




Australian
Competition &
Consumer
Commission

Competition and consumer law

an overview for small business





Australian Competition and Consumer Commission
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Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011.

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Competition and consumer laws in Australia

The *Competition and Consumer Act 2010* (the Act)—formerly known as the *Trade Practices Act 1974*—contains rules against anti-competitive conduct to ensure that there is fair and effective competition within Australia. The Act also contains consumer protection rules—known as the Australian Consumer Law (ACL)—which businesses must abide by in their dealings with consumers.

The ACL creates a single, national consumer law for Australia. It applies to all businesses regardless of their size or business structure. The ACL is enforced by the Australian Competition and Consumer Commission (ACCC), the state and territory fair trading agencies and, where it applies to financial services, the Australian Securities and Investments Commission (ASIC).

What do the competition and consumer laws do for me?

One of the primary aims of the Act is to promote a level playing field for businesses of all sizes—including small and micro businesses—through fair competition. The Act does this by giving you and your business rights that protect you in your dealings with suppliers, competitors and customers. It also imposes obligations on you in these dealings.

The Act also gives businesses a right of private action if they have been adversely affected by any conduct that may breach the Act.

This booklet tells you more about these rights and obligations, the role of the ACCC and where and how you can get further information and assistance.

What is the ACCC?

The ACCC is the Commonwealth body responsible for ensuring that businesses abide by the rules in the Act.

What can the ACCC do for my business?

The ACCC *can*:

- provide you with information on and help you understand your business' rights and obligations under the Act
- tell you about companies and individuals that have broken the rules and that the ACCC has taken action against
- investigate alleged breaches of the Act and potentially take enforcement action for breaches of the Act
- refer you to other agencies if your issue does not involve the Act
- help you in these ways via the ACCC website, by phone or by email.

The ACCC *cannot*:

- provide you with legal advice—even on the Act
- provide advice on contractual matters or any other matters that fall outside the Act, including those involving financial products or services
- comment on the reputation of a business, or whether purchasing a business or franchise is a good investment
- automatically get involved to resolve your business dispute, even if you think the Act's rules have been breached.

The competition rules

The Act gives you a number of rights when you are dealing with suppliers, other businesses and customers. It also gives guidance on how you should conduct your own business dealings.

Other businesses

The general rule

One of the most important protections for your business is the general rule that businesses cannot engage in conduct that limits or prevents competition. In simple terms, conduct is anti-competitive if it lessens competition or restricts the entry of new businesses into a particular market.

Anti-competitive conduct between businesses often allows the businesses involved to increase prices and lower the quality of goods and services they supply to consumers, as they don't need to worry about a competitor offering a better value or higher quality alternative.

Example

If a number of clothing retailers in the same shopping centre make an agreement with each other and with their landlord to restrict the ability of new retailers to obtain a lease in the shopping centre, this is likely to be anti-competitive.

The specific rules

There are also some specific rules that protect your business by prohibiting arrangements or understandings between competitors that:

- *are about prices—price fixing*
If a number of smash repairers in a geographic area get together and decide to use the same rates when quoting for certain repair work, this will amount to price fixing.
- *allocate territories or customers—market sharing*
If a number of fruit wholesalers decide that they will each only sell to specific and agreed supermarkets or other retailers, this will amount to market sharing.

- *restrict the supply of goods or services to a particular business—boycotts*

If a group of medical equipment wholesalers decide that they will all stop supplying to hospitals if the hospitals don't agree to purchase at a certain price, this will amount to a boycott.

The Act also prohibits conduct that:

- involves a business with substantial market power taking advantage of this power for an anti-competitive purpose—misuse of market power
- involves a business with a substantial market share pricing goods or services below their usual cost for a sustained period for an anti-competitive purpose—predatory pricing
- is so harsh and oppressive that it goes beyond hard bargaining and good conscience—unconscionable conduct
- breaches any of the mandatory codes under the Act, if they apply, including the Franchising Code of Conduct.

Suppliers

Many small businesses contact the ACCC with concerns that certain suppliers will not sell to them. It is important to note that your business has no automatic right to be supplied. Just as you may choose who you would like to do business with, a supplier is entitled to do the same.

Only in very limited circumstances would a refusal to supply risk breaching the Act—for example, where your supplier misuses their market power, engages in a boycott or places restrictions on your freedom to deal with other businesses or consumers.

Examples

If a building material supplier will only supply cement to builders if they also agree to purchase bricks from the supplier's brother's company (i.e. a separate business), this conduct will amount to third-line forcing and will breach the Act, regardless of whether the conduct substantially lessens competition.

A jeweller who will only sell a pendant to a consumer if they also buy a chain is engaging in conduct known as full-line forcing, but this conduct will only breach the Act if it has the purpose or is likely to have the effect of substantially lessening competition. If there are a large number of jewellers in the area to buy pendants and chains from, this conduct is unlikely to breach the Act.

Dealing with your supplier is the same as dealing with another business if the supplier is also your competitor.

Example

A computer manufacturer supplies a number of retailers with a particular brand of computers and also sells that brand of computers directly to the public.

In this situation the manufacturer is both a supplier and a competitor of the retailers.

Suppliers are not permitted to set minimum prices at which your business must resell their product, or otherwise prevent you from discounting. Such conduct is known as resale price maintenance.

Example

To maintain the exclusive image of its products, a beauty product supplier requires that retailers and salons selling its products to price them above a certain amount.

By requiring retailers and salons to price above a minimum amount, the supplier is engaging in resale price maintenance, and this conduct breaches the Act.

Can the ACCC allow anti-competitive conduct in some circumstances?

In certain circumstances the ACCC is able to grant legal immunity for conduct that would otherwise breach the Act.

In particular, the ACCC may grant immunity to small businesses to collectively negotiate terms and conditions (including price) with suppliers if this is in the public interest.

However, the processes to obtain immunity are detailed and you should refer to other ACCC publications (see page 9) for more information.

The consumer protection rules

Having good relations with customers is vital for most small businesses anyway, but there are also rules about your rights as a business owner or operator and your customers' rights when you are selling them goods or services.

The ACL outlines a number of rules that all businesses must abide by in all of their dealings with customers, including in advertising and verbal statements made about goods and services.

The general rule

Businesses must not engage in conduct that may mislead or deceive their customers. In most cases, if you are truthful and up-front about all relevant terms and conditions, you will avoid doing this.

The specific rules

Businesses must not make false or misleading representations about specific characteristics or aspects of a good or service—for example, sponsorship, price or place of origin—or about the consumer guarantees.

The rules outlined above apply equally to your competitors. So, just as you must take care to ensure that your advertising is never misleading or deceptive and that it never contains misrepresentations, your competitors must do the same. You also have a right to take action against a competitor if your business has suffered a loss because they have engaged in conduct that may breach the Act.

Consumer guarantees

Every time you sell a product or service to a consumer, or manufacture a good that is sold to consumers, you must abide by the consumer guarantees.

Both suppliers and manufacturers guarantee that goods:

- are of acceptable quality—they will be safe, durable and free from defects; they will be acceptable in appearance and finish; and they will do the job that such things are usually used for
- will match any description given to the consumer.

A supplier also guarantees that the consumer is buying goods that:

- are fit for any disclosed purpose—will do the job the consumer is told they will do
 - will match the sample or demonstration model
 - have a clear title and no undisclosed securities.
- Consumers also have a right to undisturbed possession.

A manufacturer guarantees that repair facilities and spare parts will be made reasonably available.

A service provider guarantees that services:

- will be provided with care and skill—they will use an acceptable level of skill and/or technical knowledge and take care to avoid loss or damage
- are fit for any disclosed purpose
- will be supplied within a reasonable time, if no time frame has been agreed.

If you don't comply with a guarantee, your customer may take action against you to recover a remedy.

You cannot reduce or limit your liability under the consumer guarantees—for example by saying 'no refunds on sale items' or 'all care but no responsibility' on your receipts. And if you misrepresent consumers' rights you risk breaching the Act.

The consumer guarantees help your business by giving consumers greater confidence and protection when they make purchases, and they also clarify the circumstances where you will be legally obligated to provide a remedy to a consumer.

What should businesses do if they think another business has breached the Act?

The Act provides individuals and businesses with a right of private action if they have been adversely affected by a business that may have breached the Act.

If you have evidence that another business has engaged in conduct that is likely to breach the Act, you should seek legal advice about your rights. You can also make a complaint to the ACCC.

What should businesses do if they think they have breached the Act?

If you are concerned that you have breached the Act, you should always seek legal advice. The ACCC also encourages individuals and businesses that might have breached the Act to come forward and cooperate with the ACCC to address the possible breaches.

How can I get more information about the Act?

You can get more information from the ACCC by:

Calling the small business helpline on 1300 302 021

Visiting the ACCC website at
www.accc.gov.au/smallbusiness

The ACCC also sends periodical updates about key issues in the small business sector through its Small Business Information Network. To receive this free service, please email 'SUBSCRIBE' (in the subject field) to smallbusinessinfo@acc.gov.au along with your details.

On the website you will find links to other relevant publications, including:

- *Small business, competition and consumers*— a detailed booklet telling you more about some of the topics outlined in this guide
- *the Business snapshot suite*—publications on key issues, developed specifically for businesses
- *Advertising and selling*—a booklet explaining the different types of advertising practices you should know about
- *Consumer guarantees training module*—a video for business owners, managers and sales staff explaining the consumer guarantees
- *Competing fairly*—a suite of short videos explaining key issues, developed specifically for businesses
- *The franchisee manual*—a booklet explaining the Franchising Code of Conduct and how to resolve franchising disputes
- *Authorisations and notifications: a summary*— a booklet outlining the processes for authorisations and notifications.

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