
ACCC's compliance and enforcement priorities for 2017

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In brief

The Australian Competition and Consumer Commission (ACCC) enforcement priorities for 2017 reveal that the national regulator will continue its enforcement focus on cartel conduct, anti-competitive practices, product safety and consumer issues.

In addition, it will continue to focus on private health insurers and new car retailers in 2017, as well as devoting new resources to enforcement and compliance in the agricultural, commercial construction, broadband, airline and credit card sectors.

In detail

On 24 February 2017, the ACCC Chairman Rod Sims announced the ACCC's 2017 Compliance and Enforcement Policy.

Enduring priorities

The ACCC will continue to give priority to the investigation and enforcement of the law in the following key areas:

- cartel conduct causing detriment in Australia (see our publication, [First criminal cartel prosecution in Australia](#));
- anti-competitive arrangements and practices;
- misuse of market power;
- product safety issues which have the potential to cause serious harm to consumers; and
- conduct which impacts vulnerable and disadvantaged consumers.

The ACCC regards the above areas to be 'enduring priorities', as they are considered to be so detrimental to consumer welfare and the competitive process that the ACCC will always regard them as a priority.

The ACCC also tends to prioritise enforcement action in relation to the conduct of larger businesses. The rationale for this is two-fold: the actions of big businesses have the potential for greater consumer detriment; and the conduct of big businesses can influence the behaviour of other market participants.

Current priorities

This year, Rod Sims noted that the ACCC's chosen compliance and enforcement priorities respond to new legislation, as well as areas the ACCC considers to be of current community concern. In particular, the ACCC's priorities for 2017, and how this may impact your business, are set out below:

ACCC enforcement priority	Potential impact on your business
Competition and consumer issues in the agriculture sector	This new enforcement priority appears to have emerged out of the market study currently being undertaken by the ACCC's Agriculture Unit into the cattle and beef sector. The study has been examining competition, efficiency, transparency, and trading issues in cattle and beef supply chains. The ACCC is due to release its final report into this sector on 6 March 2017.
Competition issues in the commercial construction sector	With a newly established team dedicated to this industry, the ACCC is expected to demonstrate this new enforcement priority by commencing investigations and prosecutions in the commercial construction industry during 2017. Participants in this sector are encouraged to undertake expedited competition law compliance reviews to be satisfied they have no exposure, especially as the ACCC has indicated there are "serious allegations of anticompetitive conduct" warranting investigation.
Consumer issues in private health insurance	The ACCC is continuing its focus on private health insurers this year, having first identified this sector as an enforcement priority in 2016. The regulator's ongoing enforcement work in this sector may be the result of industry insights emerging from the ACCC's current prosecution of a health insurer which focuses upon representations made to policyholders as to the level of cover available under its policies.
Consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims	The ACCC is continuing its focus on new car retailing this year, having first identified this sector as an enforcement priority in 2016, particularly in relation to its responses to consumer guarantee claims. Manufacturers and retailers of new cars are encouraged to review their compliance with Australia's new consumer guarantee regime. This dimension of industry is expected to be canvassed in the New Car Retailing Industry Market Study, with the the ACCC's final report due to be released later in 2017.
Issues arising from the ACCC's monitoring of broadband speed and performance claims	This is a new enforcement priority adopted by the ACCC in response to growing consumer complaints in relation to broadband speeds and performance claims, particularly outside the NBN network.
Consumer guarantees, including in relation to services such as those provided by the airline industry	This is a new enforcement priority of the ACCC, particularly in relation to the airline industry. International and domestic carriers are encouraged to review their terms of carriage and response to consumer complaints in this area.
Providing education to business and consumers in relation to new country of origin labelling laws	The ACCC will devote this year to educating the business community in relation to the new country of origin labelling laws ahead of adopting an enforcement focus in future years.
Ensuring compliance by business with new excessive payment surcharge laws	See our previous publications <i><u>Businesses banned from charging excessive surcharges</u></i> and <i><u>ACCC to crack down on excessive card surcharges</u></i> for further insights into this area.

Consumer issues arising from commission based sales business models	This is a new enforcement priority of the ACCC, which highlights the desirability of ACL compliance reviews for all businesses operating under commission based sales models.
Working with internet platform providers to prevent the supply of unsafe products into Australia	This new product safety enforcement priority builds on the ACCC's success to date in applying the Australian Consumer Law to offshore internet platforms which engage in online business transactions with Australian consumers.
Ensuring small business receives the protections of: <ul style="list-style-type: none"> (a) industry codes of conduct, including the <i>Franchising Code</i>, the <i>Food and Grocery Code</i> and the <i>Horticulture Code</i>; and (b) the new unfair contract terms law. 	The ACCC is continuing its focus on the listed industry codes of conduct and the new unfair contract terms law (as it applies to the small business community), having first identified these areas as enforcement priorities in 2016. See our previous publications <i>Government enacts unfair contract terms legislation to protect small business</i> and <i>ACCC Report highlights common terms in contracts with small business as potentially unfair</i> for further insights.

Additionally and on the back of recent Federal Court decisions in Australia heralding the Court's willingness to award higher penalties, Mr Sims has specifically stated that the ACCC will be seeking higher penalties to be paid by large businesses, which might impact the Commission's approach to agreed settlements going forward.

The takeaway

It is important that businesses operating in the industries the subject of the ACCC's enduring and new enforcement priorities review their business operations to ensure they are compliant with the requirements of the competition and consumer laws of Australia.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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