Reflections Of A Regulator

The silly things that businesses should never, ever do ...

Dr Michael Schaper
ACCC Deputy Chair / Adjunct Professor, Curtin University
Michael.schaper@accc.gov.au or Michael.schaper@gmail.com

John Curtin Institute of Public Policy, Curtin University
Friday 20th April 2018
THE STRAY SHOPPING CARTS
OF EASTERN NORTH AMERICA
A Guide to Field Identification

Julian Montague

Abrams Image, 2005

How to identify abandoned shopping trolleys.
Schaper’s Unofficial Top Traps

1. Advertising: beware of your fine print
2. Blaming price rises on someone else
3. Rigging online reviews
4. Silencing your customers
5. Running a cartel
6. Signing up to a scam
7. Selling unsafe goods
The ACCC: What We Do

• We’re a **national regulator** overseeing laws on consumer protection, fair competition, product safety, infrastructure access

• Administer the **Competition & Consumer Act 2010** (previously the **Trade Practices Act 1974**)

• The ACCC also **regulates specific industries** (energy, telecommunications), industry codes (franchising, horticulture) and price monitoring (airports, postage, stevedoring).

• We are an **independent statutory agency** within the Treasury portfolio

• We have seven **Commissioners** (statutory appointments), 800 staff and offices in each state and territory

• An **enforcement agency** - the ACCC does not set policy

• Most enforcement action decided through the courts (30+ cases a year)

• **Does not provide private rulings**: firms need to get their own independent advice
Legal Framework

- *Competition & Consumer Act 2010*
- Includes the Australian Consumer Law
- Laws apply across the country
- Apply to all activities “in trade or commerce” – legal structure is usually irrelevant
- Covers both goods and services
- Activities of government often exempt
- ACCC cannot impose penalties: court-based litigation (but can issue infringement notices) …
- But can seek **banning orders and fines for directors and company officers.**
A Decade In Review: Changes Between 2008-2018

- New Australian Consumer Law (2011)
- C & C Act replaces TPA (2011)
- New unfair contracts law (2016)

- Received almost 90,000 SB complaints and enquiries
- Number of Commissioner Meetings: 520
- Number of Committee meetings: 1,500
- Number of businesses in Australia:
  - 2007: 2,051,085
  - 2017: 2,171,544
- Number of presentations Given: +500
- Number of national SBC meetings: 30
- Number of SB Commissioners
  - 2008: 1
  - 2018: 5
- Number of electronic SB subscribers
  - 2008: 0
  - 2018: 7,800
A Decade Of Small Business Ministers

Kelly O’Dwyer
Bruce Billson
Mark Arbib
Brendan O’Connor
Craig Laundy
Michael McCormack
Gary Gray
Nick Sherry
Craig Emerson
Chris Bowen

accc.gov.au
ACCC Petrol Monitoring Report identifies higher prices in regional WA

ACCC refers about 200 matters to the WA Small Business Commissioner each year

225,000 businesses operating in WA in 2016

32,000 entries – 28,000 exits

Source: ABS cat no 8165.0.

Nov 2017: Fastway Couriers (Perth) pay $9,000 penalty for breaches of the Franchising Code

Sept 2015: ACCC grants exemption from certain provisions of the Wheat Code for Bunbury bulk wheat port terminal

Sept 2016: ACCC approves Seven West’s acquisition of The Sunday Times and pethnow.com.au from News Corporation

July 2017: Snowdale pays $750,000 penalties for making false or misleading representations that its eggs were ‘free range’
Our Work Covers The Glamorous…
And The Not So Glamorous

HAIR STUDIO CONTRACT CONTAINS UNFAIR TERMS
ACCC investigates

UN-FLUSHABLE ‘FLUSHABLE’ WIPES
ACCC investigates
Not universally appreciated ...
At Times We Struggle With Technology… But We’ve Improved

“Oh… so you’d like to subscribe to our email information network…?”

2012: “No problems - simply complete this paper-based form and fax to the ACCC – we will then manually process your request and you’ll be subscribed within two weeks”

2017: Visit website, type your details and click ‘subscribe’
Some People Appreciate Our Work… Others Don’t

The @acccgovau are the most useless, toothless, totally irrelevant govt. agency going around. And that is a massive pool to choose from.

Are you KIDDING me? We lived in FNQ for past 12 months and it did not move from $1.39 for even one day! Petrol stations said if they made it lower they would lose to opposition ffs. The @acccgovau were useless as tits on a bull when they SAY they investigated.

the @acccgovau is a sleeping, three legged, toothless, castrated, one eyed watchdog!

I am actually suggesting that the ACCC is, in relation to telcos, as useless as a chocolate teapot.
1. Misleading Customers …
The Devil Is Still In The Detail
(or the beer, the bread, the bacon...)

Coles bread
Byron Bay Pale Lager
Free-range eggs
Honey
Nurofen
iiNet
Bacon

mmmm... bacon
What’s Wrong With This…?

Independent Liquor Group
What’s Wrong With This…?

Conroys Pty Ltd

![Image of Breakfast Bacon packaging](image-url)
What’s Wrong With This…?

Maggie Beer Products Pty Ltd
What’s Wrong With This…?

‘Organic’ Water
2. Don’t Blame Your Price Rises On Someone Else

On 8 June 2012, the managing director of Brumby's Bakeries Pty Ltd distributed a newsletter to approximately 250 Brumby's franchisees which contained the following statement:

"... We are doing an RRP review at present which is projected to be in line with CPI, but take an opportunity to make some moves in June and July, let the carbon tax take the blame …"
3. Don’t Cut, Paste, Or Play Clever Online

What do these four companies have in common?

Electrodry  Citymove  Meriton  Aveling Homes

...but no bacon...
It’s a breach of the Australian Consumer Law to mislead or deceive customers or other businesses.

That includes “rigged” reviews.

2015 – An Electrodry franchisee paid penalties of $215,000 for publishing fake online reviews

2015 – Citymove paid penalties of $30,600 concerning false testimonials about its furniture removal services

2017 – Meriton took steps to prevent guests it suspected would give an unfavourable review from receiving TripAdvisor’s ‘Review Express’ email

2015 – Court ordered $380,000 penalties against Aveling Homes for misleading the public in connection with two online review sites
4. Don’t Try To Silence Your Customers

In December 2017, WA-based building company 101 Residential (part of the Scott Park Group) amended its standard home building contract, following ACCC concerns.

**ACCC Compliance**

Between October 2014 – August 2017, their building contract contained ‘non-disparagement clauses’ that allowed it to:

- prohibit customers from publishing any unapproved information about the company, including online reviews
- remove any published information
- suspend work on the customer’s contract site
- ultimately terminate the customer’s building contract.

Online reviews help people make informed purchasing decisions – so consumers should be free to have their say openly.
5. Keep Your Cartels Quiet …

In March 2015, the ACCC forgave Forrest’s controversial iron ore ‘cartel’ call.

“All of us should cap our production now and we’ll find the iron ore price will go straight back up to $70, $80, $90 and the tax revenues which that will generate will build more schools, more hospitals, more roads, more of everything which Australia needs — universities etc.”

The ACCC took into account Fortescue’s position that Mr Forrest’s comments were made ‘off-the-cuff’ in response to audience questions, were hypothetical and intended to encourage a policy debate about the long-term future of the iron ore industry.
In 2002, the Tasmanian Atlantic salmon industry was in financial difficulty - supply was outstripping demand.

The Tasmanian Atlantic Salmon Growers Association decided that if all members culled stocks by around 10%, this would meet demand and avoid further price falls.

It sought legal advice but did not correctly brief its lawyers.

Growers discussed, approved and circulated proposed plan.

The ACCC investigated; the cull stopped. Due to state of the industry, fact that legal advice had been sought, and cooperation shown, the ACCC did not pursue penalties. Instead obtained court orders for an industry-wide legal compliance training program and stop on future culls.
... be careful what you say in your emails ...

• “My business partner has told me not to refer work after noticing your prices are undercutting us…”

• “It’s a pretty much unsaid rule that we keep to the same pricing.”

“Ideally if we were all at the same pricing, we would all make more money.”

“We don’t need to be competing against each others, we need to team up”
Queensland pre-mixed concrete cartel

The Pioneer, Boral and CSR cartel involved bid rigging, price fixing and market sharing in the pre-mixed concrete market in south-east Queensland from 1989 until 1994. The participants had more than 50 regular meetings and phone conversations. In addition to fixing prices, they agreed on market shares and not to compete on specified major projects. The participants even engaged an accountant to monitor market shares so they could enforce compliance with the agreement. The arrangement led to considerable overcharging on major construction jobs, including federal, state and local government projects.

Penalties of $6.6 million were imposed on each company. Penalties were also imposed on six executives, the maximum being $100,000. The case demonstrated a blatant disregard for the law, as each of the corporate groups had previously been found to have engaged in similar conduct.

... don’t use your accountant to arrange your cartel ...
Avocados are $7.00 each because we are suffering a supply crisis due to the horrible weather...
MATAMOROS, Tamaulipas — A leaked video obtained by the Breitbart Texas shows a crew of Gulf Cartel gunmen preparing to incinerate dozens of murdered victims. They are also seen playing soccer with a human head.
... especially with a Mexican connection
The best type of cartel
6. Check Your Bills Before You Pay Them

You receive a really professional looking letter claiming you owe money for your domain name. It’s so similar to the one you actually own … but there are missing suffixes (‘.net’ or ‘.com.au’)

<table>
<thead>
<tr>
<th>ORGANISATION</th>
<th>ALWAZ WHYNS LAWYERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOMAIN</td>
<td><a href="http://WWW.ALWAZSWHYNS.COM">WWW.ALWAZSWHYNS.COM</a></td>
</tr>
<tr>
<td>PRICE</td>
<td>$200.00 INC GST</td>
</tr>
<tr>
<td>INCLUDES</td>
<td>2 YEARS REGISTRATION, FREE EMAIL AND WEB</td>
</tr>
<tr>
<td>SPECIAL OFFER</td>
<td>* PAYMENTS RECEIVED WITHIN 2 WEEKS GET A</td>
</tr>
</tbody>
</table>

accc.gov.au
7. Try Not To Sell Dangerous Things

It’s **illegal** to sell unsafe products, or ones that don’t comply with the relevant safety standards.

If you sell something that injures a person, you **must** to report it to the ACCC within two days.

The ACCC and Federal Minister can compulsorily recall dangerous products.
ACCC Contacts

Small business helpline
1300 302 021


Subscribe to the Small Business Info Network

Free Online Training Programs
www.ccaeducationprograms.org

Join the Small Business in Focus mailing list!