economics to conduct research into the interaction of the *Sharing economy and the Competition and Consumer Act*, with a particular focus on the effectiveness of the self-regulation of the platforms.
- **Comparator websites:** the ACCC developed *A guide for comparator website operators and suppliers* to encourage operators and suppliers to review their business practices to ensure compliance with the CCA, and to promote fair trading and better consumer experiences in this sector.
- **Debt collectors:** the ACCC, together with ASIC, updated the *Debt collection guideline for collectors & creditors* to assist creditors, collectors and debtors to understand their rights and obligations when undertaking debt collection activity and ensure that their activities are consistent with consumer protection laws.
- **Free range eggs:** the *ACCC enforcement guidance - free range hen egg claims* helps egg producers understand their rights and obligations when promoting or selling free range eggs.

## Scams

As part of the Government's Stay Smart Online Week in October, the ACCC warned small businesses to be aware of cyber criminals attempting to take advantage of the fact that many businesses store sensitive information online. Information on protecting your business is available on the [ScamWatch website](#).

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## Contact us

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

ACCC website: [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? The ACCC has a number of free newsletters that you can sign up to. Subscribe online by visiting [www.accc.gov.au/media/subscriptions](http://www.accc.gov.au/media/subscriptions).