



**Australian  
Competition &  
Consumer  
Commission**

Our Ref:  
Contact Officer: Kim Parker  
Contact Phone: (03) 9290 1849

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

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

21 March 2013

Small Business Study  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

Sent electronically: [small.business@pc.gov.au](mailto:small.business@pc.gov.au)

Dear Mr Mundy

**Productivity Commission Study into Regulator Engagement with Small Business**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to this study.

:

Yours sincerely

**Brian Cassidy**  
Chief Executive Officer  
Australian Competition & Consumer Commission

# The ACCC's Engagement with Small Business

The ACCC promotes competition and fair trade in markets to benefit consumers, businesses and the community. We also regulate national infrastructure services. Our primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws – in particular the *Competition and Consumer Act 2010* (CCA), which incorporates the Australian Consumer Law (ACL).

All of the approximately 2 million small businesses operating in Australia have rights and responsibilities under the CCA. Small businesses are treated as consumers under various ACL provisions (e.g. they also have the protection of the consumer guarantees) and the ACCC goes to great lengths to emphasise these rights in its educational activities.

The legislation recognises the importance of the ACCC having a strong small business focus. The CCA requires the ACCC to have at least one Deputy Chairperson who has knowledge of, or experience in, small business matters. Dr Michael Schaper currently occupies this role. This Commissioner participates in all of the meetings and decisions of the ACCC (including our Enforcement Committee, Adjudication Committee and Strategic Compliance meetings) which often involve matters affecting small businesses.

Set out below is an explanation of how the ACCC interacts with small businesses in the course of its compliance and enforcement activities.

## The ACCC's approach to compliance and enforcement

The ACCC's approach to compliance and enforcement is outlined in its *Compliance and Enforcement Policy*<sup>1</sup>, which is updated annually following a review of the ACCC's priorities. A copy of the recently revised policy is attached (**Attachment 1**).

To achieve its compliance objectives the ACCC employs three flexible and integrated strategies:

- encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the CCA.
- enforcement of the law, including resolution of possible contraventions both administratively and through litigation.
- working with other agencies to implement these strategies.

The ACCC's first priority is always to achieve the best possible outcome in the broader public interest.

### *1. Encouraging compliance through education*

The ACCC considers that prevention of a breach of the CCA is preferable to taking action after a breach has occurred and consumers or businesses have suffered harm.

In the ACCC's experience, most businesses are willing to comply with the law. When a new law is introduced (for example, the ACL), the ACCC first looks to raise awareness. The ACCC has a history of working with the regulated community through peak bodies and by way of direct engagement to raise awareness of new laws and to explain the ACCC's approach to enforcing compliance with them.

---

1

<http://transition.acc.gov.au/content/item.phtml?itemId=867964&nodeId=78b0956fa087fe1ea3b08b9817fa964&fn=ACCC%20Compliance%20and%20Enforcement%20Policy.pdf>

The ACCC recently updated its website, including the *Business* pages. The home page of the new site contains a dedicated link to small business specific information and publications.

The ACCC recently revised one of its most popular small business publications, *Small Business and the CCA: your rights and responsibilities*, which outlines the key CCA provisions that small business operators need to be aware of.

The ACCC is in the process of developing a free 10-module online education program for small businesses which will explain their rights and obligations under the CCA. The program, which will include quizzes to test the user's understanding, is expected to be launched in April 2013.

The ACCC has prepared extensive materials to assist franchisees and franchisors understand their rights and obligations under the Franchising Code of Conduct and the CCA, including the *Franchisee Manual, Your essential guide to the Franchising Code* (DVD) and the *Franchising Code compliance manual for franchisors and master franchisees*. The ACCC also funds a free online education program for prospective franchisees, which is administered by Griffith University. More than 3,600 people have signed up to do this course since its launch in 2010.

The ACCC has a long-standing Small Business Consultative Committee (SBCC), which is made up of associations and other representatives of small businesses from a wide range of sectors (including the farming, building, optometry, real estate, pharmacy, motor and grocery industries). The ACCC also has a Franchising Consultative Committee (FCC), which consists of franchisees, franchisors, advisors and researchers. Both the SBCC and FCC meet at least twice per year to discuss current issues affecting the small business and franchising sectors, particularly issues relating to the ACCC's role.

The ACCC has a team of Education & Engagement managers operating across Australia, giving presentations and disseminating important information to small business operators about their rights and obligations under the CCA. Together with ASIC, the ACCC recently delivered a series of seminars to accountants across Australia explaining their important role as intermediaries between regulators and small businesses. The ACCC, together with ASIC and the ATO, is also participating in the current series of HomeBiz Connect events organised by Business Enterprise Centre Australia.

The ACCC has a dedicated Small Business Helpline for small businesses and franchisees seeking quick guidance (1300 302 021). Small businesses can also sign up to the ACCC's Small Business Information Network (SBIN) which provides frequent email updates, including new laws, new ACCC guidance material and the latest ACCC court action. The SBIN has more than 1,200 subscribers.

The ACCC also has a strong focus on educating small businesses about scams. In September 2011, the ACCC and the Council of Small Business of Australia (COSBOA) jointly hosted the Australasian Consumer Fraud Taskforce 'Small business and scams' forum in Canberra. More than 70 businesses, industry association and government representatives attended to learn about and discuss the sophisticated techniques employed by scammers to target small business and how to disrupt these scams.

The ACCC also has an internal sub-committee of the Commission, Enforcement Committee – Strategic Compliance, consisting of five of the seven Commissioners. It meets fortnightly to discuss education, engagement and outreach to both the consumer and small business sectors.

Senior ACCC personnel regularly speak at conferences and other events. For example, ACCC Chairman Rod Sims and Deputy Chairman Dr Michael Schaper both delivered addresses at the COSBOA National Small Business Summit in 2012. Dr Schaper also gave an opening address at the Legal Symposium of the Franchise Council of Australia's 2012 National Franchise Convention.

The ACCC prepares a six-monthly report entitled *Small Business in Focus*, which summarises the ACCC's small business and franchising related activities, and provides a breakdown of relevant complaints and enquiries data. This is widely distributed to small business groups, the SBIN, external stakeholders and the media. The latest edition of the report, covering the period 1 July to 31 December 2012, is attached to this submission (**Attachment 2**). The ACCC also frequently writes tailored articles for industry magazines and other publications.

The ACCC produces targeted guidance material for small businesses, and works closely with industry groups and associations to raise awareness of their rights and obligations under the CCA. In 2011–12, the ACCC focused on producing guidance for small businesses on the following issues:

- *Carbon price representations* – the ACCC produced a suite of guidance material, including web FAQs and fact sheets, for businesses on their rights and responsibilities when making claims about the impact of the carbon price. On 16 August 2012, the ACCC hosted an interactive webinar to give businesses an opportunity to learn from complaints and queries received by the ACCC and investigation outcomes to date (more than 200 small businesses hooked into the webinar). Given the difficulty involved in calculating the impact of the carbon price, the ACCC also took a pragmatic approach to enforcement in this area (see “The first 100 days of the carbon price” example below).
- *Cartels* – In October 2011, the ACCC launched a dedicated cartel web portal to provide businesses with easy access to information on anti-competitive arrangements. The ACCC also developed a short film, *The Marker*, which shows the devastating effects involvement in a cartel can have on both individuals and businesses.
- *Consumer guarantees* – As part of its national consumer guarantees awareness raising campaign launched in February 2012, the ACCC worked with small business associations to disseminate industry-specific articles and educational tools.
- *Unconscionable Conduct* – The ACCC has released a Business Snapshot providing tips for businesses on how to minimise the risk of becoming a victim of unconscionable conduct, and to avoid engaging in such conduct towards other businesses or consumers.
- *Product safety* – The ACCC has undertaken a range of educational activities for small to medium sized businesses about mandatory reporting. For example, the ACCC worked with the Pharmacy Guild to promote compliance by community pharmacies. An information bulletin about mandatory reporting for service technicians was released in April 2012, a bulletin for franchises is in production and a webinar for industry is planned for 10 April 2013. The ACCC helped the Australian Food and Grocery Council (AFGC) develop its mandatory reporting guide for the food industry in 2011. In February 2012 the ACCC online reporting form automated the referral of mandatory reports about food directly to the appropriate food safety regulators. This has streamlined the interaction between small food businesses, such as restaurants, and the relevant regulators.

## **2. Enforcing the law**

The ACCC has several options when it discovers a likely breach of the CCA that warrants further action, including infringement notices, court enforceable undertakings and court proceedings. The ACCC takes a proportionate approach to enforcing the law; it determines the appropriate enforcement tools on a case by case basis, taking into consideration the alleged contravention, the business involved and the impact of the conduct on consumers and other businesses. While the size of the contravening business does not determine the ACCC's approach, it is a relevant consideration.

### *Administrative resolutions*

In some cases—for example, where the ACCC assesses potential risk flowing from conduct as low—the ACCC may accept an administrative resolution. Administrative resolutions are particularly appropriate where a small business has inadvertently breached the law and the ACCC considers it unlikely that the breach will be repeated.

Depending on the circumstances, administrative resolutions can range from a commitment by a trader in correspondence to a signed agreement between the ACCC and a business setting out detailed terms and conditions of the resolution. Administrative resolutions generally involve the business agreeing to stop the conduct and compensate those who have suffered a detriment because of it, and to take other measures necessary to ensure that the conduct does not recur.

### *Infringement notices*

The ACCC may issue an infringement notice<sup>2</sup> where it believes there has been a contravention of the CCA that requires a more formal sanction than an administrative resolution but where the ACCC considers that the matter can be resolved quickly without legal proceedings (which can be extremely costly for small businesses).

It is up to the recipient to decide whether it will offer an undertaking and/or pay the infringement notice penalty<sup>3</sup>. Payment of an infringement notice penalty is not an admission that the person has contravened the CCA.

Generally speaking, the ACCC will only consider issuing an infringement notice where it is likely to seek a court-based resolution should the recipient of the notice choose not to pay. Once an infringement notice is paid, the ACCC cannot commence court proceedings in relation to the alleged contravention.

The ACCC maintains a register on its website listing infringement notices that have been paid, which gives other businesses the opportunity to see the types of conduct that will raise concerns for the ACCC.

A recipient will almost invariably have some contact from the ACCC before receiving the infringement notice. The ACCC will raise its concerns with the business and outline the options it considers appropriate under its *Compliance and Enforcement Policy* to resolve its concerns. The business will be given an opportunity to address the ACCC's concerns and be able to provide any information or documents to the ACCC that it considers relevant.

The ACCC may issue multiple infringement notices where it considers it appropriate to do so, taking into account all of the circumstances. In deciding whether to issue more than one infringement notice, the ACCC takes into account a range of considerations, including:

- whether the ACCC believes there have been multiple contraventions of relevant provisions
- whether the contraventions have occurred in a number of states or territories

---

<sup>2</sup> The ACCC has published Guidelines on the use of infringement notices, which provide guidance to businesses and their advisors on the ACCC's approach to issuing infringement notices under the CCA: <http://transition.accc.gov.au/content/item.php?itemId=1085234&nodeId=63312bf426f4367e2c89035151812031&fn=Infringement%20notices.pdf>

<sup>3</sup> On 28 December 2012, the penalties for infringement notices increased from \$6,600 to \$10,200 for unlisted corporations, from \$66,000 to \$102,000 for listed corporations and from \$1,320 to \$2,040 for individuals.

- whether the contraventions have involved the use of different types of media, such as online, television, radio, magazines and newspapers and outdoor advertising, and
- whether there are circumstances which make it desirable to issue multiple notices to deter similar conduct by the specific business involved or the broader industry.

On over 15 occasions, multiple infringement notices have been paid in relation to the same matter. These have usually related to large businesses, such as Optus, Dodo, TPG and Foxtel.

#### *Section 87B enforceable undertakings*

The ACCC often resolves contraventions of the CCA by accepting court enforceable undertakings under section 87B of the CCA. In these undertakings, which are on the public record, companies or individuals generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their trade practices compliance programs (internal mechanisms employed by a business that are designed to identify and reduce the risk of breaching the CCA and effectively remedy any breach that may occur).

The ACCC allows businesses to tailor some elements of their undertaking to reflect their size and available resources<sup>4</sup>. For example, the ACCC would expect a large business to maintain a strong trade practices compliance program that includes a complaints handling system that complies with the relevant Australian Standard. On the other hand, it would be acceptable for a small business to maintain a more basic compliance program with a simpler complaints handling system that is nonetheless effective.

#### ***Example: court enforceable undertakings from remote community store***

In March 2012, the ACCC accepted court enforceable undertakings from Noonkanbah Enterprise Management Company Pty Ltd, a small-scale enterprise which operates the Yungngora Aboriginal Community Store (the Noonkanbah Store) in a remote Kimberley community in Western Australia

The undertakings relate to concerns the Noonkanbah Store misled customers in the community by selling some food items well beyond “best before” dates and displaying some shelf prices that were lower than the actual purchase prices.

To address the ACCC’s concerns, the Noonkanbah Store cooperated and provided court enforceable undertakings that it will refrain from engaging in similar conduct in the future; conduct periodic audits to ensure food past “best-before” date is removed from sale; ensure store managers attend a relevant ACL seminar; display an in-store corrective notice; and make the ACCC *Fairstore* publication available to customers.

The Department of Indigenous Affairs, the Department of Commerce and the Shire of Derby/West Kimberley assisted in the resolution of this matter.

<sup>4</sup> The ACCC has produced four levels of compliance program templates: levels 1 and 2 are designed for micro and small businesses; levels 3 and 4 are aimed at medium and large corporate entities. The level 1 and 2 templates are less onerous, simplified and able to be undertaken without necessarily seeking external advice from compliance professionals.

## *Court action*

Legal proceedings are only taken where, having regard to all the circumstances, the ACCC considers litigation is the most appropriate way to achieve its enforcement and compliance objectives. The ACCC is more likely to proceed to litigation in circumstances where the conduct is particularly egregious (having regard to the factors set out in its *Compliance and Enforcement Policy*), where there is reason to be concerned about future behaviour, or where the party involved is unwilling to provide a satisfactory alternate resolution to the matter.

Where the ACCC takes court action and is successful, common outcomes include declarations that a contravention has occurred, injunctions to prevent further contraventions and penalties to punish contraventions.

Where alleged contraventions of the CCA attract a civil pecuniary penalty, the ACCC ordinarily seeks civil pecuniary penalties where those matters proceed to court. This approach is appropriate as matters that proceeded to litigation are the more significant issues arising from alleged non-compliance with the law. Civil penalties are designed to provide general and specific deterrence.<sup>5</sup>

While the ACCC and other parties make submissions to the Court on appropriate levels of pecuniary penalties, the Court independently decides whether to order penalties and the penalty amount. In making this decision, the Courts apply a range of principles when determining appropriate civil penalties, including:<sup>6</sup>

- the size of the contravening company
- the degree of power it has, as evidenced by its market share and ease of entry into the market
- the deliberateness of the contravention and the period over which it extended
- whether the contravention arose out of the conduct of senior management or at a lower level
- whether the company has a corporate culture conducive to compliance with the CCA, as evidenced by educational programs and disciplinary or other corrective measures in response to an acknowledged contravention
- whether the company has shown a disposition to cooperate with the authorities responsible for enforcement of the CCA in relation to the contravention
- whether the company or individual has engaged in similar conduct in the past
- the financial position of the company or individual, and
- the deterrent effect of the proposed penalty.

For a profile of recent ACCC court action, please refer to the two latest editions of the ACCC's public quarterly report, *ACCCount*<sup>7</sup>.

---

<sup>5</sup> *TPC v CSR*

<sup>6</sup> See *TPC v CSR* and *NW Frozen Foods v ACCC*.

<sup>7</sup> ACCCount 1 October to 31 December 2012:

<http://transition.accc.gov.au/content/item.phtml?itemId=1104072&nodeId=43c127ac8862a0d78d26d460ed3df31e&fn=ACCCount%20December%202012%20quarter.pdf>

ACCCCount 1 July to 30 September 2012:

<http://transition.accc.gov.au/content/item.phtml?itemId=1088445&nodeId=6d105c0977008d5f26cbfd9070e1e143&fn=ACCCount%201%20July%20to%2030%20September.pdf>

***Examples of the ACCC's approach to enforcement and compliance:***

**The first 100 days of the carbon price**

The ACCC ran an extensive education campaign in the lead up to the introduction of the carbon price mechanism (1 July 2012) and quickly pursued some early compliance outcomes following its introduction. The balance between education and the pursuit of early enforcement helped to show businesses how to do the right thing, with most businesses acting in accordance with the law. When they did not, the ACCC contacted them quickly and worked with them to help them comply.

In the first 100 days following the commencement of the carbon price, the ACCC received around 2,500 complaints and enquiries – the majority coming from consumers and small businesses seeking information or wishing to report concerns about carbon price claims made in the marketplace. The ACCC conducted 50 initial investigations and 15 in-depth investigations into this conduct.

A number of sectors stood out as attracting a larger number of complaints, including the refrigerants industry. The ACCC through the course of its investigation of these matters received a small number of administrative resolutions and one enforceable undertaking from air conditioning and refrigeration repair companies in relation to alleged false and misleading representations regarding the impact of the carbon levy on the price of refrigerant gas. The ACCC then worked with the industry providing guidance to avoid making misleading statements.

The ACCC issued over 40 formal and informal warning letters to traders in various sectors and sent out over 50 educative letters to traders providing them with information and guidance material about carbon price claims and the role of the ACCC.

Other public enforcement outcomes included a further enforceable undertaking accepted, one informal undertaking and one infringement notice paid.

**Industry code audits**

On 1 January 2011, the ACCC was given the power under section 51ADD of the CCA to conduct audits to monitor compliance by businesses who are subject to an industry code prescribed under the CCA (currently the Franchising Code, Horticulture Code, Oilcode and Unit Pricing Code). This power enables the ACCC to obtain from a business any information or documents it is required to keep, generate or publish under an industry code it is covered by.

Before using the power, the ACCC posted guidance material for businesses on its website explaining how the ACCC chooses who to audit, how to respond to an audit notice and what to do if you need additional time. ACCC Deputy Chair Dr Michael Schaper also discussed the ACCC's approach to the power in his speech at the Franchise Council of Australia's 2011 National Franchise Convention.

The ACCC gave franchisors more than six months to ensure their affairs were in order before conducting the first audit, with the first audit notice issued in July 2011.

The ACCC has looked to ensure that compliance with an audit notice is not unnecessarily burdensome for businesses (e.g. by limiting the number of documents requested).

Audit notices have now been served on 44 businesses (33 franchisors and 11 horticulture traders). While the majority of traders have been found to be compliant with the relevant codes, the audits have revealed a small number of potential breaches. The ACCC has worked with these businesses to ensure they comply with the relevant code going forward, including by obtaining a section 87B court enforceable undertaking from one trader. To date, no court action has followed from an industry code audit. The ACCC regularly reports on its use of the audit power in various public reports, such as *Small Business in Focus*.



### **3. Working with other agencies**

The ACCC deals regularly with other state and federal agencies on small business issues, and seeks to ensure that, wherever possible, a uniform and co-operative approach is developed. For example, the ACCC has regular meetings with the other ACL regulators (e.g. the Education & Information Advisory Committee) to discuss a range of current issues, including those affecting small businesses, and to ensure a consistent approach. Late last year, the ACCC convened a meeting of the ACL regulators specifically to discuss small business issues and initiatives. The second of these meetings will be held later this month. The following examples illustrate how the ACCC works closely with other ACL regulators to deliver outcomes for small businesses.

#### ***Example: Warranties against defects – Transitional arrangements***

Suppliers and manufacturer provide promises to consumers about what they will do if something goes wrong with a good or service. These are called 'warranties against defects' (WAD). Under the ACL, businesses are required to present WAD documents in a certain way and must include certain information to ensure consumers understand the warranty. The WAD framework was introduced in January 2011 as part of the ACL, however the WAD provisions took effect from 1 January 2012. The new provisions required changes to the wording of warranty documentation included with products and industry raised concerns about being able to comply with the WAD requirements within this timeframe, given the long lead times for supply and difficulties with packaging for some products.

The ACCC and other ACL regulators recognised that there were practical difficulties for businesses to achieve compliance with the WAD requirements within the required timeframe. Accordingly, the ACCC and other ACL regulators agreed to implement a transitional period for compliance with the WAD requirements, until September 2012. Under the transitional arrangements, businesses were required to take all reasonable steps to convey the information required by the WAD provisions—for example, through clear and prominent point of sale signs or over-stickering of products—to ensure that consumers were made aware of their rights when purchasing products. The regulators worked together to develop a compliance and enforcement framework to enable a consistent regulatory approach to address cases of non-compliance with the WAD requirements.

#### ***Example: Product safety – The \$2 shop guide***

In September 2011, the ACCC and the other ACL regulators jointly developed a guide to assist small businesses such as 'two dollar' shops, discount variety stores and weekend market stallholders to understand their mandatory product safety requirements and ensure the products they are selling are safe. The guide, available in English, Chinese and Vietnamese, also provides a summary of suppliers' responsibilities under Australia's national product safety laws and has been distributed nationally across these small business retailers.

The ACCC was one of the founding members of the forum of state Small Business Commissioners and has developed a close working relationship with these commissioners, as well as the recently formed Australian Small Business Commissioner.

The ACCC and ASIC meet regularly to discuss joint co-ordination and delivery of small business information and support programmes. These meetings usually take place on a quarterly basis.

At the regional level, local ACCC Education & Engagement Managers in most states participate in their local government business information network, a forum where local, state and Commonwealth agencies co-ordinate delivery of information and advice to small firms in that jurisdiction.

In addition, ASIC, the ATO, the Small Business Commissioners and various state small business agencies (such as the WA Small Business Development Corporation) are invited to attend the ACCC's SBCC meetings.



Australian  
Competition &  
Consumer  
Commission

ACCC policy document

# ACCC COMPLIANCE AND ENFORCEMENT POLICY

February 2013





# ACCC Compliance and Enforcement Policy

## Policy purpose

This policy sets out the principles adopted by the Australian Competition and Consumer Commission to achieve compliance with the law, and outlines the ACCC's enforcement powers, functions, priorities, strategies and regime.

## ACCC jurisdiction and available enforcement options

The ACCC is Australia's peak consumer protection and competition agency. The ACCC is an independent statutory government authority serving the public interest. Most of the ACCC's enforcement work is conducted under the provisions of the *Competition and Consumer Act 2010*.

The purpose of the Competition and Consumer Act is to enhance the welfare of Australians by:

- promoting competition among business
- promoting fair trading by business
- providing for the protection of consumers in their dealings with business.

The Competition and Consumer Act provides the ACCC with a range of enforcement remedies, including court-based outcomes and court enforceable undertakings. The ACCC also resolves many matters administratively. These options are discussed more fully below.

## Australian Consumer Law

The Australian Consumer Law is the national consumer law and is applied at the Commonwealth level and in each state and territory.

At the Commonwealth level it is included as part of the Competition and Consumer Act. Compliance and enforcement with the law will be on a 'one law, multiple regulators' model, with existing consumer regulators enforcing the uniform law.

This policy is consistent with and expands on the principles in the ACL Compliance and Enforcement Guide and outlines the ACCC's approach to compliance and enforcement more generally.

## Prioritisation of enforcement matters and the exercise of the ACCC's discretion

In enforcing compliance with provisions of the Competition and Consumer Act, the ACCC's main goals are to:

- maintain and promote competition and remedy market failure, and
- protect the interests and safety of consumers and support fair trading in markets.

With these goals in mind the ACCC takes action to:

- stop unlawful conduct
- deter future offending conduct
- where possible, obtain remedies that will undo the harm caused by the contravening conduct (for example, by corrective advertising or securing redress for consumers and businesses adversely affected)
- encourage the effective use of compliance systems
- where warranted, take action in the courts to obtain orders which punish the wrongdoer by the imposition of penalties or fines and deter others from breaching the Act.

The ACCC cannot pursue all the complaints it receives about the conduct of traders or businesses and the ACCC is unlikely to become involved in resolving individual consumer or small business disputes. While all complaints are carefully considered, the ACCC's role is to focus on those circumstances that harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for competition and consumers.

To assist with this determination, the ACCC gives enforcement priority to matters that demonstrate one or more of the following factors:

- conduct of significant public interest or concern
- conduct resulting in a substantial consumer (including small business) detriment
- unconscionable conduct, particularly involving large national companies or traders
- conduct demonstrating a blatant disregard for the law
- conduct involving issues of national or international significance
- conduct detrimentally affecting disadvantaged or vulnerable consumer groups

- conduct in concentrated markets which impacts on small business consumers or suppliers
- conduct involving a significant new or emerging market issue
- conduct that is industry-wide or is likely to become widespread if the ACCC does not intervene
- where ACCC action is likely to have a worthwhile educative or deterrent effect, and/or
- where the person, business or industry has a history of previous contraventions of competition, consumer protection or fair trading laws.

Where appropriate the ACCC may also pursue matters that will assist to clarify aspects of the law, especially newer provisions of the Act.

The ACCC reviews its priorities regularly. There are some forms of conduct that are so detrimental to consumer welfare and the competitive process that the ACCC will always assess them as a priority. These include cartel conduct and anti-competitive agreements, and the misuse of market power. The ACCC will also always prioritise the assessment of product safety issues which have the potential to cause serious harm to consumers.

In addition to those matters that demonstrate the factors above, the ACCC is currently prioritising its work in the following areas:

- consumer protection in the telecommunications and energy sectors
- online competition and consumer issues including conduct which may impede emerging competition between online traders or limit the ability of small businesses to effectively compete online
- competition and consumer issues in highly concentrated sectors, in particular in the supermarket and fuel sectors
- credence claims, particularly those in the food industry with the potential to have a significant impact on consumers or the competitive process
- misleading carbon pricing representations
- the ACL consumer guarantees regime
- consumer protection issues impacting on Indigenous consumers.

When the ACCC decides not to pursue enforcement action in relation to complaints it receives, it may nevertheless:

- provide information to the parties to help them deal with the matter and gain a better understanding of the Competition and Consumer Act even where a possible contravention of the Act is unlikely
- postpone or cease investigations where insufficient information is available to it, with a view to later investigation should further information become available
- draw the possible contravention to relevant parties' attention and provide information to encourage rectification and future compliance where the possible contravention appears accidental, of limited detriment to consumers and of limited gain to the business concerned
- place the relevant parties on notice about the ACCC's concerns and the possibility of future investigation and action should the conduct continue or re-emerge

- deal with the matter informally where a business has promptly and effectively corrected a possible contravention and has implemented measures to prevent recurrence.

While the ACCC relies on complaints to identify issues and inform its compliance and enforcement activities, the ACCC is not a complaint handling body that seeks to resolve every approach. It is unlikely to pursue matters that:

- are one-off, isolated events, unless the conduct involves a blatant and deliberate breach of the law
- are more appropriately resolved directly between the parties under an industry code (for example, by way of mediation)
- involve issues more effectively dealt with at the local level by state and territory agencies (for example, by way of individual dispute resolution of a complaint)
- are primarily contractual or private right disputes (the Competition and Consumer Act provides complainants with a private right of action in these circumstances).

## Principles and approaches underlying this policy

The ACCC exercises its enforcement powers independently in the public interest with integrity and professionalism and without fear, favour or bias.

The ACCC's enforcement response is proportionate to the conduct and resulting harm, and the implementation of the ACCC's enforcement policy is governed by the following guiding principles:

- Transparency—this has two aspects:
  - the ACCC's decision-making takes place within rigorous corporate governance processes and is able to be reviewed by a range of agencies, including the Commonwealth Ombudsman and the courts
  - the ACCC does not do private deals—every enforcement matter that is dealt with through litigation or formal resolution is made public.
- Confidentiality—in general, investigations are conducted confidentially and the ACCC does not comment on matters it may or may not be investigating.
- Timeliness—the investigative process and the resolution of enforcement matters are conducted as efficiently as possible to avoid costly delays and business uncertainty.
- Consistency—the ACCC does not make ad hoc decisions; it sets its focus clearly to give business certainty about its actions.
- Fairness—the ACCC seeks to strike the right balance between voluntary compliance and enforcement while responding to many competing interests.

## ACCC compliance and enforcement strategy

To achieve its compliance objectives the ACCC employs three flexible and integrated strategies:

- enforcement of the law, including resolution of possible contraventions both administratively and by litigation.
- encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the Competition and Consumer Act
- working with other agencies to implement these strategies.

These strategies are discussed further below.

The ACCC has two additional enforcement strategies, the cooperation policy and the immunity policy for cartels. These are discussed briefly below.

### Cooperation policy

The ACCC encourages persons and companies who might have contravened the Competition and Consumer Act to come forward and cooperate with the ACCC to address these possible contraventions.

The ACCC may recognise cooperation by:

- permitting complete or partial immunity from ACCC action
- making submissions to the court for a reduction in penalty
- agreeing to an administrative settlement instead of litigation.

This policy is flexible, with the ACCC determining each case on its merits. Further information regarding the ACCC cooperation policy for enforcement matters is available at the ACCC website [www.accc.gov.au](http://www.accc.gov.au).

### Immunity policy for cartels

The ACCC also has an immunity policy designed to encourage self-reporting of cartel involvement. The immunity policy confers immunity from ACCC action to the first eligible cartel participant to report involvement in a cartel. Immunity is provided subject to certain conditions being met, including full, frank and truthful disclosure and continued cooperation with the ACCC's investigation and any subsequent legal proceedings against other participants. Further information regarding the ACCC Immunity policy for cartels is available at the ACCC website [www.accc.gov.au](http://www.accc.gov.au).

## Compliance and enforcement outcomes

The ACCC uses a range of compliance and enforcement tools in order to encourage compliance with the Act. In deciding which compliance or enforcement tool (or the combination of such tools) to use, the ACCC's first priority is always to achieve the best possible outcome for the community.

## Education, advice and persuasion

The ACCC makes comprehensive use of educational campaigns to provide information and advice to consumers and businesses, and to use persuasion to encourage compliance with the Competition and Consumer Act. The ACCC takes the firm view that prevention of a breach of the Competition and Consumer Act is always preferable to taking action after a breach has occurred. The Commission also seeks to ensure that consumers and small businesses are fully aware of both their rights and responsibilities under the Act.

The ACCC provides targeted and general information, tips and tools to help consumers via a wide range of channels; it liaises extensively with business, consumer and government agencies about the Competition and Consumer Act and the ACCC's role in its administration and is working to ensure that consumer education is embedded in the new National Curriculum. The ACCC aims to ensure that consumers and small businesses are sufficiently well-informed to benefit from, and stimulate, effective competition.

Communicating its enforcement role is fundamental to the effectiveness of the ACCC's information and liaison activities.

## Voluntary industry self-regulation codes and schemes

The ACCC encourages and assists genuine voluntary compliance initiatives by individual businesses and industry sectors. These initiatives range from individual trader compliance programs to sector-wide initiatives, including industry charters and voluntary codes of conduct that apply the requirements of the Competition and Consumer Act to the specific circumstances of a particular industry sector.

## Administrative resolution

In some cases—for example, where the ACCC assesses potential risk flowing from conduct as low—the ACCC may accept an administrative resolution. Depending on the circumstances, administrative resolutions can range from a commitment by a trader in correspondence to a signed agreement between the ACCC and a trader setting out detailed terms and conditions of the resolution. Administrative resolutions generally involve the trader agreeing to stop the conduct and compensate those who have suffered a detriment because of it, and to take other measures necessary to ensure that the conduct does not recur. The ACCC is unlikely to accept an administrative resolution for conduct that recurs after having been subject to a previous administrative resolution.

## Infringement notices

The ACCC may issue an infringement notice where it believes there has been a contravention of the Competition and Consumer Act that requires a more formal sanction than an administrative resolution but where the ACCC considers that the matter may be resolved without legal proceedings.

## Section 87B enforceable undertakings

The ACCC often resolves contraventions of the Competition and Consumer Act by accepting court enforceable undertakings under s. 87B of the Act. In these undertakings, which are on the public record, companies or individuals generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their trade practices compliance programs and culture.

## Court cases

Legal action is taken where, having regard to all the circumstances, the ACCC considers litigation is the most appropriate way to achieve its enforcement and compliance objectives. The ACCC is more likely to proceed to litigation in circumstances where the conduct is particularly egregious (having regard to the factors set out on page two), where there is reason to be concerned about future behaviour or where the party involved is unwilling to provide a satisfactory resolution.

Under the Competition and Consumer Act, legal action may result in the court:

- making declarations that a company or individual has contravened the Act
- making injunctions restraining current or future conduct, or requiring respondents to take certain action
- requiring respondents to publish notices about their conduct and corrective advertising, and to disclose relevant information to others (for example, to their customers)

- making findings of fact that show contraventions of the Act so that damages may be recovered by consumers and businesses affected by the conduct
- making orders to achieve financial redress for consumers or businesses harmed by the conduct
- making various non-punitive orders, including community service or probation orders (which may include orders for implementing a compliance or an education and training program)
- imposing significant pecuniary penalties for breaches of the consumer protection or restrictive trade practices provisions (the ACCC is more likely to seek pecuniary penalties in matters which result in significant consumer detriment, involve blatant conduct or where the traders or individuals concerned have a history of past conduct)
- convicting persons found to have contravened various offence provisions in the Act, and/or
- imposing prison sentences for serious cartel conduct.

## Working with other agencies

The ACCC is not always the agency best placed to deal with particular consumer and small business issues. For example, most state and territory fair trading agencies facilitate dispute resolution between consumers and traders and have enforcement responsibilities under the Australian Consumer Law. Various Ombudsmen services may also provide a more appropriate resolution through dispute resolution schemes.

In addition, some business-to-business matters raised with the ACCC are more effectively dealt with under the various mediation services provided by different state and federal governments. Where this is the case, the ACCC will refer the complainant to an appropriate agency or mediation service.

### Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

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.



# SMALL BUSINESS IN FOCUS



SMALL BUSINESS, FRANCHISING AND INDUSTRY CODES HALF YEAR REPORT

NO. 5

July–December 2012

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 amongst the small business sector.

## Facts and figures

**2 338** is the number of complaints and enquiries recorded by the ACCC Infocentre from small businesses, franchisees and franchisors over the last six months

**20 132** is the number of hard copy publications distributed to small businesses and associations

**108** is the number of presentations, expos and field days that the ACCC participated in

**3 590** is the number of registrants who have signed up to the ACCC-funded free online franchising education program since it began in 2010

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

The ACCC receives a large number of complaints and enquiries from small businesses about competition and consumer issues. The following number of contacts were received from the small business sector:

	This period: Jul–Dec 2012	Last period: Jan–Jun 2012
Small business	1471 complaints and 366 enquiries	1803 complaints and 872 enquiries
Franchising <sup>2</sup>	454 complaints and 47 enquiries	271 complaints and 76 enquiries

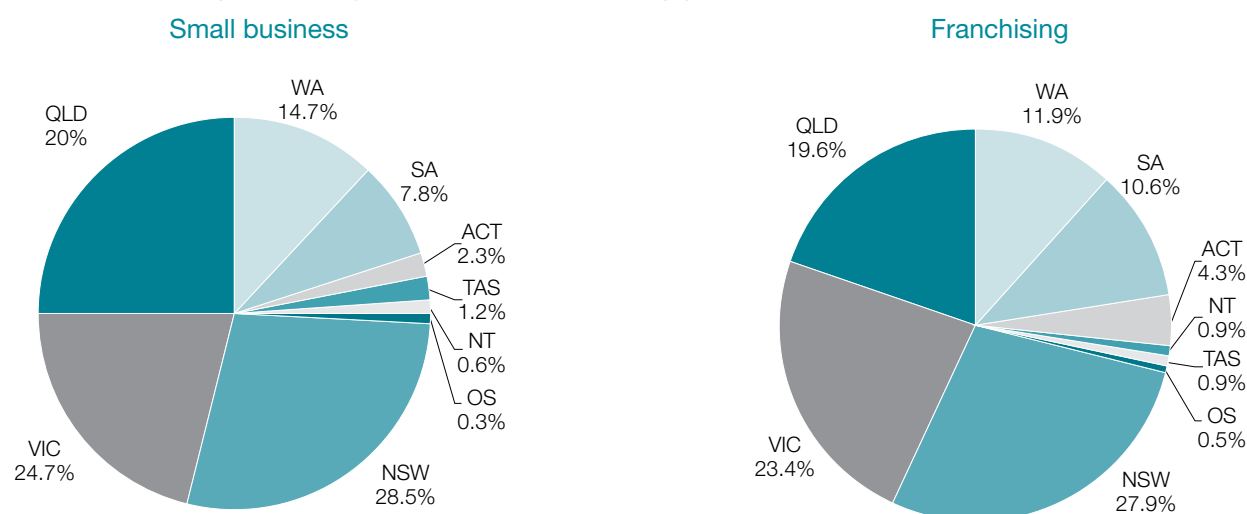
To find out more about your rights and obligations, or to make a complaint, contact the ACCC via the Small Business Helpline:

**1 300 302 021**

<sup>1</sup> The data provided reflects complaints and enquiries received by the ACCC from various sources and is provided as general guidance only. Upon further investigation, the conduct being complained about may not amount to a legislative breach. Care should be taken when drawing any conclusions based on this data.

<sup>2</sup> Primarily from franchisees, but includes a small number from franchisors.

## Breakdown of complaints by location where supplied


 Breakdown of complaints by key issue<sup>3</sup>

Issue	Small business		Franchising	
	This period Jul–Dec 2012	Last period Jan–Jun 2012	This period Jul–Dec 2012	Last period Jan–Jun 2012
Consumer protection related issues				
Misleading conduct/false representations	389	678	65	59
Consumer guarantees	135	307	4	18
Unsolicited goods/services	25	50	0	0
Unconscionable conduct	68	71	47	31
Product safety standards	25	54	2	4
Other ACL issues	25	108	6	5
Unlikely to raise ACL issues <sup>4</sup>	158	334	19	30
Competition related issues				
Exclusive dealing	35	66	15	9
Misuse of market power	47	102	4	0
Other competition related issues	22	46	4	8
Unlikely to raise competition issues <sup>5</sup>	62	65	11	4
Franchising Code of Conduct related issues				
Disclosure	N/A	N/A	62	43
Termination of franchise agreement	N/A	N/A	26	12

For more information about the principles adopted by the ACCC to achieve compliance with the law and the ACCC's enforcement powers, functions and priorities, see our *Compliance and Enforcement Policy*.

<sup>3</sup> Multiple issues may be identified from a single complaint. Complaints not within the remit of the ACCC are excluded.

<sup>4</sup> The nature of 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.

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



## New ACCC small business guidance

### Unconscionable Conduct Business Snapshot

The ACCC's latest Business Snapshot provides practical tips for you to minimise the risk of becoming a victim of unconscionable conduct, and to avoid engaging in such conduct towards other businesses or consumers.

The Australian Consumer Law prohibits what is known as 'unconscionable conduct'—but it can be a difficult concept to nail down. Certain conduct may be unconscionable if it is particularly harsh or oppressive to another party—either another business or to a consumer. Conduct may also be considered unconscionable where one party knowingly exploits the special disadvantage of another. But it needs to be more than just hard commercial bargaining.

The ACCC snapshot uses examples of cases where the ACCC has successfully prosecuted businesses for engaging in such conduct towards small-business owners, franchisees and Indigenous and elderly consumers. The snapshot was published in September 2012.

Factors to consider when assessing whether conduct is unconscionable include:

- What are the relative bargaining strengths of the parties?
- Were any conditions imposed on the 'weaker' party that were not reasonably necessary to protect the legitimate interests of the 'stronger' party?
- Did the 'stronger' party use undue influence, pressure or unfair tactics?

The snapshot is available at [www.accc.gov.au](http://www.accc.gov.au).

### Small Business and the Competition and Consumer Act: your rights and responsibilities

The ACCC has revised one of its key publications for small businesses. The *Small Business and the Competition and Consumer Act* is a handy, comprehensive guide to the main competition and consumer laws you need to be aware of and your rights as a business operator.

The guide also gives some practical tips when it comes to:

- refund and return signs
- sales practices including proof of transactions and itemised bills
- product safety bans and recalls
- advertising and promoting your business
- working with other businesses in the supply chain, and
- competing fairly.

You can download or order a copy of this publication from [www.accc.gov.au](http://www.accc.gov.au).

## The Marker



The ACCC has released *The Marker*—a short film showing the devastating effects involvement in a cartel can have on both individuals and businesses. *Businesses compete, cartels just cheat* is the theme and message of the ACCC's cartels-awareness campaign.

A cartel is formed when two or more competing businesses agree to work together to profit by engaging in conduct such as:

- Fixing prices—so there is no competition and buyers have no choice.
- Allocating customers, suppliers or territories—to remove competitors.
- Rigging bids—so that cartel members can rotate winning jobs at inflated rates.
- Controlling output or limiting the amount of goods and services available to buyers—so they have no choice but to pay higher prices.

Civil and criminal sanctions apply, including up to 10 years in jail.

The ACCC runs an immunity program that enables past or present cartel members to confess their actions and cooperate with investigations in exchange for immunity from ACCC-initiated civil and (through the Commonwealth Director of Public Prosecutions) criminal proceedings.

For more information about cartels or to watch *The Marker* visit [www.accc.gov.au/cartels](http://www.accc.gov.au/cartels).

## ACCC Shopper App



In December 2012 the ACCC released a free ACCC Shopper app for Apple and Android smartphones and tablets. The app provides instant advice to consumers while they are shopping, and answers commonly asked questions about refunds, returns, warranties, and lay-bys. Some consumers might use the app to store photographs of receipts as proof of purchase on their smartphone or tablet.

The app answers questions such as:

- 'What do I do if a product is faulty?'
- 'What happens if I don't have a receipt?'

The app allows consumers to set reminders for lay-bys and the expiry date for warranties and gift vouchers. It also explains common labelling terms like 'Made in Australia'.

You can download the free app from the Apple App Store and Google Play—search for 'ACCC Shopper'.

*The ACCC acknowledges Consumer Affairs Victoria's assistance in developing this app.*

## Advertising and selling

### 'Was/now' and 'strikethrough' pricing

'Was/Now' and 'strikethrough' pricing are forms of two-price advertising commonly used by businesses.

#### Example of was/now price statements

Was \$50 Now \$25 or ~~\$100~~ Now \$75

A likely impression conveyed by this pricing is that consumers will save an amount, which is the difference between the higher price—the 'was' or 'strikethrough' price—and the lower price (if the item is purchased during the sale period). You are free to make these statements but you need to be accurate about any claim you make.

Where this type of pricing statement is made it is likely to breach the ACL if consumers would not make the represented savings—in other words, if a customer would not have paid the 'was' or 'strikethrough' price during a reasonable period, immediately before the start of the sale.

How long this 'reasonable period' is may depend on factors such as the type of product or market involved and the usual frequency of price changes.

Consideration of the ticketed or 'offer' price of an item and actual sales data will help determine whether a consumer would or would not have paid the higher price.

### Carbon price claims—the first 100 days

Remember with carbon price claims it has always been business as usual and you are entitled to increase your prices as you see fit. However, if you make claims about the impact of the carbon price those claims need to be truthful and have a reasonable basis.

## Carbon Price Claims

In the first 100 days since the commencement of the carbon price mechanism, the ACCC received close to 2500 carbon price related complaints and enquiries. To give that figure some context, the ACCC received just over 43 000 total complaints and enquiries in the same period. The majority of contacts came from small businesses and consumers seeking information or wishing to report concerns about carbon price claims. The low complaint levels show that most businesses have acted in accordance with the law during the first 100 days of the carbon price.

The ACCC has engaged extensively with business and industry as part of its dedicated carbon price related compliance activities. On 16 August the ACCC hosted an interactive webinar to give businesses an opportunity to learn from complaints and queries received by the ACCC, investigation outcomes to date and to link with updated guidance. A range of guidance material has been developed, including web FAQs, checklists and snapshot summaries.

The webinar and all ACCC carbon price guidance can be found at [www.accc.gov.au/carbon](http://www.accc.gov.au/carbon).

### ACCC continues to protect small businesses against misleading or deceptive conduct

In September the Federal Court ordered three publishing companies to pay penalties totalling \$400 000, and the companies' director, Mr Andrew Clifford, to pay \$100 000 after they admitted that they had engaged in misleading and deceptive conduct, harassment and coercion, and unconscionable conduct in relation to advertising services that were never requested or provided.

The publishing companies contacted mostly small businesses and told them that they had already paid for, or agreed to, advertising in one of the companies' magazines, when they had not. The companies would then send them a document and invite them to sign it in order to receive complementary copies of the magazines. The publishing companies then claimed the signed document was an agreement to buy advertising services, and demanded payment of around \$500 for each.

The companies also admitted they used harassment and coercion and acted unconscionably when pursuing payment from some businesses.

"...the ACCC will use its powers to take action against companies that make a living out of deceiving small businesses."—ACCC Chairman Rod Sims

Also in September, following ACCC action, the Federal Court ordered Ms Rosemary Bruhn to pay a civil pecuniary penalty of \$50 000 for conduct involving substituting cage eggs for free range eggs. The ACCC alleged that from March 2007 to October 2010, Ms Bruhn represented that eggs she supplied to 109 business customers in South Australia including retail outlets, bakeries, cafes and restaurants, were free range when a substantial proportion were in fact cage eggs.

## Dealing with your suppliers and competitors

### Resale price maintenance

Resale price maintenance occurs when a supplier requires a business customer to not sell or advertise goods below a minimum price specified by the supplier. This limits the ability of business to engage in price competition.

In October the Federal Court in Melbourne imposed penalties of \$90 000 against Eternal Beauty Products Pty Ltd (Eternal Beauty) and its Director, Penny Rider, a wholesaler and retailer of skin care products, for engaging in resale price maintenance.

The Court made declarations that Eternal Beauty and Ms Rider engaged in specific acts of resale price maintenance and Eternal Beauty was ordered to contribute \$10 000 to the ACCC's costs and establish a trade practices

compliance program. The declaration and orders were made by consent.

Noting the penalties, ACCC Chairman Rod Sims said “Businesses are free to sell their products at prices below suppliers’ recommended retail prices if they wish...The ACCC takes seriously any attempts by suppliers to prevent discounting of their products, which affects the fundamental right of traders to compete for business”.

Prior to the orders Eternal Beauty voluntarily sent letters to all of its retailers and informed them that resale price maintenance is illegal and retailers were entitled to independently set the price at which they offer those products for sale.

During the period, the ACCC also accepted a court enforceable undertaking from Chemical Formulators Pty Ltd, Valiant Enterprises Pty Ltd and Oticon Australia Pty Ltd for engaging in resale price maintenance.

### Collective bargaining

Under certain circumstances the ACCC can authorise an arrangement where two or more small businesses can come together to negotiate terms and conditions with a supplier or a customer.

These arrangements usually raise concerns under the *Competition and Consumer Act 2010* as they involve agreements between competitors, often in relation to pricing.

In the last six months the ACCC has authorised arrangements between Tasmanian lottery agents, small private hospitals, truck drivers providing concrete cartage services and potato growers.

If you want to know more about your rights to collectively bargain go to [www.accc.gov.au](http://www.accc.gov.au) or ring the Small Business Helpline.

### Spotlight on scams—be aware of scams targeting you

Beware that scammers are continuing to target you with false billing scams.

#### Warning signs for false billing scams

- You receive a call from a business directory or other publication you’ve never heard of, ‘confirming’ your entry or advertisement.
- You receive a document in the mail that appears to be an invoice from a publication you’ve never heard of.
- The caller reads out your listing or advertisement and you recognise it as a listing you put in a different publication.

#### Tips to protect yourself

- Make sure the business billing you is the one you normally deal with.
- Always check that goods or services were both ordered and delivered before paying an invoice.
- Try to avoid having a large number of people authorised to make orders or pay invoices.

In September the ACCC also issued a joint alert with the Australian Taxation Office urging you to be aware of scam calls or emails around deadlines for submitting tax returns—a known time for scammers to target busy businesses with tax-related and other scams.

For more information visit SCAMwatch, at [www.scamwatch.gov.au](http://www.scamwatch.gov.au) and view ‘small business scams’.

## Franchising and other industry codes

### Franchising

ACCC Education and Engagement Managers continued to deliver seminars and distribute publications to prospective franchisees.

The ACCC funds a free online franchising education program run by Griffith University which now has more than 3590 registrants. If you are interested in participating in this program visit [www.franchise.edu.au/pre-entry-franchise-education](http://www.franchise.edu.au/pre-entry-franchise-education).

### Audit notices

The ACCC has the power to audit businesses for compliance with prescribed industry codes. The ACCC can require a business to provide any information or documents it is required to keep, generate or publish under one of these codes. The business then has 21 days to produce the documents.

The ACCC audited 15 traders across Australia in the last six months—13 franchisors and two horticulture traders. The majority of the businesses that have been audited so far have been found to be complying with the relevant codes. Where audits reveal shortcomings, the ACCC engages with the business to bring about compliance.

### Voluntary industry codes

The ACCC continued to participate as an observer at Code Development Committee meetings for a port access code being developed for wheat export.

This period, the ACCC met with the Clean Energy Council regarding the voluntary Solar PV Retailer Code of Conduct it is developing. The ACCC also provided comments to the Complementary Healthcare Council on the recently revised Code of Practice for the Marketing of Complementary Medicines and Health Food Products.

## Energy–National Energy Retail Law

In 2012, the National Energy Retail Law (Retail Law) commenced in the Australian Capital Territory and Tasmania. South Australia expects to commence the new law on 1 February 2013 with New South Wales to follow on 1 July 2013.

The new laws set out the rights and responsibilities of residential and small business gas and electricity customers.

Knowing your rights helps small businesses to make informed choices about the energy services you purchase. If you are a small energy customer your energy retailer must:

- provide fair contracts with clear terms and conditions so you can fully understand the energy offer
- provide clear and transparent bills
- tell you about your right to complain if you have problems with your energy service.

Energy customers in states and territories that have commenced the Retail Law can also use the Australian Energy Regulator's 'Energy Made Easy' website. It can help you compare all of the electricity and gas offers generally available for your business, making it much simpler for you to find an energy offer which meets your needs.

For further information on the new energy laws visit [www.aer.gov.au](http://www.aer.gov.au) or you can visit Energy Made Easy at [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au).

## Telecommunications Consumer Protection Code review

The Telecommunications Consumer Protection (TCP) Code is the key industry-developed regulation that sets out rules for telecommunications service providers about consumer protection issues including advertising, billing, and complaint handling. Most of the TCP Code's rules cover small business consumers (defined as those that spend less than \$20 000 with a provider each year).

A revised TCP Code has been registered following an extensive review process. The ACCC actively participated in the review, which sought to address concerns that the TCP Code was not adequately protecting consumers.

The revised TCP Code contains a number of improvements over the previous version. In particular, it includes several measures supported by the ACCC, including:

- provisions to improve the clarity and accuracy of advertising, including a requirement to display 'unit' pricing in advertisements, and a ban on the use of 'cap' to describe mobile phone plans
- a pre-sale Critical Information Summary for all telecommunications products, that must include key pricing information, terms and conditions (this will be mandatory for all providers from September 2013).

The ACCC will be observing the operation of new measures in the revised TCP Code to assess their effectiveness in improving practices across the sector.

## Small business engagement

### National Small Business Summit

The ACCC was a sponsor of the Council of Small Businesses Australia (COSBOA)/NAB National Small Business Summit, which was held on 1 and 2 August in Melbourne. Chairman Rod Sims presented on the ACCC's small business activities and launched the *Small Business, Franchising and Industry Codes Report* (January–June 2012). Deputy Chairman Dr Michael Schaper opened the evening networking session. The ACCC also hosted an exhibition booth.

### Contact us

**ACCC Small Business Helpline** 1300 302 021

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

### Small business publications

[www.accc.gov.au/smallbusinesspublications](http://www.accc.gov.au/smallbusinesspublications)

**Small Business Information Network**—regular updates from the ACCC on issues relevant to small business—email your contact details to [smallbusinessinfo@acc.gov.au](mailto:smallbusinessinfo@acc.gov.au)

**Franchising Information Network**—regular updates from the ACCC on issues relevant to franchisees and franchisors—email your contact details to [franchisingcode@acc.gov.au](mailto:franchisingcode@acc.gov.au)

Australian Competition and Consumer Commission  
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601  
© Commonwealth of Australia 2013

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, no part may be reproduced without prior written permission from the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, ACCC, GPO Box 3131, Canberra ACT 2601, or [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au).

#### Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

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.

ISBN 978 1 921973 42 0

ACCC 02/13\_651

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