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20 - 22 October 2013

# Australian Competition & Consumer Commission Update

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ACCC Deputy Chairman

# Outline

## The Past Year

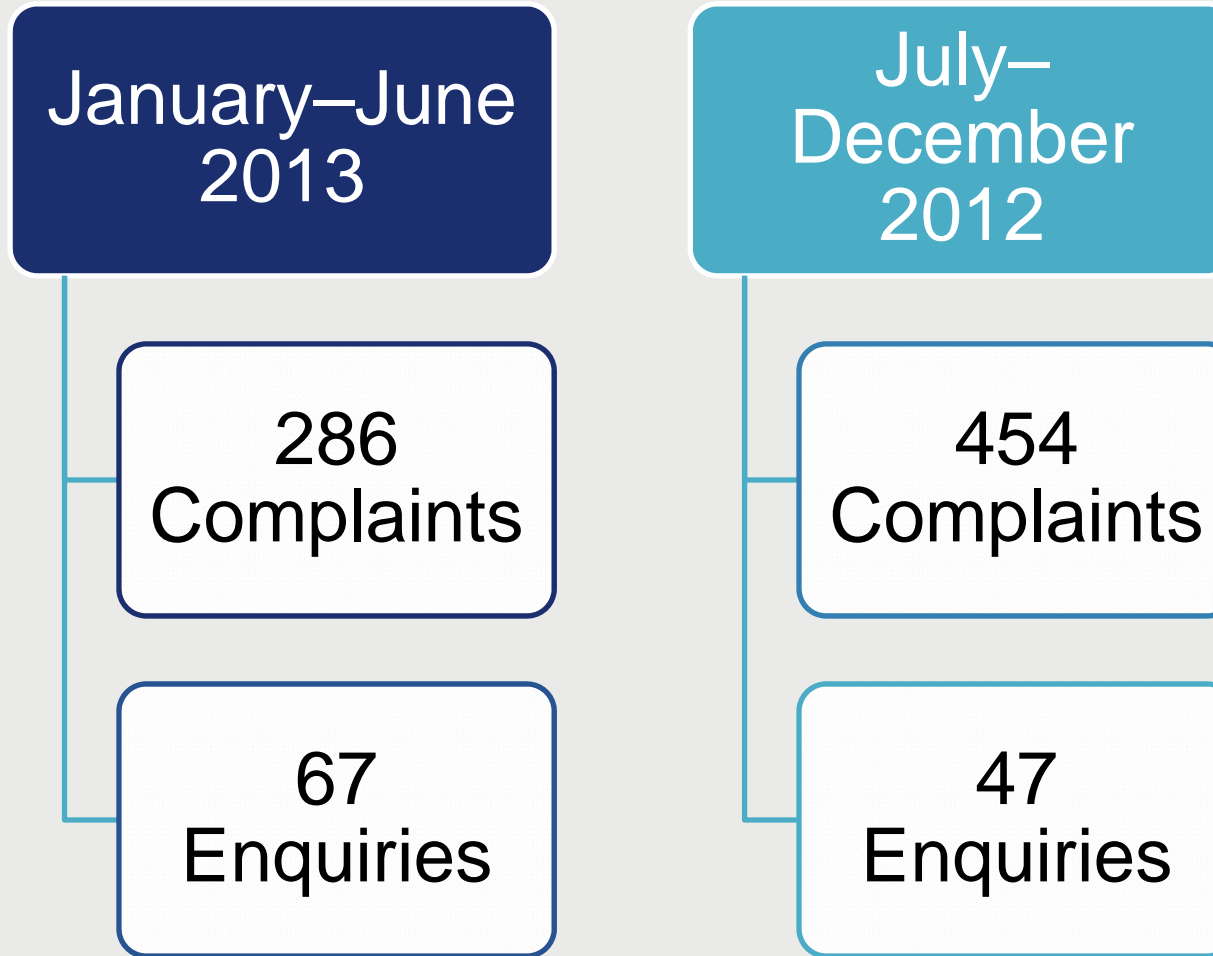
- Franchising complaints and enquiries
- Compliance and enforcement
- Court cases
- Online education programs

## Looking Forward

- Audits
- Consultative Committee
- Guidance on supply arrangements, existing material
- International activities

## Franchising Review

# 1. Franchising Complaints & Enquiries



# Franchising complaints by issues

Issue	2012–13	2011–12
<b>Consumer law related issues</b>		
Misleading conduct/false representations	107	159
Consumer guarantees	7	24
Unsolicited goods/services	0	1
Unconscionable conduct	61	58
Product safety standards	3	4
Other Australian Consumer Law issues	11	9
<b>Competition related issues</b>		
Exclusive dealing	21	19
Misuse of market power	5	2
Other competition related issues	6	13
<b>Franchising Code related issues</b>		
Disclosure	122	101
Termination of franchise agreement	42	68

# Compliance & Enforcement

## Outcomes 1998-2013

- more than 20 successful court actions
- more than 10 court enforceable undertakings

## Investigations

- about 5-15 investigations a year (varies)

# Recent Franchising Related Court Cases

- **ACCC v Sensaslim (2011):** Alleged misleading or deceptive conduct and false representations in relation to the identity of Sensaslim officers, the Sensaslim Solution and the business opportunities offered by Sensaslim. Judgment reserved.
- **ACCC v Taxsmart (2013):** Alleged false, misleading or deceptive job ads for graduate accountant positions to attain a tax agent licence and subsequently operate a Taxsmart franchise. Awaiting hearing date.
- **ACCC v nine Harvey Norman franchisees (2013):** Alleged misrepresentations regarding consumer rights.



## Pre-Entry Franchise Education Program

### Module One: Overview of Franchising

This is the first of five modules in the Pre-entry Franchise Education Program, sponsored by the Australian Competition and Consumer Commission and developed by Griffith University's Asia-Pacific Centre for Franchising Excellence.

*Module One: Overview of Franchising* will take 45 minutes to complete, and is a combination of informational videos and a short document outlining the advantages and disadvantages of franchising, to help you with your decision processes when deciding to enter into a franchise business.

You may like to take notes while working through this module to assist you down the track, and we've also included a list of further **resources** you may like to explore for further assistance and information.

At the end of this module is a **self-assessment quiz** to test your understanding of the information provided so far, before moving onto *Module Two: Understanding franchise disclosure, agreements & finance*.

Module One will provide you with a basic understanding of:

- What is Franchising?
- Advantages and Disadvantages of Franchising
- The Franchising Code of Conduct
- The Role of the Australian Competition and Consumer Commission (ACCC)

#### What is Franchising?

*Module One: Overview of Franchising* begins with a video interview of Asia-Pacific Centre for Franchising Excellence Director, Professor Lorelle Frazer discussing the size of the Australian franchise sector, what can be franchised and provides a basic understanding of 'what is franchising'.

#### Fast franchising facts:

- The franchise sector has been growing steadily over the past two decades
- There are 1100 franchise systems in Australia, and more than 65,000 franchise stores or units in Australia
- Franchising contributes around \$128 billion to the Australian economy
- Per capita Australia has more franchise systems than anywhere in the world
- Virtually anything can be franchised
- Typical investment range for a retail franchise is upwards of \$250,000 and for a service franchise is \$50,000 - \$60,000
- Buying a franchise is not a guarantee of success

A transcript of the 'What is Franchising' video is available [here](#).

[www.franchise.edu.au/pre-entry-franchise-education](http://www.franchise.edu.au/pre-entry-franchise-education)

ACCC / Griffith University Franchise Pre-Entry Program

Participants are more likely to have positive franchising experiences

# Franchising Pre-Entry Education

## The course is...

- a joint project between the ACCC and Griffith University
- **online and free**
- about the advantages and disadvantages, laws and questions to ask
- proving popular with more than 5,000 enrolments since July 2010

## Five modules covering...

- research
- contracts
- due diligence
- dispute resolution
- site selection
- financials



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## Competition & consumer law Education programs

**Welcome.** Funded by the ACCC, this website contains a suite of learning tools to help users increase their knowledge of the *Competition and Consumer Act 2010*.

### Small business



10 modules.

Read through the information then test your understanding with the quiz.

### Tertiary students

Coming soon



Arriving late-2013.

Notify me when available



### Franchisees



Thinking of buying a franchise? Click here for more information and a link to a free education program to help you assess franchise business opportunities before you buy one.

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

Free online education program for small businesses  
on Australia's competition and consumer laws

## 2. Industry Code Audit Power

### How does it work?

- Enables the ACCC to compel a trader to provide any information or documents it is required to keep, generate or publish under a relevant prescribed code.
- For franchisors this includes disclosure documents, marketing fund statements and franchise agreements

### How is it being used?

- Conducted 63 audits since 2011 – including 49 franchisors – and most of them have come up clean.
- Looking at industries which generate a disproportionate number of complaints – **take-away food** and **health and fitness industries**

# Franchising Consultative Committee

13-member  
forum

Provides  
information,  
feedback &  
advice



Breadth of  
membership

Encouraging  
interest from  
industry

Calling for new  
appointments  
late 2013

**Interested in joining?** We will be inviting Expressions of Interest via our email subscription service - Franchising Information Network  
[www.accc.gov.au/franchisingcode](http://www.accc.gov.au/franchisingcode)

# Franchising Supply Arrangements

- **New** guidance on franchising supply arrangements (third line forcing) and the Act.
- Explains how franchisors may lodge a 'notification' with the ACCC which provides protection from legal action under the Act
- Provides advice on the ACCC's role and what it considers in assessing notifications.
- Addresses the issue of rebates.



# Better Guidance

Planning to revise guidance material to ensure it is useful for franchisors and legal advisers

The ACCC will work with FCA and our Consultative Committee members on this



# International Activities

ACCC working to develop closer ties with other franchise regulators globally

Liaison important in franchising, where international expansion is common and master franchisor is often in a different jurisdiction

Sharing of information, updates on activities, disclosure regimes, enforcement activity

Cross-border co-ordination already well established in other ACCC roles (ICN, ICPEN)

Approx. 30 regulatory bodies globally; ACCC has a special interest in the Asia-Pacific region

### 3. ACCC Submission to the Franchising Review

Need for pecuniary penalties and infringement notices for breaches of the Franchising Code

Extension of the audit power to more accurately assess compliance

Dealing with online issues

Increased disclosure: short risk statement, disclosure of franchisee details, disclosure of infringement notices paid



# Need More Info?

**Small business helpline** 1300 302 021

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

**Twitter** @ACCCgovau

**Franchising Consultative Committee**

**Franchising Information Network**

**Education & Engagement Managers**

**Publications**

*Small Business in Focus*

*The Franchisee Manual*

*Franchising Code of Conduct Compliance Manual*

