



Australian
Competition &
Consumer
Commission

Enhancing the competitiveness of livestock exports - the role of the ACCC

The ACCC: What We Do

- **National regulator**: oversees laws on consumer protection, fair trading, competition, product safety, infrastructure access
- Also regulates some specific industries (such as energy, **water**, telecommunications), industry codes (franchising, **horticulture**, wheat) and price monitoring (fuel, stevedoring)
- An independent statutory agency within the Treasury portfolio...government cannot direct
- Seven Commission members make decisions
- Dual educative and enforcement function
- Enforcement agency...does not set policy

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)

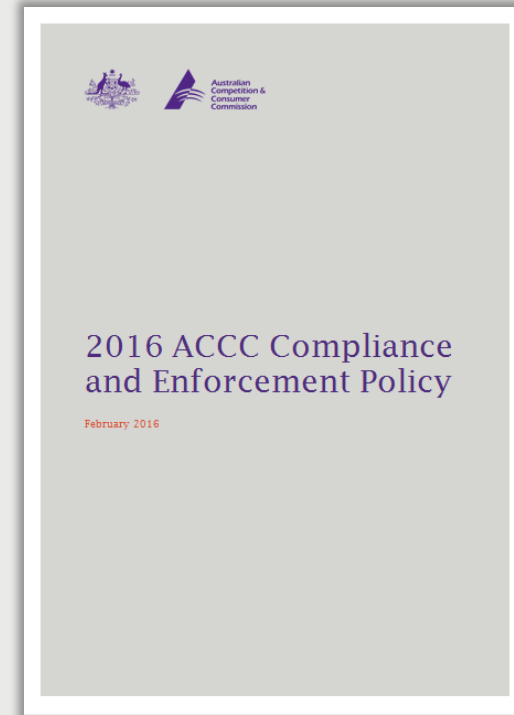
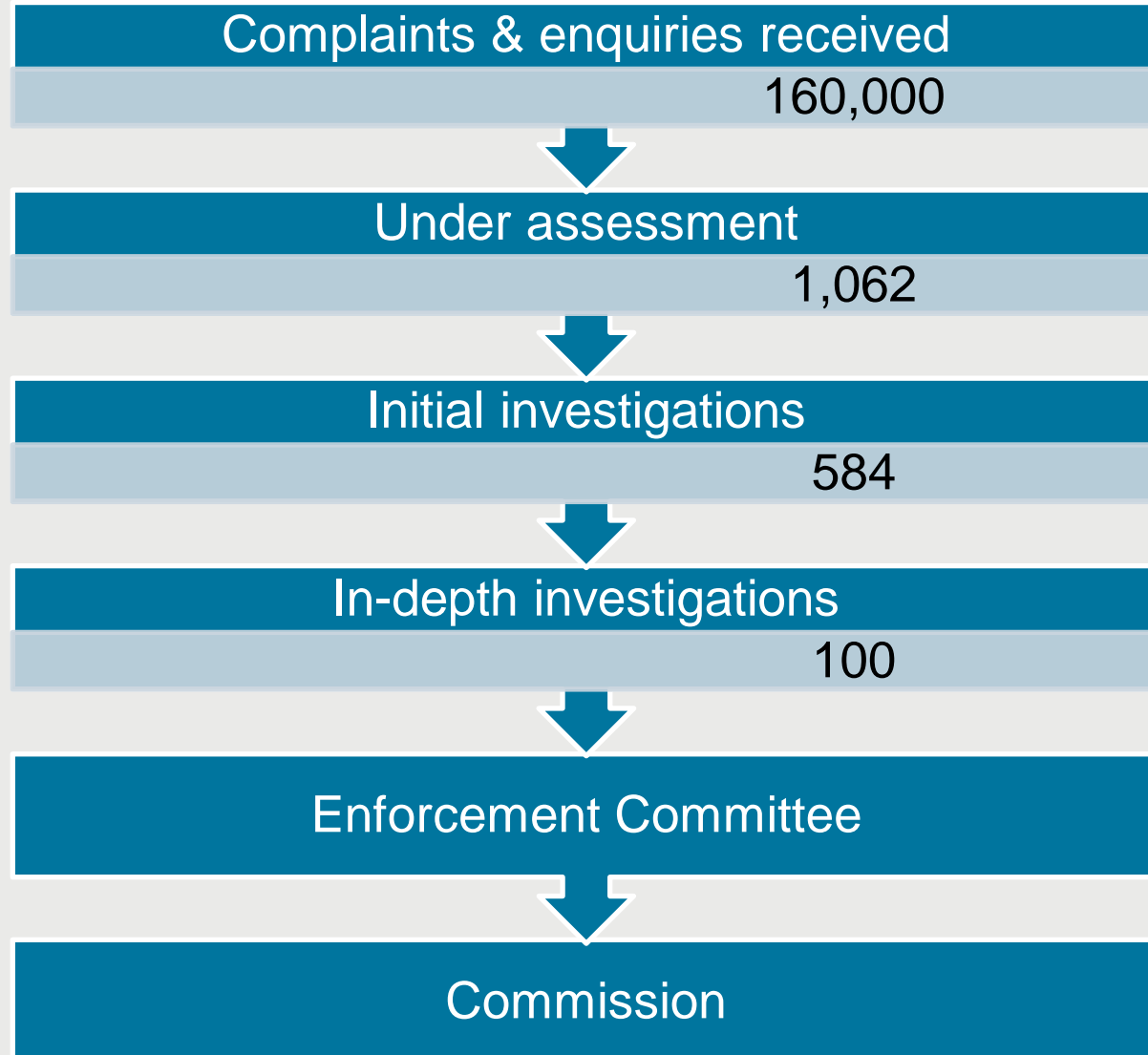


Agriculture Unit

- The Government released the *Agricultural Competitiveness White Paper* in 2015.
- The ACCC received \$11m over four years to establish the Unit to:
 - increase engagement in rural and regional areas, and
 - increase our knowledge of the factors affecting the competitiveness of agricultural markets.
- The Government has appointed Mick Keogh as a Commissioner.



Complaints & Enquiries



Takes about 30 matters to court
+ 30 enforceable undertakings
& infringement notices per year



Competition laws



Fair trading



Infrastructure regulation/monitoring



Market studies



Unfair contract terms

Competition Laws

Cartel conduct

- Price fixing, market sharing, bid-rigging, restricting output (e.g. Salmon cull)

Misuse of market power

- Harper competition review recommended amending

Anti-competitive agreements

- contracts, arrangements and understandings (e.g. Cement Australia)

Mergers

- ...that substantially lessen competition (e.g. JBS Swift/Primo)

Enduring priority for the ACCC

Highly damaging to markets

Court action requires evidence

Business Day

MARKETS MONEY PORTFOLIO QUOTES SMALL BUSINESS

Visy and Pratt fined \$36m over price fixing



Richard Pratt.
Photo: John Donegan

Dewi Cooke and Leonie Wood
November 2, 2007 - 12:30PM
Page 1 of 2 | [Single page](#)

Billionaire Richard Pratt and his Visy group of companies have been fined a record \$36 million for colluding in a price fixing deal with their arch rival in Australia's cardboard industry.

Latest related coverage

- [Visy verdict reveals 'moral blindposts'](#)
- [Video: Pratt's company fined \\$36m](#)

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Apr 29 2016 at 6:04 PM | Updated Apr 29 2016 at 6:23 PM

ACCC delivers \$40m in penalties in three days



Cement Australia has been hit with an \$18.6m fine for anti-competitive behaviour in Queensland. Michele Mossop



by [Mark Ludlow](#)

The corporate watchdog scored another victory on Friday, with Cement Australia being hit with an \$18.6 million fine for anti-competitive behaviour in Queensland.


Only a day after [Colgate was fined \\$18 million](#) and the maker of [Nurofen was hit with a \\$1.7 million fine](#) for misleading conduct, the Federal Court in Brisbane hit Cement Australia and related companies in the hip pocket for breaches of the Trade Practices Act.

Bloomberg Markets Markets Tech Pursuits Politics Opinion Businessweek

Dow Chemical CEO Says DuPont Merger May Be Delayed to 2017

by Rick Clough Jack Kaskey
 @jackkaskey

October 25, 2016 — 12:49 PM AEDT Updated on October 25, 2016 — 11:55 PM AEDT



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Competition laws



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Unfair contract terms

Fair trading

- The Australian Consumer Law provides protections to consumers and small businesses
- 'Fair trading' is about complying with laws that govern interactions with other businesses and consumers
- The fair trading laws most relevant to agriculture supply chains are:



**Misleading or
deceptive
conduct**



**Unconscionable
conduct**



**Consumer
guarantees**

Misleading or Deceptive Conduct

Businesses cannot behave in a misleading or deceptive way and cannot make false or misleading claims to consumers or other businesses.

The most important question to ask when considering these laws is whether or not the **overall impression** created is false or inaccurate.

False or misleading claims are not only harmful to consumers, but can disadvantage producers who make accurate claims about, for example, the country of origin of their products.

Examples: Aussie Beer (made in China), Victoria Honey (product of Turkey and made from plant sugars).



Unconscionable Conduct

- Businesses cannot act in an unconscionable way towards consumers and other businesses.
- Conduct may be unconscionable if it is particularly harsh or oppressive or where one party knowingly exploits a weakness of another.
- Unconscionable conduct is more than just hard commercial bargaining; it must be against conscience as judged against the norms of society.

Example: ACCC v Coles Supermarkets

Coles says sorry for 'crossing the line'

ANDREW JEFFERSON

SUPERMARKET giant Coles is facing a financial penalty of up to \$10 million after it was accused of using its enormous market power to bully its suppliers.

Coles, which supplies about 35 per cent of the nation's

engaged in unconscionable conduct against certain suppliers over claims for various payments, including payments for purported profit gaps, waste and markdowns, as well as

short and delayed deliveries. Suppliers risked being sidelined if they did not meet

Courier Mail
16 December 2014

In 2014, the ACCC took two court actions against Coles in relation to dealings with suppliers; the 'Active Retail Collaboration' case and the 'Claims' case.

Following admissions by Coles and agreement on the facts, the Federal Court handed down a **landmark judgment** in both proceedings.

In December 2015, the Court found Coles' misconduct was 'serious, deliberate and repeated' and ordered **penalties totalling \$10 million**.

Coles provided an undertaking to establish a formal arbitration process overseen by the Hon Jeff Kennett resulting in **Coles refunding \$12 million to suppliers**.

Consumer (Small business) Rights

**Repair. Replace.
Refund.**

Remedy depends
on whether
problem is major or
minor

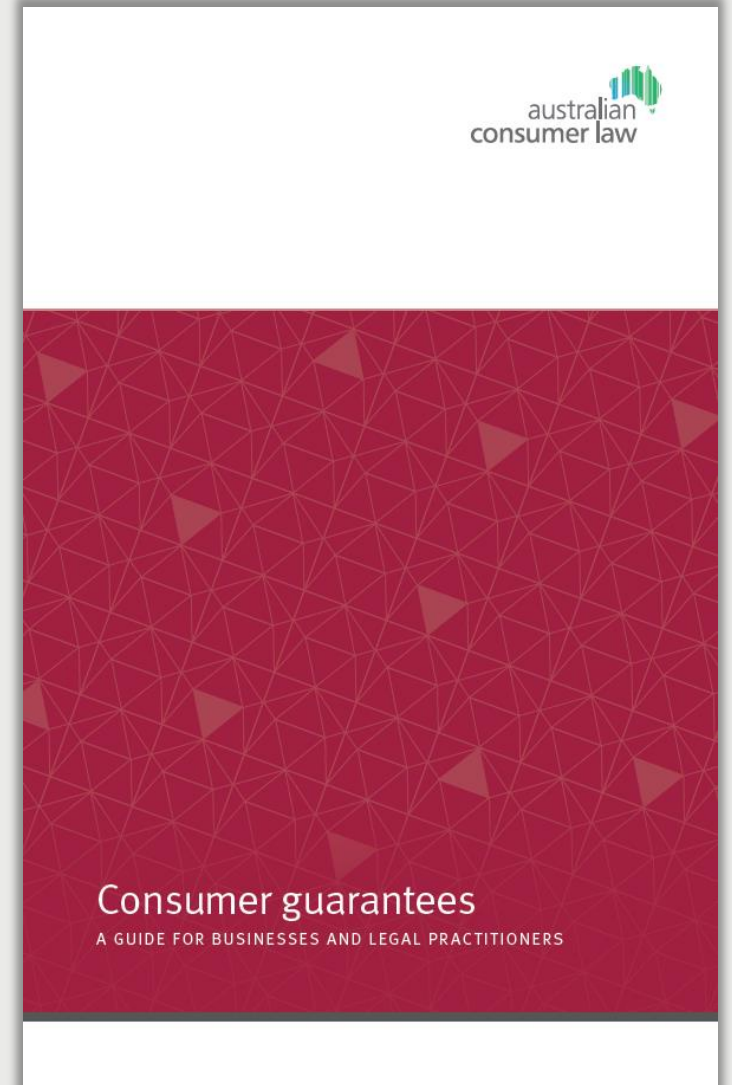
**Businesses also
have rights,**

(misused products,
changes of mind,
cheaper
elsewhere)

**Micro businesses
are consumers at
times – and**

protected under
the ACL (e.g. the
\$40,000 threshold)

**‘No refunds’ or
‘No refunds on sale
items’ statements
are not allowed**





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ACCC's role

- Monitor fuel prices
- Monitor the Australian stevedoring industry
- Monitor performance of four major airports
- Access to the NBN, setting some wholesale prices, monitoring telecommunication prices.
- Mobile telephone 'roaming'

- Regulation of water trading and charging in MDB
- The AER sets prices for electricity transmission and gas pipelines.

ACCC's role

- The ACCC can facilitate third party access to certain significant infrastructure.
- Infrastructure has included rail and ports.
- The next important infrastructure debate is likely to be about road funding and user charges.

ACCC concerned Queensland electricity prices will rise under Labor's power generators merger plan

Updated 20 Mar 2015, 2:35pm

The Queensland Government is holding talks with the Australian Competition and Consumer Commission (ACCC) over criticism of its proposal to merge major power generators.

MAP: QLD

ACCC chairman Rod Sims has written to Queensland Energy Minister Mark Bailey saying he was concerned the plan to merge CS Energy and Stanwell would drive up electricity costs.

Premier Annastacia Palaszczuk said her Government would not do anything that would drive up household electricity.

"Queenslanders need to be reassured that my Government is leading a very steady ship," she said.

"We'll be consulting, but we do not want to see any negative impact on any Queensland in relation to their power prices."

Queensland Treasurer Curtis Pitt said he was happy to work closely with the ACCC to come up with a solution.

"The important thing here is we want to work constructively with the ACCC and Mr Sims is happy to do that," he said.

Petrol prices still too high, argues ACCC

By consumer affairs reporter Amy Bainbridge

Updated 22 Aug 2016, 3:38pm

Australian motorists are paying the lowest petrol prices in 14 years, yet retailers are earning higher margins than ever before, according to new data.

The Australian Competition and Consumer Commission's (ACCC) latest report on the petrol industry shows average prices in 2015-16 were at their lowest levels since 2002.

During that period, the average price for petrol in the five largest cities - Sydney, Melbourne, Brisbane, Adelaide and Perth - was 121.7 cents per litre.

But ACCC chair Rod Sims is worried about the retail margins in those areas, which went up by 1.2 cents per litre in the final quarter of the 2015-16 financial year.

"We remain concerned about the petroleum industry's high gross retail margins, which indicate motorists are not reaping the full benefits of lower international crude oil and refined petrol prices," ACCC chairman Rod Sims said.



PHOTO: The ACCC advises consumers to use fuel price apps to shop around. (Cameron Atkins: ABC News)

RELATED STORY: [Petrol prices drop below \\$1 per litre](#)

RELATED STORY: [Petrol retailers asked to explain high profit margins](#)

MAP: Australia



Competition laws



Fair trading



Infrastructure regulation/monitoring



Market studies



Unfair contract terms

Market studies

The ACCC has capacity to initiate detailed and objective studies into the operation of specific markets in Australia.

**Eastern
Australian
Domestic
Gas Market
Study
2016**

**Motor vehicle
servicing
market study
2016**

**Beef and
cattle market
study
2016**

Cattle market study processes.

- Issues paper released. April 2016
- Submissions closed 10/7/16 (Over 50 received)
- Industry forums (Wodonga, Toowoomba, Dubbo, Mt. Gambier, Bunbury)
- Draft report (for comment) end of October 2016
- Final report, December 2016.



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Unfair contract terms

Unfair Contract Term Laws



Protect both consumers and small businesses from unfair terms where they have little or no opportunity to negotiate.



In November 2015, Parliament extended protections to cover small businesses contracts from 12 November 2016.



The ACCC is encouraging compliance with the new laws. This includes looking at contracts in the horticulture and viticulture industries that may raise concerns.

What's An Unfair Contract Term?

Standard form contracts cannot contain terms that:

cause a significant imbalance in rights

are not reasonably necessary to protect the business's interests, and

cause any detriment to the consumer or small business



A court or tribunal looks at transparency and the contract as a whole before deeming a term unfair.



Unfair term is void (treated as though it never existed), however the rest of contract will continue to bind.



Terms that set out the price are not covered by the UCT law.

When Do The Unfair Contract Laws Apply?



Applies to standard form contracts



One of the parties to contract has less than 20 employees



Upfront price is less than \$300,000
(\$1 million for multi-year contracts)

Laws enforced by ASIC (financial products and services) and ACCC and state/territory ACL regulators (every-day goods and services)

Conclusion

- ACCC has no direct role in enhancing the competitiveness of the livestock export industry
- Most of the issues the ACCC deals with have an indirect impact on industry competitiveness.
- The addition of agricultural expertise to the ACCC creates the opportunity to address specific agricultural competitiveness issues.

ACCC Contacts



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