The primary competition, fair trading and consumer protection legislation in Australia is the Trade Practices Act 1974 (the Act). Also, each State and Territory has a Competition Code, and fair trading and consumer protection laws.

Virtually all businesses and the people behind them are required to comply with these laws.

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

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

The ACCC has a fundamental role in securing compliance with the Act by:

- informing business and consumers about the rights and obligations created by the Act and about the role of the ACCC in enforcing it
- detecting possible contraventions of the Act, and addressing them through administrative settlements and litigation.

The ACCC is an independent, statutory, government authority serving the public interest.

The ACCC does not act on behalf of particular interests. It does not provide professional or commercial advice, education, mediation or conciliation services. The ACCC does not make rulings or arbitrate on conduct—except pursuant to its Adjudication and Regulatory Affairs administrative functions (see Authorising anti-competitive conduct and Industry regulation and price monitoring in Related topics).

Where the ACCC is unable to pursue a particular matter, it provides information and referrals to relevant agencies to assist enquirers.
Compliance priorities

The ACCC's current compliance priorities are set out in its Corporate Plan (see Corporate documents box), and include:

- to pursue and achieve appropriate remedies for:
  - serious cartel behaviour such as price fixing, market sharing and primary boycotts
  - deceptive and unconscionable conduct
- to achieve greater certainty in interpretation of the law on unconscionable conduct and in current misuse of market power matters.

The ACCC will change its focus within and beyond these priorities, as required to suit prevailing marketplace conditions that substantially affect competition and consumers.

Compliance objectives

Contraventions of the Act can cause serious detriment to consumers and business directly, and by damaging the competitive process that is crucial to a dynamic and healthy economy.

The ACCC therefore seeks to achieve deliberate compliance with the Act, by providing useful information to business and consumers, and taking action to resolve possible contraventions.

The ACCC aims to prevent contraventions of the Act from arising and, where they do occur, to address them so as to encourage compliance by the business concerned and businesses generally. By pursuing possible contraventions, the ACCC also seeks to produce clarity and certainty for business and consumers about the law and to identify areas for possible law reform.

To do this, the ACCC employs an integrated enforcement regime encompassing information dissemination, information gathering, and resolution of possible contraventions administratively and through litigation.

Information dissemination

The ACCC provides a wide array of targeted and general publications, and liaises with many and varied business, consumer and government interests, about the Act and the ACCC's role in its administration. Communication of the ACCC's enforcement role is fundamental to the effectiveness of its information and liaison activities.

The ACCC publicises its enforcement activities generally, including by making known that it is focussing upon particular conduct or sectors from time to time. The ACCC reports specifically on all of its public enforcement outcomes.

By actively promoting awareness and understanding of the rights and obligations created by the Act, and the role of the ACCC in enforcing it, the ACCC encourages business to seek to know and voluntarily comply with the law. This also encourages business and consumers to exercise their rights under the Act, and to report possible contraventions to the ACCC.

The ACCC does not make public statements or otherwise provide information concerning individual investigations in progress, except on suitable terms e.g. where it is seeking specific assistance in investigations.

Information gathering

The ACCC obtains extensive market information from many sources. It detects possible contraventions of the Act through a variety of means, for example:

- enquiries and complaints
- observation of marketplace conduct and public reports of same
- proactive market enquiries
- information from governments within Australia and internationally
- research and analysis
- government, consumer, and business consultative and advisory mechanisms
- in performance of its various functions.

The ACCC's policy on the collection and use of information in the course of its enforcement and regulatory activities is set out in its publication Collection and use of information October 2000 (see Publications in Related documents box).

Most possible contraventions of the Act that come to the ACCC's attention are raised by individual Australian consumers and businesses directly affected by the conduct. Possible contraventions are often reported by competitors, or past or current representatives, of businesses.

**ACCC co-operation policy for enforcement matters**

The ACCC has a general policy of encouraging people and companies who might have contravened the Act to come forward and co-operate with the ACCC in addressing their possible contraventions of the Act.

Such co-operation can be recognised by the ACCC through, for example: complete or partial immunity from action by the ACCC; ACCC submissions to the court for a reduction in penalty; or administrative settlement instead of litigation. This policy is flexible and evolving, and the ACCC determines each case on its merits.

Immunity will not be granted where the person or company concerned has compelled or induced someone else to take part in the conduct or where they were the ringleader or originator of the contravention.

The policy applies only to potential civil contraventions of the Act (under the competition, fair trading and consumer protection provisions). Discretion regarding immunity for criminal conduct (under some fair trading and consumer protection provisions) lies with the Commonwealth Director of Public Prosecutions, not the ACCC.

For details of the co-operation policy and how to approach the ACCC under it, see ACCC co-operation policy for enforcement matters July 2002 (see Publications in Related documents box) and ACCC leniency policy for cartel conduct (see Publications in Related documents box and below).

If you are unsure whether you have contravened the Act, or otherwise want to “blow the whistle” on a possible contravention, approach the ACCC.

**ACCC leniency policy for cartel conduct**

The ACCC has a special leniency policy regarding co-operation in uncovering and addressing cartels formed by competitors—such as price fixing, market-sharing, bid-rigging, customer-sharing, production quotas or sales quotas arrangements.

Cartel behaviour is inherently anti-competitive and harmful. The leniency policy provides clear and certain incentives to discourage the continuation and formation of cartels.

Specific conditions apply to the granting of leniency for participation in cartels, including that the leniency applicant must not have been involved in the coercion of other persons to participate in the cartel and must not have been the clear individual leader in the cartel.

Subject to the terms of the leniency policy, co-operation will be recognised by the ACCC where the person or company concerned is the first to make an application for leniency in respect of the cartel: through immunity from ACCC proceedings (where the ACCC is unaware of the cartel); or immunity from the ACCC seeking pecuniary penalty (where
the ACCC is aware of the cartel but in its view has insufficient evidence to commence proceedings concerning the cartel).

For details of the leniency policy and how to approach the ACCC under it, see ACCC leniency policy for cartel conduct June 2003 (see Publications in Related documents box). See also: ACCC co-operation policy for enforcement matters – above.

If you are unsure whether you have been involved in a cartel, or otherwise want to “blow the whistle” on a possible cartel, approach the ACCC.

Inter-agency collaboration
The ACCC collaborates with other government agencies in Australia and elsewhere to best serve competition and consumer outcomes efficiently and effectively on State/Territory, national and international bases.

The ACCC has formal public arrangements with various government counterparts (see Related topics).

Requests for voluntary provision of information
The ACCC’s activities in detecting and assessing possible contraventions of the Act are tailored to suit the circumstances of the particular enquiry or allegations. It typically requests persons who might have relevant information to provide such information voluntarily.

The ACCC may make enquiries of people such as customers, competitors, suppliers, relevant government authorities, etc, as well as the subject businesses.

The ACCC will usually put information or allegations to subject businesses at a relatively early stage of investigations. The ACCC’s timing in approaching subject businesses will depend upon its balancing of the effective and efficient collection of relevant information from various sources.

Also, the ACCC has powers to issue statutory demands to persons who might hold information relevant to possible contravention of the Act – see below.

ACCC powers to issue statutory demands for information
In conducting enquiries about possible contraventions of the Act, the ACCC may issue statutory demands for information. The ACCC uses these powers having regard to its effective and efficient collection of relevant information, and the imposition upon the person to whom the notice is issued.

Where the ACCC, the Chairperson or the Deputy Chairperson has reason to believe that a person is capable of providing information, documents or evidence about a matter that constitutes or may constitute a contravention of the Act, a member of the ACCC may issue a notice requiring the person to provide the information, documents or evidence. This includes requiring people to appear before the Commission in person.

Similarly an ACCC member may issue a notice authorising ACCC staff to enter premises and inspect and copy documents in a person’s possession or control, to ascertain whether they have engaged in such conduct.

The ACCC uses these powers to obtain information from people who might have contravened the Act, and also from others. For a variety of reasons, people sometimes do not wish to voluntarily provide information to the ACCC, or might not be otherwise able to do so because of confidentiality or other legal considerations.

Where there is possibility of unwarranted delay, resistance, incompleteness, concealment, destruction or other interference with the ACCC’s enquiries, its use of its statutory demand powers becomes more likely.

Resolving possible contraventions

In pursuing compliance with the Act, the ACCC seeks to achieve the following outcomes according to the circumstances of the matter:

- establishing contravention of the Act and clarifying the law
- stopping offending conduct
- facilitating restitution for consumers and businesses adversely affected
- deterring the business concerned, and other businesses, from offending conduct
- penalties or fines.

The extent to which such outcomes will be pursued, if at all, depends upon whether there is a possible contravention of the Act and, if so, whether there is sufficient evidence of possible contravention, its seriousness, and its detriment to competition and consumers.

When the ACCC examines potential trade practices issues and allegations, a variety of informal treatments may be used to address them. For example:

- where possible contravention of the Act is highly unlikely, the ACCC may provide information to interested parties to assist them in dealing with the matter and to gain a better understanding of the Act
- where there is insufficient information to support further enquiries at the time, the ACCC may postpone or cease investigations, with or without notifying the businesses concerned of its investigations
- where a possible contravention appears accidental, and of limited detriment to consumers and of limited gain to business, the ACCC may draw the possible contravention to relevant parties’ attention and provide information to encourage rectification and future compliance
- where a business has promptly and effectively corrected a possible contravention and implemented measures to prevent recurrence, the ACCC may deal with the matter informally.

The ACCC maintains records of information it receives and its enquiries, and generally may draw on them at any time.

Formal administrative resolutions

To resolve a possible contravention of the Act, the ACCC may decide to accept formal administrative settlements or undertakings from businesses, including in addition to or in lieu of taking legal proceedings.

It usually does so pursuant to its power under the Act to accept court-enforceable undertakings.

The ACCC does not accept offers of such undertakings unless the undertakings are to be made public and do not contain denial of contravention of the Act.

The ACCC may enforce such undertakings in court if they are not honoured.

See Section 87B of the Trade Practices Act August 1999 (Publications in Related documents box).

Litigated resolutions

Only a court can determine whether a contravention of the Act has occurred and make orders against offenders. The ACCC’s role is to bring matters before the courts, so they can rule on whether contraventions have occurred and order suitable remedies and deterrents.
The ACCC commences proceedings under the Act in the Federal Court of Australia. Decisions of the Federal Court can be appealed to the Full Court of the Federal Court, and then to the High Court of Australia.

**Notice of proceedings**
Before commencing legal proceedings, the ACCC usually gives notice to the intended respondents. In some circumstances the ACCC will not do so, for example where it seeks to preserve evidence or assets.

**Formal demands prior to commencement of proceedings**
Where the ACCC is satisfied that a contravention of the Act has likely occurred and it is prepared to commence legal proceedings, it may make formal demands of the intended respondents and will often do so by letter.

The ACCC specifies what action it considers should be taken to resolve the matter and requests a response by a specified time. If there is no response by the specified time or all the specified action is not taken, the ACCC may commence proceedings without further notice.

**Proceedings against individuals**
The ACCC takes proceedings against people who are significantly involved in likely contraventions as well as against businesses.

The ACCC considers that establishing personal liability for contraventions is of intrinsic importance in generally deterring personal and corporate contraventions of the Act.

**Court rulings**
The courts can make a wide range of findings and orders, for example:

- declarations that a company or individual has contravened the Act
- require respondents to publish public notices about their conduct and corrective advertising, and to disclose relevant information to others such as customers
- injunctions restraining current or future conduct, or requiring respondents to take certain action
- findings of fact which show contraventions of the Act, so that damages may be recovered by consumers and business affected by the conduct
- performance of community service
- place respondents on probation.

For contravention of the competition provisions of the Act, penalties of up to $10 million for companies, and $500,000 for individuals, per contravention may be imposed.

For contravention of the criminal fair trading and consumer protection provisions of the Act, fines of up to $1.1 million for companies, and $220,000 for individuals, per offence may be imposed.

**Enforcement of court orders**
The ACCC monitors obedience to court orders made in its proceedings. When court orders are not complied with the ACCC will seek to enforce them, and also may bring proceedings for contempt of court.

**ACCC intervention in private proceedings before the courts**
The ACCC may seek to intervene in private legal proceedings brought under the Act or other laws, where it considers it is in the public interest to do so.

In deciding whether to seek to intervene in proceedings under the Act, the ACCC has regard to whether the case involves significant public
interest, construction of the Act in untested areas or to clarify its
operation, and deleterious conduct of an international nature.

The ACCC may also seek to participate in proceedings not as an
intervening party, but as amicus curiae (friend of the court). Such
applications may be limited to making submissions on selected issues.

The ACCC will duly consider invitations by private litigants for the ACCC
to intervene in proceedings. The ACCC does not subsidise litigation
brought by private parties.

See ACCC intervention in private proceedings July 2002 (Publications in
Related documents box).

Action by business and consumers—promoting compliance
with the Act

The requirements of the Act permeate virtually all business/business
and business/consumer transactions.

Contraventions can be avoided, and mutually suitable outcomes to
rectify contraventions can often be negotiated, by parties who are aware
of their rights and obligations under the Act.

The majority of litigation under the Act is conducted by private
parties. The public interest nature of the Act is reflected in the ability of
the public to take legal proceedings concerning contraventions. Any
person is entitled to take legal action to stop most conduct in
contravention of the Act, whether or not they are directly affected by it.

Top