



Goal 2: Encourage fair trading, protection of consumers and product safety

Significant outcomes in 2011–12

- The ACCC has secured over \$10 million in penalties under the Australian Consumer Law.
- The ACCC has received payment for 34 infringement notices across 14 matters with penalties of over \$220 000.
- Collective bargaining arrangements approved for small businesses involved in tomato growing, chicken growing, dairy farming, furniture and bedding retailing, sales of lottery products, paint retailing, film and television writing, grocery retailing in regional communities.
- Proceedings against a number of companies of the Heartlink Group and certain individuals was finalised for false, misleading or deceptive conduct, with penalties against two of the respondents totalling \$900 000, and a disqualification order for 15 years against the director of the Heartlink Group.
- Apple Pty Ltd was penalised \$2.5 million for misleading consumers in relation to the 'iPad with WiFi + 4G'.
- Harvey Norman was penalised \$1.25 million for misleading representations in relation to advertisements in its catalogues and on its website.
- SingTel Optus was penalised \$3.61 million in relation to misleading or deceptive conduct and false representations in relation to advertising for the 'Think Bigger' and 'Supersonic' broadband internet plans.
- Launched guidance material for both consumers and business in relation to carbon price claims.
- Conducted awareness raising campaign *Repair. Replace. Refund*, following the introduction of consumer guarantees as part of the Australian Consumer Law.
- Launched best practice guidelines for the dating and romance industry to help combat scammers that take advantage of consumers.
- Successfully negotiated the voluntary recalls of 26 potentially unsafe 'do-it-yourself' teeth whitening products from 10 different suppliers.
- Published 420 product safety recalls, which included 135 hazardous products.

Overview

The *Competition and Consumer Act 2010* contains the provisions known as the Australian Consumer Law. The introduction of the Australian Consumer Law (ACL) shifted consumer laws in Australia to a 'single law, multiple regulator' model, under which the ACL is enforced throughout Australia by the ACCC and state and territory fair trading agencies. The ACL ensures that consumers everywhere benefit from the same statutory rights.

The ACL provides:

- a broad range of regulatory powers and tools to address conduct that affects consumers and businesses and to promote fair trading
- a civil pecuniary penalties regime, and infringement notices as a means to deal with minor breaches of the law
- statutory consumer guarantees in relation to products and services
- a statutory test for unfair contract terms
- a nationally harmonised product safety regime
- a national law for unsolicited consumer agreements.

ACCC COMPLIANCE AND ENFORCEMENT TOOLS

The ACCC has a range of tools to encourage and enforce compliance with the Competition and Consumer Act and the Australian Consumer Law.

The ACCC's compliance and enforcement policy, available on the ACCC website, describes the range of powers available to the ACCC to enforce the Act and the Australian Consumer Law. These include the taking of enforcement action in the courts and the acceptance of court enforceable undertakings under section 87B of the Act. The ACCC also uses the range of tools and powers described below.

Education and advice

The ACCC makes comprehensive use of educational campaigns to provide information and advice to consumers and businesses, encouraging them to comply with the Competition and Consumer Act and the Australian Consumer Law. The ACCC takes the view that prevention of a breach of the Competition and Consumer Act is preferable to taking action after a breach has occurred.

The ACCC provides targeted and general publications; it liaises broadly with business, consumer and government agencies about the Act and the ACCC's role in its administration. The ACCC aims to ensure that consumers are sufficiently well-informed to benefit from, and stimulate, effective competition.

Communicating its enforcement role is fundamental to the effectiveness of the ACCC's information and liaison activities.

Voluntary industry self-regulation codes and schemes

The ACCC encourages and assists genuine voluntary compliance initiatives by individual businesses and industry sectors. These initiatives range from individual trader compliance programs to sector-wide initiatives, including industry charters and voluntary codes of conduct, that apply the requirements of the Competition and Consumer Act to the specific circumstances of a particular industry sector.

Administrative resolution

In some cases—for example, where the ACCC assesses potential risk flowing from conduct as low—the ACCC may accept an administrative resolution. Depending on the circumstances, administrative resolutions can range from a commitment by a trader in correspondence to a signed agreement between the ACCC and a trader setting out detailed terms and conditions of the resolution. Administrative resolutions generally involve the trader agreeing to stop the conduct and compensate those who have suffered a detriment because of it, and to take other measures necessary to ensure that the conduct does not recur.

Infringement notices

The ACCC may issue an infringement notice where it believes there has been a contravention of the Competition and Consumer Act that requires a more formal sanction than an administrative resolution but where the ACCC considers that the matter may be resolved without legal proceedings.

Examples of circumstances where the ACCC is more likely to consider the use of an infringement notice include:

- where the ACCC forms the view that the contravening conduct is relatively minor or less serious
- where there have been isolated or non-systemic instances of non-compliance
- where there have been lower levels of consumer harm or detriment
- where the facts are not in dispute or where the ACCC considers the circumstances giving rise to the allegations are not controversial, or
- where infringement notices form part of a broader industry or sector compliance and enforcement program following the ACCC raising concerns about industry wide conduct.

2.1 Promote fair trading

Strategy: Promote fair trading and minimise harm to businesses from unfair trading practices

Measures:

- Timely and effective identification and investigation of unfair conduct in business to business areas, to determine and action responses most likely to address unfairness in line with the Competition and Consumer Act
- Collective bargaining notification decisions affecting small business made within statutory timeframes
- Fair trading outcomes achieved through enforcement of mandatory codes of conduct
- Effective education and communication to inform business about their rights and obligations under the Competition and Consumer Act
- Effective remedies achieved through court and non-court action

OVERVIEW

The ACCC has a dedicated role in ensuring small businesses understand and comply with their obligations and in encouraging them to exercise their rights under the Competition and Consumer Act. Importantly, the ACCC seeks to ensure small businesses understand how the legislation helps them.

The ACCC aims to promote a competitive and fair operating environment for small business and to help raise small businesses' awareness of the Competition and Consumer Act.

The ACCC also regulates commercial behaviour, including enforcing fair trading provisions, protecting small business against misuse of market power, promoting and enforcing codes of conduct and administering the authorisation and notification provisions of the Competition and Consumer Act that allow for certain trading arrangements in the public interest.

In this way the ACCC helps 'level the playing field' for small businesses by tackling unreasonable commercial behaviour.

SMALL BUSINESS EDUCATION AND OUTREACH

Through its education and outreach activities, the ACCC plays a key role in educating businesses about their rights and obligations under the Act. The ACCC's activities with this sector are informed and assisted by its Small Business Consultative Committee and the Franchising Consultative Committee, which were established to provide a forum for addressing the competition and consumer law concerns relating to the small business and franchising sectors. In 2011–12, the ACCC held two meetings with each of these committees. The ACCC also reviewed the membership of both committees in 2012.

The ACCC produces targeted guidance material for small businesses, and works closely with industry groups and associations to raise awareness of their rights and obligations under the Act. In 2011–12, the ACCC focused on producing guidance for small businesses on the following issues:

- Carbon price representations. During 2011–12, the ACCC produced a suite of guidance material for businesses on their rights and responsibilities when making claims about the impact of the carbon price.
- Cartels. In October 2011, the ACCC launched a dedicated cartel web portal to provide businesses with easy access to information on anti-competitive arrangements.
- Consumer guarantees. As part of its national consumer guarantees awareness raising campaign launched in February 2012, the ACCC worked with small business associations to disseminate industry-specific articles and educational tools.

Other key educational products developed during 2011–12 included counter display cards and posters about legal requirements regarding refunds and returns for goods, and refunds and remedies for services. These products aim to educate both businesses and consumers about their rights and obligations under Australian Consumer Law regarding refunds or replacements. Over 45 000 of these signs and posters have been distributed to industry associations and retailers.

The ACCC has also published online six-monthly reports on its small business and industry codes activities.

In September 2011, the ACCC and the Council of Small Business of Australia jointly hosted the Australasian Consumer Fraud Taskforce 'Small business and scams' forum in Canberra. More than 70 businesses, industry association and government representatives attended to learn about and discuss the sophisticated techniques employed by scammers to target small business and how to disrupt these scams. The forum highlighted underreporting of scams impacting on small businesses and the difficulties faced by law enforcement agencies in gauging the level of financial and non-financial impact on this sector.

The ACCC also participated in a range of conferences, events and presentations organised by industry associations representing a broad range of sectors, including motor vehicles, security, franchising and accounting, to provide their members with information about competition and consumer law issues.

ALLOWING TRADING ARRANGEMENTS IN THE PUBLIC INTEREST

Under the authorisation (sections 88–91C) and notifications (sections 93–93A) provisions of the Competition and Consumer Act, the ACCC can grant protection from legal proceedings for some arrangements or conduct, on public benefit grounds, that might otherwise breach the competition provisions.

Allowing collective bargaining in certain circumstances supports the capacity of small business to trade with larger firms in a fair, yet competitive environment. Under these provisions a number of small businesses may band together to collectively bargain with a large supplier or buyer. Small businesses often lodge applications for authorisation or notifications with the ACCC. The conduct covered by the applications includes price agreements, collective bargaining and exclusive dealing.

In 2011–12 the ACCC received 28 new proposals for authorisation, more than one third of which involved small businesses. The ACCC also received and assessed more than 505 exclusive dealing notifications, a significant number of which include small businesses. These proposals and notifications included:

- exclusive dealing notifications lodged by a wide range of franchise arrangements where franchisees are required to source equipment, point of sale systems and/or stock or ingredients from approved suppliers
- the Real Estate Institute of Western Australia (Inc) (REIWA) for re-authorisation of arrangements contained in its Articles, Members' Codes of Practice, Auction Code of Conduct, Multiple Listing Service By-Laws and Standard Exclusive Agency Agreements (together, REIWA's membership framework)
- Homemakers South Limited T/A Homemakers Furniture & Sleepzone Bedding (Homemakers) for authorisation for its members stores to collectively negotiate supply agreements with suppliers of furniture, bedding and related stock, advertising and marketing services
- the Australian Writers' Guild Limited (AWG) for authorisation to collectively negotiate model agreements for use by current and future members of AWG when contracting with producers of either film or television.

Further information on authorisation arrangements, including collective bargaining can be found under *1.3 Authorisations and notifications to allow arrangements in the public interest* on page 41.

ENFORCING CODES OF CONDUCT

The ACCC is responsible for promoting and enforcing compliance with four mandatory industry codes: the Franchising Code, the Horticulture Code, the Oilcode and the Unit Pricing Code.

Franchising Code

The Franchising Code aims to regulate the conduct of participants in franchising towards each other and to ensure that they are sufficiently informed about a franchise before entering into it. The code also provides a cost-effective dispute resolution scheme for franchisees and franchisors.

In 2011–12, the ACCC continued to educate the franchising sector to promote voluntary compliance with the code. The ACCC-funded pre-entry education program for prospective franchisees, which is administered by Griffith University, continued to draw a large number of registrations. As at 30 June 2012, more than 2800 people had signed up to do the course.

The ACCC also continued to actively enforce the code. The ACCC has used its audit powers to review trader's compliance with the mandatory franchising code of conduct (see section 51ADD audit power on page 54). A number of investigations into alleged breaches of the code or the Competition and Consumer Act by franchisors are currently underway.

The ACCC has liaised with the Department of Industry, Innovation, Science, Research and Tertiary Education regarding the proposed 2013 review of the code.

Horticulture Code

The purpose of the Horticulture Code is to improve the clarity and transparency of transactions between growers and wholesalers of fresh fruit and vegetables. It also provides a fair and equitable dispute resolution procedure.

The ACCC's role is to investigate complaints and, where necessary, take enforcement action against anyone who fails to comply with the Horticulture Code.

Our role also includes promoting compliance by providing educational material such as guidelines, articles and fact sheets as well as giving presentations through our outreach programs in each state and territory.

The ACCC continued to liaise with the Department of Agriculture, Fisheries and Forestry regarding the Horticulture Code and related matters. The ACCC also used its audit powers to review trader's compliance with the mandatory horticulture code (see section 51ADD audit power on page 54).

Oilcode

The purpose of the Oilcode in general terms is to regulate the conduct of suppliers, distributors, and retailers in the downstream petroleum retail industry.

The Oilcode aims to:

- improve transparency in wholesale pricing and provide better access to declared petroleum products, as defined in the Oilcode, at a published terminal gate price (TGP)
- assist industry participants to make more informed decisions when entering, renewing or transferring a fuel re-selling agreement by requiring the disclosure of specific information
- improve the operating environment for all industry participants by providing access to a cost-effective and timely dispute resolution scheme as an alternative to litigation.

In 2011–12, the ACCC liaised with the Department of Resources, Energy and Tourism (RET) on the implementation of the government's response to RET's 'Oilcode Review Report'. The ACCC's role will include educating relevant stakeholders about the impending amendments to the Oilcode and participating in a working group to identify and address barriers to using collective bargaining provisions in the downstream petroleum sector.

Unit Pricing Code

The Unit Pricing Code is a mandatory industry code of conduct that is enforceable under the Competition and Consumer Act.

The code makes it compulsory for certain grocery retailers to use unit pricing when selling non-exempt grocery items to consumers.

This enables consumers to assess the price of a range of comparable items by using a common measure or unit price when purchasing grocery items.

The ACCC's role is to promote and ensure compliance with the code by helping grocery retailers understand their rights and obligations under the code. We do this by developing educational and guidance materials as well as by giving presentations through our outreach programs in each state and territory.

We are also responsible for investigating complaints and, where necessary, taking enforcement action against anyone who fails to comply with the code.

Since the introduction of the code in 2010, the ACCC has observed a decrease in the number of complaints concerning the use of in-store unit pricing. The ACCC has worked collaboratively with retailers to ensure they continue to comply with their obligations under the code. In particular, the ACCC has encouraged retailers to use in-store promotional material and catalogues and continue to guide consumers on the unit pricing system.

Voluntary codes of conduct

During 2011–12, the ACCC also assisted with the development of a port access voluntary code of conduct for Australian bulk wheat shipments, group buying and holiday rentals.

Section 51ADD audit power

On 1 January 2011, the ACCC was given power under section 51ADD of the Competition and Consumer Act to conduct audits to monitor compliance by traders who are subject to a mandatory industry code. These compliance audits are part of a wider strategy to ensure compliance with the mandatory codes.

This power enables the ACCC to obtain from a trader any information or documents it is required to keep, generate or publish under an industry code it is covered by. The trader has 21 days to provide these documents.

Since January 2011, the ACCC has served audit notices on 29 traders (nine on horticulture traders and 20 on franchisors). While the majority of traders have been found to be compliant with the relevant codes, the audits have revealed a small number of potential breaches which are being investigated.

EFFECTIVE FAIR TRADING REMEDIES THROUGH COURT AND NON-COURT ACTION

The ACCC seeks effective fair trading remedies by using a variety of enforcement tools, including infringement notices, enforceable undertakings, and litigation. For example in 2011–12, the ACCC instituted legal proceedings against a number of companies for engaging in misleading or deceptive conduct in relation to small businesses.

The ACCC took legal proceedings in the Federal Court against a number of companies of the **Heartlink Group** and certain individuals for engaging in false, misleading or deceptive conduct in contravention of sections 52 and 59(2) of the *Trade Practices Act 1974*, now the Competition and Consumer Act. In particular, the conduct involved false, misleading or deceptive representations about the potential earnings of Heartlink distribution businesses to sell Heartlink branded household cleaning products to independent supermarkets and stores.

The Federal Court found that consumers who purchased Heartlink distribution businesses were misled about the profitability and potential earnings of the business, as well as the overall viability of the business. The Federal Court ordered penalties against two respondents totalling \$900 000 and disqualified the founder of the Heartlink Group, Mr Laurence Hann, from managing a company for 15 years (see Heartlink case study page 56).

In September 2011, the ACCC instituted proceedings in the Federal Court against **Exclusive Media & Publishing Pty Ltd** and others for alleged misleading or deceptive conduct and harassment. The ACCC alleges that the four companies offered mostly small business the opportunity to take out advertisements in the companies' community magazines for approximately \$500 and that the companies never intended to and never did distribute 500 copies of any of their magazines as represented. The ACCC claims the companies invited businesses to sign a document to receive complementary copies of the magazines, and that after the businesses signed and returned the document, the publishing companies claimed that they had in fact agreed to buy advertising services, for which they demanded payment. It is alleged that some of the conduct engaged in while pursuing payment constitutes harassment and unconscionable conduct. The ACCC is awaiting judgment in this matter.

2.2 Using our ACL powers to stop unfair trading and protect consumers

Strategy: Tackle unfair trading practices and deliver increased consumer welfare through the Australian Consumer Law

Measures:

- Timely and effective identification, investigation and action responses to breaches of the ACL
- Enforcement outcomes achieved through court action
- Non-court based remedies used
- Effective education and communication to inform consumers about their rights and responsibilities under the ACL

The Australian Consumer Law provides Australian consumer regulators (ACCC, ASIC and state and territory consumer protection agencies) with a single set of consistent investigation and enforcement tools to respond to breaches of fair trading and consumer protection laws. These replace the range of powers under previous national, state and territory legislation.

The enhanced consumer protection provisions are being actively used by the ACCC to protect consumers. The ACCC is also focused on encouraging voluntary compliance by educating businesses about their obligations and consumers about their rights.

In certain circumstances, the ACCC may issue infringement notices to corporations and individuals where it considers there has been a breach of the Act. This year the ACCC has received payment for 34 infringement notices with penalties of over \$220 000.

The remedies available under the Australian Consumer Law also include civil pecuniary penalties imposed by the Federal Court. The ACCC has obtained orders for more than \$10.7 million in penalties for Australian Consumer Law breaches in 2011–12.

In 2011–12, the ACCC conducted education and awareness raising campaigns including:

- consumer guarantees, warranties and refunds
- new unfair contract term laws
- environmental claims
- scams
- carbon pricing.

FALSE, MISLEADING AND DECEPTIVE CONDUCT

The Australian Consumer Law gives the ACCC a range of remedies and powers to more effectively respond to breaches of fair trading and consumer protection laws. Section 18 of the Australian Consumer Law prohibits businesses from engaging in conduct that is misleading or deceptive. Business conduct is likely to breach the law if it creates a misleading overall impression among the intended audience about the price, value or quality of consumer goods or services.

Section 21 of the Australian Consumer Law prohibits businesses from engaging in unconscionable conduct in their business dealings with consumers and businesses, other than listed public companies.



Serious penalty for misleading conduct selling business opportunities to vulnerable and disadvantaged consumers

In the period from about January 2007 to May 2010, certain companies of the Heartlink Group 'sold' distribution businesses with false, misleading or deceptive representations about large profits to be made from selling Heartlink branded products. These profits never materialised and purchasers, many of them elderly, suffered large losses, in the range of \$10 000 to \$30 000.

In August 2010, the ACCC issued its first public warning notice, a new power available under the Australian Consumer Law, warning consumers against the alleged false, misleading or deceptive representations being made by certain companies of Heartlink Group.

On 6 May 2011, the ACCC took action against multiple respondents who were involved in making the false, misleading or deceptive representations about the projected earnings of distribution businesses for Heartlink branded products. The respondents were Halkalia Pty Ltd, Heartlink Enterprises Pty Ltd and its sole director, and National Semi Retired Group Pty Ltd and its sole director.

On 28 May 2012, the Federal Court ordered penalties totalling \$900 000 against two of the respondents, Halkalia Pty Ltd and the founder of the Heartlink Group, Mr Laurence Hann. The Court also ordered declarations against four of the respondents, injunctions against the three companies preventing them from being involved in this type of business for a period of 15 years, and costs.

Mr Hann was also banned from managing a corporation for 15 years for not only engaging in the false, misleading or deceptive conduct, but also being knowingly concerned in, or a party to the contravening conduct. This case marks the first time the Federal Court has ordered that a person must not manage a corporation following a contravention of the Australian Consumer Law.

Justice Tracey said that the conduct of Mr Hann was not only deliberate and persistent, even after he well knew what he was doing wrong, but it also constituted an egregious series of contraventions of the *Trade Practices Act 1974*, which is now the Competition and Consumer Act. Justice Tracey also noted that Mr Hann had a history of establishing companies in order to promote dubious business opportunities and considered that he should not have the opportunity to engage in this conduct again.

This result demonstrates that the ACCC is willing and able to use a wide range of its powers to pursue both companies and individuals that engage in unscrupulous business practices designed to prey on disadvantaged or vulnerable consumers.

Enforcement outcomes achieved through court action

The ACCC instituted proceedings in the Federal Court in 2007 alleging that an advertiser (**Trading Post**) and a number of Google entities, including **Google Inc**, had each engaged in misleading and deceptive conduct or conduct likely to mislead or deceive, in relation to the publication of certain advertisements appearing on Google's search results pages in Australia. Trading Post accepted that it had engaged in contravening conduct.

In relation to Google Inc, following a lengthy hearing, the Court, in September 2011, found that although a number of advertisements on the website contained misleading or deceptive representations, Google had not made those representations. Rather, the Court held that Google had merely communicated representations made by the advertiser. On that basis, the Court found that Google had not contravened the Trade Practices Act (which is now the Competition and Consumer Act).

In April 2012, the Full Federal Court unanimously upheld the ACCC's appeal and found that Google had made the misleading representations and thereby engaged in conduct that was misleading or deceptive, or likely to mislead or deceive.

Google's conduct comprised responding to users' search queries by displaying advertisements as well as organic search results. Each advertisement appeared to the user as a clickable heading near the URL of the advertiser. Google, by its 'Adwords' program, allowed advertisers to insert keywords into the clickable heading that comprised a competitor's name. When a user clicked on the headline, they were taken to the advertiser's website. In upholding the ACCC's appeal, the Full Court concluded that Google created the misleading message through its technology in response to the user's search query and did not merely repeat or pass on a statement by the advertiser.

In June 2012, the High Court of Australia granted special leave to Google to appeal the decision of the Full Federal Court. The appeal is listed for hearing on 11 September 2012.

Under the Australian Consumer Law, the ACCC may seek a civil pecuniary penalty in the Federal Court in relation to certain contraventions. Finalised matters in 2011–12 include:

- **Apple** was penalised \$2.25 million for misleading consumers as to the characteristics of the 'iPad with WiFi + 4G' device. Apple was also ordered to pay a \$300 000 contribution to the ACCC's costs (see Apple case study page 58).
- **Harvey Norman Holdings Ltd** was penalised \$1.25 million for representations in relation to its catalogues and on its website (see Harvey Norman case study page 59).
- **SMS Global Pty Ltd** and its director were penalised \$85 000 for misleading consumers by falsely representing that the company was endorsed by the government. SMS Global falsely represented on its website that it was an Australian Government-endorsed supplier and falsely represented in a brochure it was a government-endorsed specialist. The court also ordered SMS to publish corrective notices and maintain a trade practices compliance program.
- Three individuals received penalties totalling \$200 000 for their participation in the pyramid selling scheme **TVI Express**. The Court also made declarations and granted injunctions for five years restraining all three from engaging in similar conduct.
- A Victorian butcher, **Hooker Meats Pty Ltd** trading as Peninsula Bulk Meats, received a \$50 000 penalty after it admitted it had engaged in misleading or deceptive conduct by falsely claiming that the meat it offered for sale was sourced from King Island, when it was not.



ACCC takes swift action against Apple's misleading 4G advertising

On 8 March 2012, Apple Pty Ltd began promoting the 'iPad with WiFi + 4G' in Australia on its website and online store, and in its retail store. Apple resellers also promoted the 'iPad with WiFi + 4G' online and in their stores using promotional materials supplied by Apple. Apple's promotion represented to Australian consumers that the product could, with a SIM card, connect to a 4G mobile data network in Australia. In fact, the 'iPad with WiFi + 4G' could not connect to any Australian 4G networks.

Responding quickly to what it considered to be misleading or deceptive advertising, the ACCC made an application to the Federal Court on 28 March 2012 seeking urgent interlocutory relief against Apple under the Australian Consumer Law. In response to the ACCC action, Apple provided an undertaking to the Federal Court, that it would, in the interim:

- display the following statement in its promotional materials, on its website and on its online store: 'This product supports very fast cellular networks. It is not compatible with current Australian 4G LTE networks and WiMAX Networks'
- distribute signage with the statement to resellers for display at points of sale
- contact by email any persons for whom Apple Pty Limited has an email address and who have purchased the 'iPad with WiFi + 4G' between 16 March and 28 March (including pre-orders prior to 16 March) including statements to the effect that 'This product supports very fast cellular networks. It is not compatible with current Australian 4G LTE networks and WiMAX Networks' and stating that they are entitled to return the product and request a refund within a timeframe specified in the email.

On 12 May 2012, Apple announced that it was globally changing the product name 'iPad with WiFi + 4G' to 'iPad with WiFi + cellular'.

On 21 June 2012, the Federal Court ordered Apple to pay \$2.25 million in civil pecuniary penalties. The Court declared that Apple's conduct was liable to mislead the public as to the characteristics of the device in contravention of section 33 of the ACL. Justice Bromberg noted the deliberate nature of Apple's conduct and described it as being 'serious and unacceptable'. Apple was also ordered to pay a \$300 000 contribution to the ACCC's costs. Apple agreed to the declaration and consented to the penalties and other orders sought from the Court.

This decision was the fifth penalty over \$1 million handed down since civil pecuniary penalties for consumer protection matters were introduced. This matter demonstrates that the ACCC can and will act quickly in response to misleading conduct that has the potential to cause significant detriment to Australian consumers. It should also serve as a warning to multinational traders that they must comply with the ACL when conducting business in Australia and that contraventions of the ACL can lead to heavy penalties even where early ACCC intervention results in the conduct occurring over a relatively short period of time.

Harvey Norman's case shows fine print is not an excuse

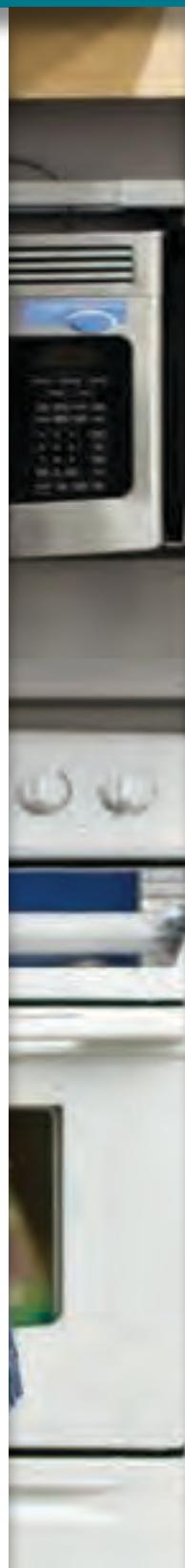
In September 2010, Harvey Norman promoted 3D televisions in a sales catalogue that was distributed across Australia.

The catalogue created the impression that consumers could buy a 3D TV from the local Harvey Norman store in places where the catalogue was distributed and use it to watch the 2010 AFL and NRL grand finals in 3D format, when in fact the 3D broadcast was only available in limited areas of Australia.

Additionally, between October 2008 and July 2011, advertisements in Harvey Norman catalogues and on the Harvey Norman website created the dominant impression that goods advertised were available at Harvey Norman stores generally. However, there was a condition in the catalogues that the offers they contained were only being made by a single store in each state or territory, and the website had a condition that the offers appearing on it were only being made by one store in Australia. The conditions were in fine print and were not prominent. The Federal Court found that by failing to proximately or prominently disclose the conditions to the reader, Harvey Norman created the misleading impression that the conditions did not exist.

In December 2011, Harvey Norman Holdings Ltd was penalised \$1.25 million for these misleading representations. The Federal Court described Harvey Norman's behaviour as being 'seriously misleading and deceptive, on a significant and far-reaching scale'.

This successful outcome demonstrates that fine print cannot remedy a misleading representation. It also reflects the ACCC's determination to pursue substantial penalties in appropriate cases.



In 2011–12 the ACCC secured 14 court enforceable undertakings to remedy fair trading and consumer protection conduct. These are listed in Appendix 9, and include:

- **Aldi Foods Pty Ltd** and **Spring Gully Foods Pty Ltd** provided separate court enforceable undertakings to the ACCC in relation to misleading claims about ‘Just Organic’ honey manufactured by Spring Gully Foods and sold exclusively through Aldi Supermarkets. Both Aldi Foods and Spring Gully have undertaken to not to make certain claims in relation to honey, inform consumers by corrective notices, and establish and implement a compliance program.
- **Australian Workplace Services Pty Ltd** and its director provided separate court enforceable undertakings in relation to false or misleading representations the company made in relation to the selling or promoting of its safety products. The company has undertaken to refrain from engaging in similar conduct, publish corrective notices and implement a trade practices compliance program. The director has undertaken to not make, or be directly or indirectly knowingly concerned in, or party to a corporation making these representations.
- **True Value Solar** provided a court enforceable undertaking in relation to misleading and deceptive conduct and false or misleading representations it made in relation to solar panel systems. True Value Solar have undertaken that it will refrain from engaging in similar conduct, and establish and implement a trade practices compliance program.

Non-court based remedies used

Infringement notices

The ACCC can issue an infringement notice in respect of the consumer protection provisions in the Australian Consumer Law. An infringement notice signifies that the ACCC believes that a contravention has occurred; however, payment is not an admission of wrongdoing by the trader and involves no court finding of any contravention. This year the ACCC has received payment for 34 infringement notices with penalties totalling over \$220 000.

These matters included:

- **Foxtel Management Pty Ltd** paid seven infringement notices totalling \$46 200 for running a nationwide advertising campaign that the ACCC believed was misleading. FOXTEL advertised a ‘Christmas sale’ which included a prominent headline that consumers could acquire a subscription for \$55 per month on a six month contract. However, an asterisk referred to fine print terms and conditions that locked customers into a 12 month contract with a cost of \$77 per month after the initial six months of the contract term.
- **The Big Olive Company Ltd** paid two infringement notices totalling \$13 200 for labelling products as ‘extra virgin olive oil’ that the ACCC considered were not in fact ‘extra virgin’. Testing determined that the oil contained more free fatty acids than permitted by olive oil trade standards, including the voluntary Australian standard.
- **Advanced Lifestyle International Retail Pty Ltd** paid three infringement notices totalling \$19 800 in relation to false or misleading representations to consumers during in-home sales presentations for its massage wands, cushions, chairs and beds. The ACCC also accepted a court enforceable undertaking from Advanced Lifestyle International Retail and one of its former salespeople relating to this conduct. The company undertook to implement a trade practices compliance program and publish various corrective notices.

CONSUMER PROTECTION IN THE TELECOMMUNICATIONS SECTOR

The ACCC has continued its focus on consumer protection in the telecommunications sector. Successful enforcement outcomes have been achieved in 2011–12 to sanction those companies that mislead consumers.

Enforcement outcomes achieved through court action

In 2011–12 ACCC action in the courts made it clear that misleading and deceptive advertising by telecommunications companies to entice consumers without sufficiently disclosing all costs is not acceptable, imposing significant penalties for this conduct.

The Full Federal Court penalised **SingTel Optus** \$3.61 million in relation to misleading or deceptive conduct and false representations in the advertising for its 'Think Bigger' and 'Supersonic' broadband internet plans. These advertisements promoting the broadband plans did not sufficiently or clearly disclose the service details of the plans.

The Federal Court made declarations by consent that the company formerly known as Clear Telecoms (Aust) Pty Ltd engaged in misleading or deceptive conduct and third line forcing in relation to the sale of bundled deals of telecommunication services and equipment rental agreements to two small businesses in 2008. This court result is the culmination of a number of activities by the ACCC to stop this type of conduct.

The Federal Court also imposed \$2 million in pecuniary penalties against **TPG Internet Pty Ltd**. TPG ran two sets of advertisements for its \$29.99 Unlimited ADSL 2+ plan in a national campaign, including TV, newspaper, radio and website advertisements. The first set ran from 25 September to 7 October 2010. The second set ran from 7 October 2010 until 29 November 2011.

The ACCC alleged that the headline price of ADSL2+ broadband for \$29.99 per month in the advertisements was misleading as a consumer had to also acquire home phone line rental from TPG and at an additional cost of \$30 per month, making a total monthly cost \$59.99.

It was also alleged that TPG in both sets of advertisements failed to properly disclose up front charges payable for the bundle of either \$79.95 or \$129.95, depending on the term of the contract and to prominently display the single price of the plan in the original advertisements (\$509.89). In addition to the penalty, TPG was also ordered to publish corrective notices and implement a trade practices compliance program in response to false representations made about the price of services.

TPG has filed an appeal against the Federal Court decision, which is scheduled to be heard by the Full Federal Court in November 2012.

Non-court based remedies used

Separately, **TPG Internet Pty Ltd** paid two infringement notices totalling \$13 200 in relation to advertisements for its '500 free VoIP Minutes' offer. The ACCC believed the advertising to be misleading due to the fine-print terms and conditions.

Timely advice to government and agencies

The ACCC has been concerned that high levels of consumer complaints about 'bill shock', misleading advertising and other industry practices indicate systemic problems with the sector's consumer protection framework.

A number of recent reviews have sought address these issues in some form. The ACCC has actively participated in these reviews with the goal of improving safeguards for telecommunications consumers.

Australian Communications and Media Authority (ACMA) Inquiry—Reconnecting the Customer (RTC)

The ACMA released its final inquiry report in September 2011. The report found a range of systemic problems with customer service, complaints handling and consumer protection across the telecommunications industry. The report made several recommendations to address these issues.

The ACCC made a number of detailed submissions to the inquiry, in particular highlighting how widespread poor advertising practices and confusing service information made comparison between service difficult and contributed to significant consumer detriment such as 'bill shock'. The ACCC supported the final report's recommendations to address these issues, including tools to prevent excess expenditure, mandatory pre-sale information and clearer pricing.

The ACMA asked the industry peak body, Communications Alliance, to address these recommendations through its review of the Telecommunications Consumer Protection Code.

Communications Alliance's Telecommunications Consumer Protection (TCP) Code

The TCP Code is the key self-regulatory instrument that sets out rules for service providers about advertising, billing, complaint handling and a range of other issues. High numbers of complaints to consumer agencies in recent years indicates that the current TCP Code is not adequately protecting consumers.

Communications Alliance (CA), the industry peak body, began to review the Code in mid-2010. The ACCC has actively participated in the review with the aim of strengthening the Code's content, compliance monitoring and enforcement mechanisms.

CA submitted a revised TCP Code to the ACMA for registration in May 2012. The revised Code contained a number of improvements over the current code, with CA addressing many of the RTC Inquiry recommendations supported by the ACCC, including provisions to improve the clarity and accuracy of advertising and mandatory expenditure management tools.

Inadequate compliance monitoring and enforcement have been key problems with the current code. The ACCC will be watching to see whether new compliance measures in the revised Code are effective in improving levels of industry compliance.

Mobile Premium Services (MPS) Code

The ACMA registered the revised Communications Alliance's Mobile Premium Services (MPS) Code in February 2012. The revised MPS Code incorporated a number of ACCC recommendations and should further reduce consumer detriment in this sector.

Telecommunications Industry Ombudsman (TIO) Scheme review by the Department of Broadband, Communications and the Digital Economy (DBCDE)

The Communications Minister released the DBCDE's report into reform of the TIO in April 2012. The report made a number of recommendations to reform the governance and processes of the TIO.

The ACCC considers that the recommendations, once implemented, should enhance the TIO's role as an effective and efficient part of the telecommunications consumer protection framework

CONSUMER GUARANTEES, WARRANTIES AND REFUNDS

The consumer guarantees are a set of rights which all consumers have when they purchase goods or services anywhere in Australia. The consumer guarantees include guarantees that goods are of acceptable quality, and that services are delivered with due care and skill.

Effective education and communication to inform consumers and businesses

The ACCC's compliance activities continued to complement the extensive work program being undertaken with its state and territory counterparts through the Education and Information Advisory Committee.

To complement the existing educational tools for business, the ACCC developed industry-specific information in consultation with industry associations, and disseminated information to small businesses through its established small business stakeholder network, including the Small Business Consultative Committee, the Small Business Information Network, and face-to-face messaging through seminars, presentations and events.

The ACCC continued to work closely with businesses, business stakeholder groups and intermediaries as part of its ongoing education and engagement activities to increase businesses' awareness about rights and obligations under the consumer guarantees provisions. This included continued engagement about education and compliance matters with key retail industry associations and large and small retailers, particularly businesses in the electronic, telecommunications and whitegoods sectors, as well as manufacturers and importers.

The ACCC conducted a national consumer guarantees awareness campaign in 2011–12. See case study on page 64.

During 2011–12, a range of compliance activities were undertaken to assist retailers, suppliers and manufacturers during the transitional phase following the introduction of requirements on 1 January 2012 that apply whenever a 'warranty against defects' representation is made to consumers.

Other ACCC education and awareness raising activities in 2011–12 included work with the state and territory consumer protection agencies to produce and distribute a national point of sale sign, which outlines the circumstances in which consumers are entitled to a refund or replacement.

During 2011–12, the ACCC also conducted a review of the consumer refund and warranty policies of several major traders. A number of traders have voluntarily made changes to their refund policies and procedures following contact from the ACCC raising concerns.

UNFAIR CONTRACT TERMS

Many businesses and consumers are well aware of the unfair contract terms provisions in the Australian Consumer Law which came into force on 1 July 2010. Having communicated guidance and educational materials for businesses and consumers, the ACCC's activities this year saw some key compliance outcomes and positive contract changes as a result of its proactive industry reviews.

Timely and effective identification, investigation and action

Throughout the year, the ACCC continued its proactive inquiries into key industries that generate significant consumer complaints and detriment. These inquiries have involved in-depth analysis of consumer contracts offered across the sectors, and direct engagement with businesses to highlight potentially unfair contract terms and to assess the commercial drivers underpinning the terms. The proactive review process has resulted in a range of positive changes across key sectors including telecommunications, domestic aviation, vehicle rental and fitness.



National consumer guarantees project

The Australian Consumer Law (ACL) revised the consumer guarantees framework, creating a nationally consistent set of statutory guarantees relating to the supply of goods and services. Questions and complaints about guarantees and warranties are one of the most common reasons that consumers contact the ACCC and other ACL regulators. With this identified need, the ACCC, together with the other ACL regulators, commenced a national consumer guarantees compliance project, to improve business compliance and consumer awareness of their rights.

The ACCC's compliance efforts focused on suppliers and manufacturers in the telecommunications, white goods and electronics industries, as research indicated consumers experienced considerable detriment in these sectors.

Compliance activities included gathering data from complaints received by ACL regulators, engaging with businesses in these sectors, reviewing their websites and conducting mystery shopping activities, complemented by the ACCC's *Repair. Replace. Refund.* national consumer guarantees awareness raising campaign.

The campaign was launched on 5 February 2012 with advertisements appearing online, on radio and in outdoor media placements, complemented by ongoing stakeholder engagement and communication activities. A supporting suite of educational materials included web page information, an online problem solver to assist consumers to resolve problems with faulty goods and services, a campaign poster, a short brochure explaining consumer guarantees rights and obligations, and regular updates on a new facebook page.

The campaign aimed to increase consumers' awareness of their rights when they buy goods and services that are faulty, unsafe or do not work as intended, and increase their confidence to go back to the business with a problem or contact their local consumer protection agency or the ACCC when businesses don't live up to these guarantees. Campaign activities also aimed to increase businesses' awareness of their rights and obligations, including how to appropriately assist consumers when they have a problem with a product or service.

The campaign targeted consumers generally, focusing on consumers most at risk of detriment, such as those with less knowledge of consumer law and less confidence in pursuing their entitlements. Research suggest these include people from culturally and linguistically diverse backgrounds, Indigenous communities, young consumers, consumers with lower income and education levels, and consumers living in regional areas.

The campaign was successful, achieving:

- a 17 per cent increase in the level of confidence of the consumers surveyed in relation to their knowledge of consumer rights in the situation where they purchase a faulty product or service
- a 35 per cent increase in the level of confidence of people with an education level of high school or below
- a 32 per cent increase in the level of confidence of people who do not speak English at home
- of the total consumers surveyed from a cultural background where English is not spoken at home, 20 per cent were aware of the ACCC's campaign.

Non-court based outcomes

The review process resulted in a range of positive, non-court-based outcomes. Direct engagement with businesses was employed to highlight concerns and effect improvements to contract terms, where contracts were identified as potentially unfair or raising broader concerns. During the review, a range of businesses across the industries deleted, amended and made structural changes to contract terms in response to the ACCC's concerns. Many of the changes were designed to increase transparency and accessibility. In some cases, business made wholesale changes across consumer contracts, redrafting entire agreements as part of the review. In other instances, businesses made important improvements to customer service and introduced improved consumer information to tackle key areas of complaint or dissatisfaction. The extent of compliance engagement and positive change demonstrates the benefits of the review process.

In addition to the proactive inquiries, the ACCC also initiated a number of investigations into consumer contracts offered by individual businesses in response to concerns raised by consumers. These activities cover contracts offered in industries such as fitness, retirement villages, solar panels and educational services. In the majority of cases, an initial approach by the ACCC led to the business making significant improvements to their contract terms. In these cases, the ACCC was able to facilitate significant contract change—to alleviate potential unfairness or remedy broader concerns. This resulted in important non-court based outcomes and increased levels of compliance.

The ACCC shares responsibility for enforcing compliance with the Australian Consumer Law with the state and territory Offices of Fair Trading. During the year, the ACCC led and coordinated a national project, assessing contracts terms offered in the online sales of goods and services across Australia. The ACCC-led project analysed contracts of 80 online businesses offering goods and services to Australian consumers, and involved direct compliance engagement with a number of businesses whose contract terms raised concerns. This project uncovered a number of trends and common issues in online sales, including standard form contracts seeking to:

- limit the business' liability for errors or inaccuracies in product information
- limit the business' liability for commonly available legal remedies in tort and contract law
- enable the business to unilaterally vary the contract
- require consumers to agree they have 'read, understood and agreed' the contract
- limit the jurisdiction or courts in which consumers can bring legal action against the business
- enable businesses to use consumers' intellectual property and correspondence
- define statutory consumer guarantee rights in a way that is ambiguous and potentially misleading.

Having engaged directly with businesses to highlight the issues and provide information about business online contract obligations and responsibilities, these findings will inform future industry guidance that is currently being developed.

Enforcement outcomes achieved through court action

Where the ACCC raises potentially unfair contract terms and businesses do not effect positive changes in response, the ACCC may launch legal action (for example, on 7 September 2011, the ACCC announced it had joined NRM Corporation and added unfair contract terms issues to the proceedings: see *ACCC v Advanced Medical Institute & Ors*).

ENVIRONMENTAL CLAIMS

The ACCC is working with other Australian Consumer Law regulators on a national project targeting the solar power industry, to raise consumer and industry awareness of their rights and obligations under the law.

Effective education and communication to inform consumers and businesses

These awareness-raising initiatives include the development of educational information by all regulators for industry participants about their obligations, focusing on:

- claims and representations in advertising
- changes to the Australian Government Small-scale Renewable Energy Scheme
- the feed-in tariff scheme for renewable electricity
- carbon price claims.

The ACCC also placed a 'Hot Topic' on its website to alert businesses about their obligations under the Australian Consumer Law.

The Australian Consumer Law regulators remain focused on informing the community about emerging issues, and engaging with solar power industry participants to ensure that advertised performance claims are accurate and can be substantiated.

During 2011–12, the ACCC's education and engagement managers also delivered a number of presentations to industry groups and businesses about organic claims and carbon price representations.

SCAMS

During 2011–12, the ACCC's response to scams involved:

- awareness and education programs to help consumers avoid scams
- actively engaging with other agencies and private organisations to share intelligence with a view to identifying possible strategies to disrupt scam conduct
- targeted enforcement action in cases where the conduct is egregious and the trader can be identified, as well as proactive investigations where required.

Effective education and communication to inform consumers and businesses

Statistics suggest that many consumers are becoming more alert to scams and are increasingly reporting them to the ACCC. In the 2011 calendar year the ACCC received 83 150 scam-related contacts from consumers and small businesses, almost double the number in 2010. There was also significant growth in visitors to the ACCC's SCAMwatch website (www.scamwatch.gov.au), with more than 20.5 million hits and almost 800 000 unique visitors in 2011.

The high demand for ACCC scam education resources, such as *The Little Black Book of Scams*, continued during 2011–12. Government organisations internationally have noted the value of the guide, with the Canadian Competition Bureau reproducing the book in March 2012. Also released in March 2012 was the third annual *Targeting Scams* report, highlighting successful responses to scams in 2011 and the challenges they present to law enforcement.

SCAMwatch issued over 20 'radar' alerts via its website and via email to subscribers in 2011–12. By the end of June 2012, SCAMwatch had almost 19 000 subscribers. Radar alerts covered a variety of topics from London Olympic accommodation booking scams to fake carbon compensation payments and fraudulent gift vouchers on social media sites.

Guidelines for dating and romance industry developed to help combat scammers

Dating and romance scams cost Australians more than \$21 million in 2011, with more than 2100 individuals reporting scammers to the ACCC. The average loss for a victim reporting a scam to the ACCC was over \$20 000.

On 14 February 2012, the ACCC launched best practice guidelines to help dating and romance websites combat scammers that take advantage of consumers.

These types of scams typically involve a genuine user of a dating website being contacted by a scammer disguised as a potential admirer. After forming a relationship with the victim, the scammer plays on emotional triggers to get the victim to provide money, gifts or personal details.

The ACCC headed a working group of dating and romance website operators to develop these voluntary guidelines, which are intended to bolster existing measures used by dating websites to counter scam activities and provide guidance to industry on how to better protect users from scams. The actions detailed in the guidelines fall into three areas:

- appropriate scam warnings and information
- internal vetting and checking procedures to detect scammers
- effective complaint handling procedures.

Australian dating websites contributed significantly to the development of the guidelines and responded positively to their launch, indicating their intention to adopt the guidelines to better protect their users from scams.



The ACCC provided real-time scam alerts and tips via its Twitter account (http://twitter.com/SCAMwatch_gov). The Twitter account was launched in March 2011 and has over 3000 subscribers. It enhances the SCAMwatch website's radar alert service by providing real-time information about scams to consumers, businesses, stakeholders and the media. It also provides a dynamic platform for the ACCC to engage with, educate and hear from the public about scams. Through Twitter the ACCC supports government, private stakeholders and Australasian Consumer Fraud Taskforce members to spread their key messages and campaign information.

During National Consumer Fraud Week in March 2012, the ACCC's SCAMwatch Twitter account led a joint social media campaign to collaborate with a group of private and public sector taskforce partners. The partners used their Twitter accounts to disseminate scams and campaign messaging, reaching more than 850 000 Twitter and Facebook users.

In light of increasing reports to the ACCC of dating and romance scams in recent years, the ACCC began working with operators of dating websites to address scams targeting their users. On 4 July 2011 the ACCC held a roundtable meeting with a number of dating website operators, including those with major dating websites based in Australia, to discuss measures to improve their response to online dating and romance scams.

Industry response was positive and website operators provided information on the measures they had already implemented to protect their users from scams. Following the meeting, a working group of nine dating websites and the ACCC was formed to develop best practice guidelines for dating websites. On 30 November 2011 the ACCC distributed the draft guidelines to the broader dating website industry for review and comment. Finalised guidelines were released on 14 February 2012 to coincide with Valentine's Day. The guidelines are intended to bolster existing measures used by dating websites to counter scam activities and provide guidance to industry on how to better protect users from scams.

The ACCC continues to work closely with its government, non-government, business and consumer stakeholders, both in Australia and internationally, in an integrated and coordinated effort to address scams and limit detriment to consumers.

The ACCC continued to participate in the International Consumer Protection and Enforcement Network (ICPEN) and to chair the Australasian Consumer Fraud Taskforce. As part of this work it continued its annual coordination of the National Consumer Fraud week campaign. The ACCC is also a partner agency of the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's anti-money laundering and counter-terrorism financing regulator. From time to time the ACCC examines information provided by AUSTRAC for certain patterns of conduct that mirror known advance fee fraud schemes. The ACCC uses this information to provide targeted education to affected consumers.

In September 2011, the ACCC joined its counterparts in the ICPEN International Internet Sweep, which targeted the use and misuse of third party authority, particularly the unauthorised online use of government endorsements or affiliations. The Australian sweep looked at a broad spectrum of conduct including websites that falsely represented government authorisations in areas such as government programs or services, carbon pricing and green claims, immigration, taxation, education, sport, nutrition and community services.

The ACCC 'swept' approximately 1300 websites and identified around 250 sites for final analysis. During the sweep's second phase, many of the websites were found to be no longer active, while others were sent warning letters that resulted in changes being made. Letters were also sent to a number of website operators regarding rights and obligations in dealing with warranty, refund and consumer guarantee issues.

National Consumer Fraud Week 2012

The Australasian Consumer Fraud Taskforce comprises 22 federal and state government regulatory agencies and departments (including New Zealand), and has a responsibility for consumer protection in relation to fraudulent and scams activity. As Chair of the Taskforce, the ACCC organises and hosts a variety of forums, including the National Consumer Fraud Week campaign each year. This annual coordinated information campaign forms part of ICPEN's Global Consumer Fraud Prevention Month.

National Consumer Fraud Week 2012 (19 to 25 March 2012) aimed to highlight scam delivery methods and educate Australians to 'slam scams' at the point of contact. The week commenced with two key events on 19 March 2012—the Australian Institute of Criminology's Consumer Fraud Offender's Agency Forum, and the ACCC's 'Slam Scams' event. Both events were attended by participants from federal and state consumer law regulators, consumer advocacy groups, industry associations, community rights organisations and private businesses. Two ACCC publications, *Targeting Scams 2011 annual report on scams activity* and a new, pocket-sized edition of *The Little Black Book of Scams*, were also launched by ACCC Chairman Mr Rod Sims at the 'Slam Scams' event.

An important outcome of Fraud Week 2012 was the continued growth in the Partnership Program. There are now over 120 partners supporting the Taskforce and its efforts to raise awareness about scams. The week also received considerable media coverage across television, radio, print media and social media. Australasian Consumer Fraud Taskforce partners helped ensure the campaign achieved a significant online presence, publishing website features, blogging and tweeting the scams awareness message to hundreds of thousands of Australians.

CARBON PRICING

On 31 July 2011 the ACCC was directed by the Treasurer to undertake compliance and enforcement activity associated with representations arising out of the carbon pricing mechanism (CPM) which was implemented on 1 July 2012.

The ACCC's role involves encouraging compliance and raising awareness among businesses and consumers about their respective responsibilities, obligations and rights under the Australian Consumer Law. It also includes giving priority to investigating businesses that make misleading or deceptive claims about the impact of the carbon price.

In the lead-up to the implementation of the CPM, the ACCC released guidance material for both consumers and businesses. For businesses, the ACCC Chairman launched the *Carbon price claims—Guide for business* on 15 November 2011. A refreshed version of this was released on 25 May 2012 to coincide with the launch of a series of videos for business. Additionally, five Business Snapshots have also been released on the ACCC website. These are:

- *Carbon price claims: information to support your claims*
- *Carbon price claims: dealing with your suppliers and competitors*
- *Carbon price claims: guidance for industry associations*
- *Carbon price claims: guidance for business advisors*
- *Carbon price claims: guide for business* (short-form summary of original guide)

For consumers, *Consumers and carbon price claims* was launched at the Consumer Forum in Melbourne on 15 March 2012.

Since the policy announcement and subsequent ministerial direction, the ACCC has been actively engaged in consultation with industry associations, small business groups and consumer representatives, providing assistance and undertaking presentations to these stakeholders where possible. The ACCC also continues to engage with specific businesses that have publicly made their carbon pricing intentions known and, where necessary, has sought further information. This has included liaison with transport providers, electricity retailers and local councils to understand the representations they have made about the carbon price.

Timely and effective identification, investigation and action

The Australian Consumer Law allows the ACCC to investigate and take action against businesses for engaging in misleading or deceptive conduct, which includes to carbon price claims. A range of carbon price related conduct will likely be captured by the Australian Consumer Law, including:

- representations about price increases as a direct result of the proposed carbon price framework and, later, the commencement of the carbon price
- representations about price increases due to increases in input costs
- scam conduct, such as email solicitations for tax rebates, particularly that targeted at disadvantaged or vulnerable consumers, and
- potential coordinated conduct between competitors and/or industry associations in the setting of prices or uniform price rises.

A number of enforcement remedies and investigation tools under the Australian Consumer Law will assist the ACCC in its enforcement activities, including substantiation notices, infringement notices, civil pecuniary penalties, banning orders, non-party redress and public warning notices.

The ACCC has been reviewing carbon price representations brought to its attention through complaints, media and stakeholder engagement. This has resulted in warning letters being sent to traders to both educate them about their obligations under the Competition and Consumer Act and caution them with reference to specific claims.

EDUCATING BUSINESSES AND CONSUMERS ABOUT THE AUSTRALIAN CONSUMER LAW

The ACCC continued its commitment to consult with and educate businesses and consumers about legislative changes, and their rights and obligations under the Australian Consumer Law. To support business transition and consumer understanding of the Australian Consumer Law framework, the ACCC undertook a range of education and awareness initiatives in 2011–12.

The consumer regulators continued to work together to develop materials for consumers and businesses to promote awareness of, and compliance with, the Australian Consumer Law, which came into effect on 1 January 2011. The national effort continued to be coordinated through the Education and Information Advisory Committee, which comprises the group of national, state and territory consumer regulators, including the ACCC.

Together with the other regulators, the ACCC implemented longer-term, targeted awareness raising activities to broaden the reach of education and compliance. This included the use of social media, tailored guidance and the dissemination of educational material to a wider range of stakeholders, including government agencies, Indigenous organisations, ethnic media and communities, multicultural agencies, migrant resource centres, community organisations, chambers of commerce and youth-focused organisations.

On 15 March 2012, the ACCC hosted a consumer forum in Melbourne to coincide with World Consumer Rights Day. The forum provided a valuable opportunity for consumer groups to meet with all the consumer regulators and to exchange views on the operation of the Australian Consumer Law since its introduction. The forum also included three panel discussions, research presentations and discussion of future priorities.

A focus of the ACCC's awareness-raising activities in 2011–12 has been on raising awareness of the protections consumers have when they buy certain goods or services from door to door salespeople. In January 2012 the ACCC produced and widely distributed a postcard summarising consumers' key legal rights when dealing with door to door salespeople and provided a checklist for consumers. The consumer checklist was also published on the ACCC website, as was a consumer 'Hot Topic' on door to door sales. Further guidance for consumers on door to door sales practices will be released during 2012–13.

ACL regulators negotiate remedies for airline customers

The ACCC worked closely with other Australian Consumer Law regulators to deliver good outcomes for consumers following the grounding of airline services in 2011.

When Tiger Airways' Australian domestic flights were suspended in July 2011, the ACCC raised concerns with Tiger Airways about how affected consumers would be treated. Tiger Airways responded by committing to meet their obligations to consumers under the Australian Consumer Law.

The ACCC worked with Tiger Airways to arrange full refunds for affected customers and to ensure appropriate external communication mechanisms were in place so consumers were aware of their rights. Tiger Airways also kept the ACCC informed by regular reports on the progress of refunds.

After the grounding of the Qantas fleet in October 2011, the ACCC made contact with Qantas to ensure consumer remedies were sufficient. After discussion with the ACCC, Qantas extended its offer of refunds and compensation for reasonable losses to any consumer that was affected by the grounding.

Qantas provided the ACCC with regular updates on its consumer refunds and compensation claims processing and we continued to monitor this process to ensure that customer claims were managed in a timely fashion.

The positive outcomes achieved for consumers demonstrate the effectiveness of collaboration between regulators under the Australian Consumer Law.



The ACCC has continued to engage with business stakeholders across Australia, including delivering training sessions, presentations, meetings, and written communications. In addition, articles, editorials and interviews have also reached extensive audiences, and the ACCC's education and engagement managers have given presentations to businesses and consumers across Australia.

The ACCC will continue to work closely with state and territory consumer regulators to ensure that all its communication and education activities are consistent with, and complementary to, any work being completed by other agencies.

INFORMATION PROGRAMS FOR SMALL, ISOLATED OR DISADVANTAGED GROUPS

The ACCC uses tailored information and communication strategies that meet the wide range of needs of its diverse audiences, including those groups who might experience a disadvantage or vulnerability in the marketplace.

Information is made available in the full range of media, and in languages other than English. Information is tailored for specific groups. The ACCC also supports its published material with a range of other targeted initiatives which enable it to have a strong and engaging presence within the community. The ACCC's Chairman, commissioners and staff regularly attend and participate in events, presentations, and conferences.

An ACCC non-English speaking background/culturally and linguistically diverse (NESB/CALD) stakeholder information network was created during 2011–12 to reach NESB/CALD communities through their community associations, community services agencies and ethnic media. This is a free email information service that provides subscribers with updates in English about consumer protection, scams awareness and fair trading information relevant to these communities.

Disadvantaged and vulnerable consumers are also the focus of the ACCC's consumer guarantees education campaign and the results for these audiences show significant improvements in awareness of their rights.

The awareness campaign media strategy included:

- digital/online advertising
- radio advertisements in English and translated into 14 languages broadcast via popular radio stations nationwide during a four-week period in February/March 2012
- specific radio channels for Indigenous communities
- outdoor panels/posters displayed in regional shopping centres to target regional consumers.

See case study on page 64.

CONSUMER PROTECTION ISSUES IN INDIGENOUS COMMUNITIES

The ACCC's Indigenous Consumer Protection Strategy seeks to better inform Indigenous consumers about their rights, detect breaches of the law at an early stage, enforce the law to stop conduct and, where possible, provide recompense for affected consumers. At the national level the ACCC consulted with other regulators and agencies to facilitate more effective information and communication exchanges with this sector of the community. The ACCC also contributed to the work undertaken with the National Indigenous Consumer Strategy to address specific areas of concern of Indigenous consumers, in particular:

- trading practices, specifically in relation to door to door sales, general marketing, and debt collection
- consumer literacy, specifically in relation to consumer rights, contracts, complaints processes, and knowledge of consumer agencies and services.

The ACCC has continued work with its national, state and territory counterparts through the Compliance and Dispute Resolution Advisory Committee and the Education and Information Advisory Committee to identify and address unfair high pressure sales and trading practices in a number of Indigenous communities through the Unfair Traders project. The project involved visits to Indigenous communities to gather information regarding problematic trader activities and the delivery of a communications campaign using radio broadcasts and a range of communication products for Indigenous consumers.

The ACCC continued remote Indigenous communities engagement through the Northern Territory community outreach program with the appointment of an Indigenous Outreach Manager in the ACCC's Northern Territory office. Over the year, several Indigenous communities have been visited including Wurrumiyanga on the Tiwi Islands, Galiwingku on Elcho Island, Ntaria (Hermannsburg) plus Santa Theresa in Central Australia, and in Katherine visits included Jilkminngan, Beswick and Barunga—including a product safety survey of Katherine and Wurrumiyanga community stores. These visits have helped to identify preferred education strategies for these communities and detect some conduct in contravention of consumer law.

In January 2012, ACCC staff liaised with Consumer and Business Services in South Australia to join in warning people throughout the Anangu Pitjantjatjara Yankunytjatjara (APY) lands to beware of scam emails targeting the area. This resulted in a SCAMwatch radar and a number of tweets.

Indigenous communities were also the focus of the ACCC's consumer guarantees awareness raising activities. See case study on page 64.

The ACCC hosted the annual National Indigenous Consumer Strategy Reference Group on 18 and 19 October 2011. The meeting provided an opportunity for consumer regulators to discuss ways of addressing emerging issues impacting on Indigenous consumers.

Another key area focus is to improve practices in door to door sales through educating traders and Indigenous consumers about their rights and obligations. This effort is supported by research undertaken by the Indigenous Consumer Assistance Network that outlined the key causes of Indigenous consumer disadvantage, which will also help inform the awareness raising strategy for promoting Indigenous consumer protection.

Non-court based remedies used

Enforcement action in 2011–12 included a court enforceable undertaking in August 2011 from **Austar** admitting that its contracts were likely to mislead customers about price and providing for clear and prominent explanations of the costs of its subscription television package going forward. Austar's conduct was investigated following door to door sales to Indigenous residents of Beswick and Barunga, remote communities in the Northern Territory.

A further s. 87B undertaking was accepted in March 2012 from **Noonkanbah Enterprise Management Company Pty Ltd** which operates the Yungnora Aboriginal Community Store (the Noonkanbah store). The undertaking relates to concerns the Noonkanbah Store misled customers in the community by selling some food items well beyond 'best before' dates and displaying some shelf prices that were lower than the actual purchase prices.

2.3 Protect consumers from unsafe products and services

Strategy: Minimise harm to consumers from unsafe consumer products and services

Measures:

- Timely identification and response to product safety hazards
- Product safety activities to effectively assess and address product safety hazards
- Effective education and communication to reduce product safety related injury and maximise industry compliance

Consumers have a right to expect that products they buy work properly without unreasonable risk of causing illness or injury. Businesses must use quality control measures to ensure that products they supply meet acceptable levels of safety. Suppliers also have to ensure products meet requirements of relevant mandatory standards and bans and comply with recall and mandatory reporting requirements.

In 2011–12 the ACCC worked to strengthen the new harmonised national product safety system. This included work by the ACCC to revise existing and introduce new regulations and permanent bans:

- Permanent bans on babies' dummies with decorations and babies' dummy chains with decorations came into effect on 9 September 2011 after interim bans were revoked. These products contain small decorations which can detach and become a choking, inhalation and ingestion hazard.
- The mandatory standard on Tobacco (Graphic Health Warnings) commenced on 1 January 2012 and takes full effect from 1 December 2012. The standard is the first product information standard developed under the ACL and is part of a comprehensive suite of reforms being implemented by the Australian Government to reduce smoking and its harmful effects.

Progress was made in relation to a possible mandatory standard for children's portable swimming pools and a mandatory service standard for the installation of corded internal window coverings. Reviews of existing standards, including hot water bottles, baby walkers, disposable cigarette lighters and children's nightwear also commenced.

There are currently 60 mandatory standards and bans in place, including three mandatory information standards, 37 mandatory safety standards and 20 permanent bans.

The ACCC also continued to cooperate with state and territory fair trading agencies to promote product safety. The national Product Safety Consultative Committee (PSCC) continued to meet regularly to progress a range of national product safety matters, including the biannual national product safety surveillance program, and nationally coordinated consumer and supplier education campaigns. Chaired by the ACCC, the PSCC represents product safety regulators across Australian states and territories, as well as New Zealand. The PSCC is also a key forum for the ACCC and state and territory fair trading agencies to collaborate on a range of emerging product safety issues.

On the international front, the ACCC continues to work closely with its international counterparts, including through alignment of projects designed to develop a consistent international response to priority products. This year, the first of three consensus papers was completed, on curtain and blind cords. Significant progress was also made in developing consensus papers on baby slings and chair-top booster seats for children.

The ACCC continued its role as Chair of the Organisation for Economic Cooperation and Development (OECD) Product Safety Working Party. This Working Party was established to implement 10 key international product safety recommendations including the development of an international information sharing portal which is now in place, and the establishment of a global recalls database.

IDENTIFYING EMERGING HAZARDS

The identification of emerging product hazards continues to be a priority for the ACCC. The ACCC's Clearinghouse system provides a product safety hazard identification system and allows systematic analysis of a wide range of national and international injury and hazard data sources, enabling the ACCC to quickly identify and respond to emerging issues.

The ACCC continues to promote the mandatory reporting requirement introduced on 1 January 2011 which requires businesses to notify the Australian Government within two days of becoming aware that a product (or product-related service) they have supplied has caused, or may have caused, serious injury, illness or death. During the 2011–12 year, 2357 mandatory reports were received. Of these, 1221 reports were referred to other regulators such as Food Standards Australia New Zealand and 1136 were assessed or are currently under assessment by the ACCC.

In addition to these confidential mandatory reports, the Clearinghouse receives information from consumers and suppliers via the ACCC Infocentre, Product Safety Australia website and ACCC social media. The clearinghouse also proactively monitors the media and overseas recalls of unsafe consumer goods, and it receives injury reports from various parts of the health system and from other agencies in Australia and overseas.

Information is assessed for relevance and risk. Further work can lead to:

- recall negotiations with suppliers
- more detailed assessment involving consultation with stakeholders and experts
- new or revised product safety standards or bans
- consumer or supplier education and awareness activities
- recommendations to other agencies.

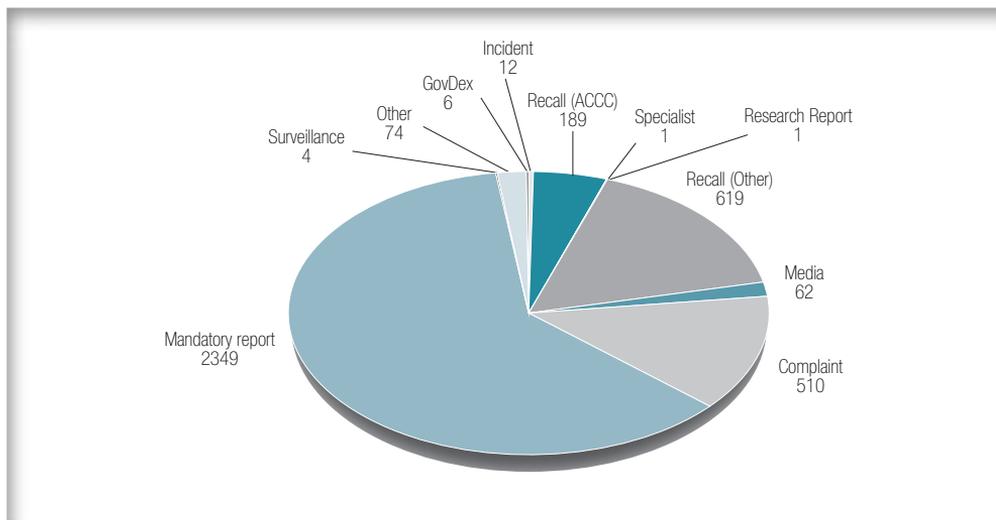
One example of a non-regulatory outcome resulting from product safety hazards identified via the Clearinghouse is the development of voluntary industry guidelines on the use of drawstrings in children's clothing. This was a collaborative project involving close work with industry representatives. The guidelines have been distributed to relevant suppliers and are also available via the Product Safety Australia website.

Another example involves voluntary use of warning labels on portable petrol generators—after a reported death associated with the use of a generator in an enclosed space, the ACCC wrote to identified suppliers regarding the carbon monoxide poisoning hazard associated with their products. All 16 suppliers contacted voluntarily agreed to add a simple, visual warning label to their products similar to a label developed for this purpose by the United States Consumer Product Safety Commission.

Both of these examples illustrate the collaborative way the ACCC works with industry to address and reduce product safety hazards.

The mandatory reporting requirement, and hazard identification work in the Clearinghouse, has also led to product recalls. In September 2011, the ACCC received a spike in mandatory reports involving serious injuries associated with a particular product when it broke. In this case, the ACCC contacted the supplier and negotiated for them to conduct a timely and thorough safety investigation. As new mandatory reports appear to relate to injuries from the same product continued to be submitted, the ACCC worked with the supplier to negotiate a voluntary recall of the product. The supplier's investigation subsequently determined that the problem was due to a faulty batch of components used in the product. In this case, the mandatory reporting provisions enabled the ACCC to be involved in the supplier's safety investigation and to influence the supplier's decisions at an earlier stage than would have otherwise been the case.

Figure 3.2: Sources for Product Safety Clearinghouse records 2011–12



PRODUCT RECALLS

The ACCC published 420 recalls for 2011–12. Ninety-five of these recalls were a direct result of active negotiation by the ACCC. They involved 135 hazardous products. These recalls were prompted by mandatory reports, industry intelligence, Infocentre complaints and monitoring of overseas recalls.

Of the 420 recalls published, the ACCC directly monitored and administered 221—the remainder were administered by other regulators. This activity represents an increase of 9 per cent on all recalls monitored by the ACCC compared to last year.

Figure 3.3: Consumer product recalls by category

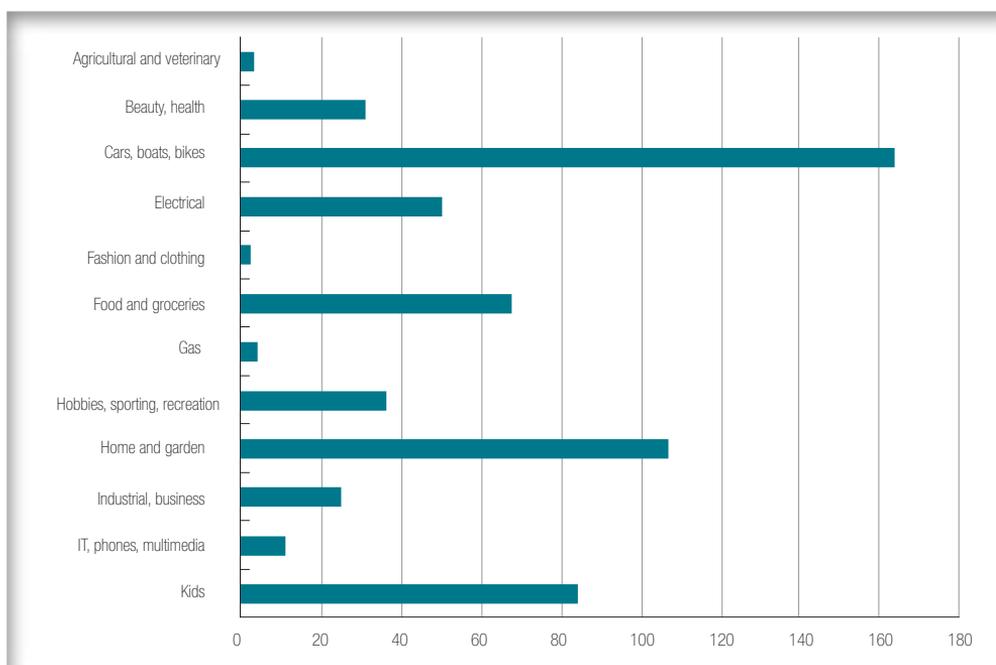
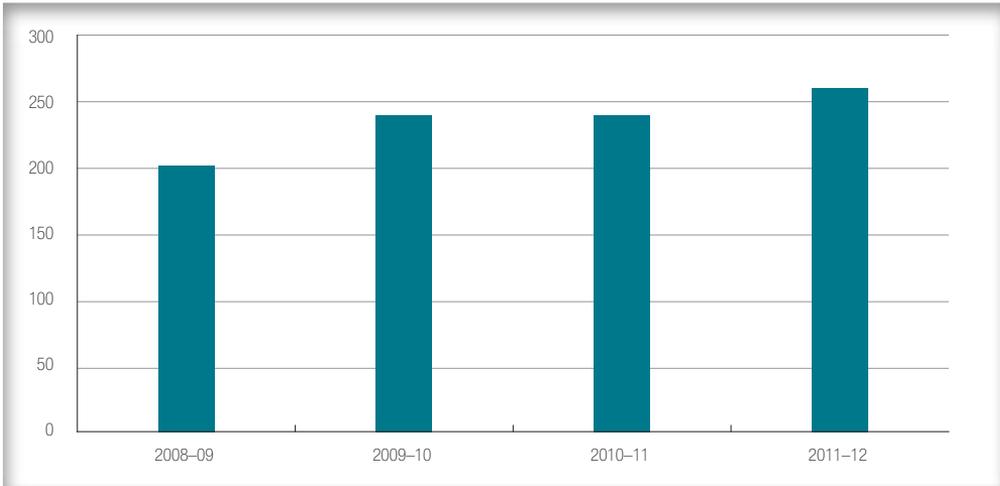


Figure 3.4: Year-on-year growth (based on financial years) of recalls monitored by the ACCC



During 2011–12, the ACCC successfully negotiated the voluntary recalls of 26 ‘do-it-yourself’ (DIY) teeth whitening products from 10 different suppliers. The recalled products were found to contain concentrations of more than 6 per cent hydrogen peroxide or more than 18 per cent carbamide peroxide.

A further two teeth whitening products were subject to a compulsory recall ordered by the then Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, on 6 February 2012, as the supplier had refused to voluntarily recall its products (which contained more than 6 per cent hydrogen peroxide) when requested to do so by the ACCC. The compulsory recall was the first under the Australian Consumer Law. A review of the Parliamentary Secretary to the Treasurer’s decision was sought under the Administrative Decisions (Judicial Review) Act, and a decision in the Federal Magistrates’ Court proceedings is pending.

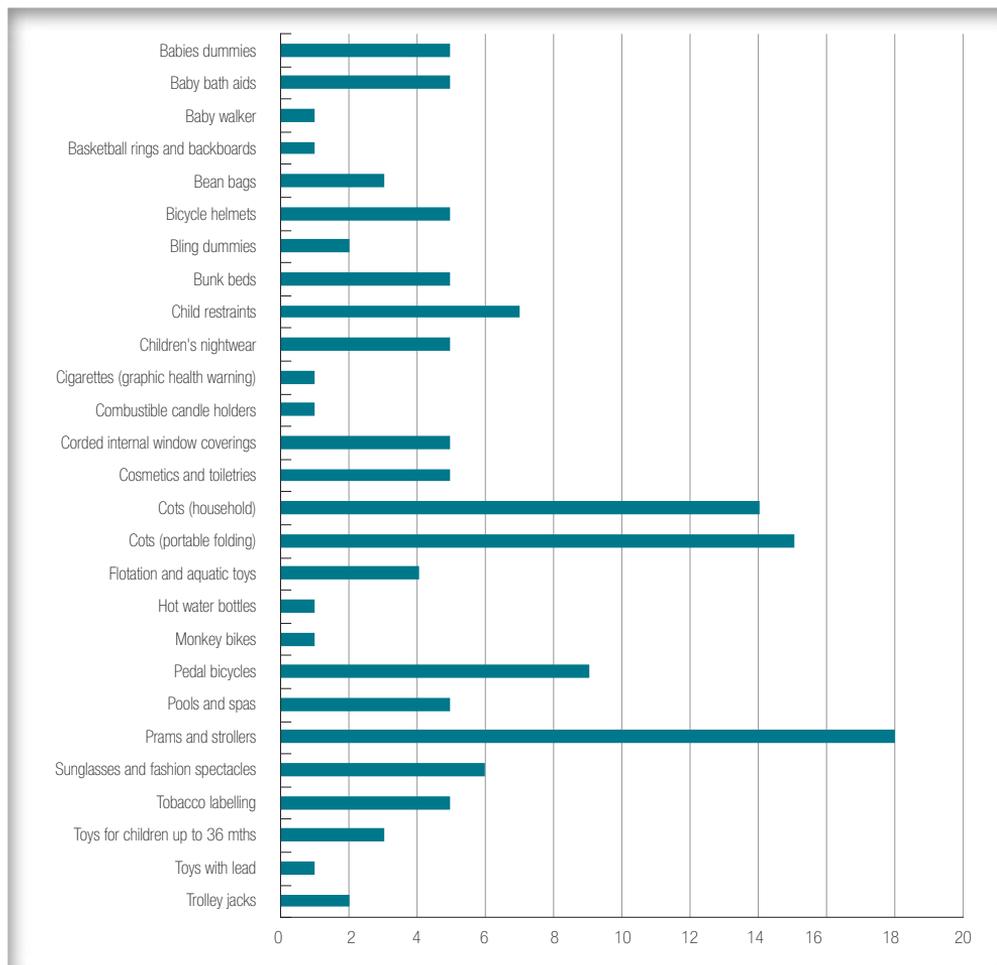
The recall of over 200 000 faulty hand-held gas bottles by the world’s largest supplier of gas cylinders, Worthington Cylinders, is also indicative of the success of the ACCC’s collaborative approach to achieving product safety compliance. Apart from having industrial applications, these hand-held gas bottles are also used by chefs and for ‘do-it-yourself’ purposes. As part of the investigation, the ACCC discovered that the Worthington product accounts for 70–80 per cent of all hand-held gas bottles sold in Australia. This investigation and the resultant recall also enabled the ACCC to strengthen its relationship with the Heads of Workplace Safety Authorities (HWSA) and with the Gas Technical Regulatory Committee (GTRC).

In 2011–12, the most prominent category of consumer goods recalls managed by the ACCC was ‘home and garden’. A total of 61 recalls from this category were initiated.

PRODUCT SAFETY COMPLIANCE AND ENFORCEMENT

The ACCC continued to apply a risk-based strategic approach to maximise compliance with product safety regulations. All matters involving a potential breach of a mandatory standard or ban were subject to an initial assessment within 24 hours of receipt. In determining action, factors such as the severity of the hazard posed by the breach, the level of consumer detriment and the market profile of the trader and the trader’s compliance history are considered. During 2011–12 a total of 135 matters were investigated.

Figure 3.5: Matters considered by standard/ban 2011–12



During 2011–12, the ACCC continued to partner with state and territory fair trading offices to undertake national surveillance programs and investigate non-compliance in the marketplace. This included the annual national pre-Christmas toy survey. In the lead up to Christmas, a total of 100 000 product lines and 2931 retailers were surveyed across Australia with 493 product lines failing to comply with the relevant mandatory standard or ban. A number of products were recalled as a result of this surveillance work.

In addition, in the lead up to Christmas 2011, the ACCC, worked with the Australian Customs and Border Protection Service, to conduct surveillance at the border to test for unsafe lead levels in toys. A total of 29 inspections and 837 individual tests were performed on 203 toys arriving at Melbourne and Sydney ports. All 203 toys were found to comply with the Customs Prohibited Import Regulations and the mandatory safety standard for lead and other toxic elements in toys.

There were three successful enforcement outcomes achieved by the ACCC against suppliers of hydraulic trolley jacks and luggage straps. **Trade Quip Pty Ltd** was penalised \$100 000 for supplying hydraulic trolley jacks that failed to comply with the mandatory standard. **TWM Imports Pty Ltd** was issued with three infringement notices totalling \$19 800 and provided a court enforceable section 87B undertaking after supplying hydraulic trolley jacks that failed to meet the requirements of the mandatory safety standard. Furthermore, **Sontax Australia (1988) Pty Ltd** was penalised \$40 000 for the supply of 2353 luggage straps with non-compliant warning labels.

Intervention improves labelling of potentially harmful chemicals in hair dye

Following an allegation of a serious allergic reaction to the permanent hair dye *Herbatint*, the ACCC wrote to the supplier detailing concerns about the package labelling of this cosmetic. In addition to this reported injury the Clearinghouse identified several recent cases/deaths overseas alleged to relate to PPD in hair dyes. Both *Today Tonight* and *A Current Affair* aired 'horror hair dye' stories on Wednesday, 21 March 2012 and the EU announced it was beginning the process of introducing stricter warning requirements for PPD in cosmetics.

In the *Herbatint* case, the consumer was aware that they were allergic to the chemical Paraphenylenediamine (PPD) however, they could not read the ingredients list and were led to believe the product did not contain PPD by the overall presentation of the product. The ingredients list was on the bottom of the box in a very small and poorly contrasting print. The ACCC also expressed concerns that the product was potentially misleading to consumers as it was generally presented as being natural, benign and as not containing potentially harmful industrial chemicals. The ACCC advised the supplier they must comply with the requirements of the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 and ensure the cosmetic ingredients list was prominent and legible. They were also advised to ensure they did not mislead or deceive and that in emphasising the presence of certain natural/herbal ingredients they should also adequately disclose the presence of industrial chemicals including PPD.

It was pleasing that the supplier of *Herbatint* responded immediately to the issues raised by the ACCC by:

- promptly producing and affixing interim stickers to all existing stocks which displayed the ingredients clearly on the side panel in clearly legible black text on a white background
- having the packaging redesigned for future production overseas so that the ingredients were clearly listed on the side panel in clearly legible black text on a white background
- agreeing to review and moderate the marketing claims on the package and their website.

This successful administrative outcome significantly enhances consumer safety as allergic reactions to PPD can be life threatening. While rare, there is emerging evidence that the prevalence of PPD allergy may be increasing in the general population. A person who does not have a history of allergy to PPD can become sensitised unexpectedly at any stage in life and suffer serious injury as a result of any exposure to this chemical. Effective ingredients labelling and directions for conducting individual skin patch sensitivity testing before every hair dye application are the key safety measures in place to protect consumers.



The ACCC also took legal proceedings against **Cotton On Kids Pty Ltd** and **Cotton On Clothing Pty Ltd** for allegedly supplying children's nightwear that failed to meet the requirements of the mandatory standard. The matter is awaiting final judgment.

EFFECTIVE EDUCATION AND COMMUNICATION

The ACCC continues to explore new and innovative ways to communicate directly with consumers and suppliers about product safety. In December 2012, a Facebook page, ACCC Product Safety, was launched.

The ACCC continues to post recalls, safety alerts and safety tips on both Twitter and Facebook. At 30 June 2012, ACCC Product Safety had more than 2100 Twitter followers and over 300 Facebook fans. These channels enable the ACCC to engage in two-way communication with stakeholders about product safety. They also provide an additional mechanism for the ACCC to share safety messages and direct consumers and suppliers to relevant sections of the Recalls Australia and Product Safety Australia websites.

The ACCC also used YouTube to share safety videos and announce new initiatives in product safety via its own dedicated channel, ACCC Product Safety. Videos on the ACCC Product Safety YouTube channel are available for other organisations to feature on their sites or to distribute through their own channels—for example in pre-natal classes. Current videos cover baby products, vehicle jack safety and hot water bottle safety.

Additionally, the ACCC developed and launched the Recalls Australia iPhone application. The app provides easy access to information on consumer goods recalls including where a product was sold and what consumers can do if they have the product. Additionally, consumers can send notification of unsafe products and photographs directly to the ACCC via the app. The Recalls Australia app is available via the iTunes Apple Store at no cost.

The ACCC also developed its first eBook available free of charge via iTunes: the *Keeping baby safe* publication.

The ACCC continued its successful seasonal online campaigns for consumers during 2011–12. The SafeSummer and EasterSafe campaigns used social media and other online platforms to engage consumers.

Other education campaigns included:

- During 2011–12 the ACCC partnered with Kidsafe and Energizer to raise awareness of safety issues surrounding coin-sized lithium button batteries (also known as button batteries) for children under five. The campaign included a media launch and the release of a video, fact card, poster and promotion via social media networks.
- The national DIY vehicle maintenance safety education campaign (*Don't be a jackass with jacks*) was launched in September 2011 and ran until the end of February 2012. The campaign was a joint initiative of the ACCC and state and territory fair trading agencies aimed at curbing death and serious injury among DIY home mechanics.

The campaign focused on the safe use of several regulated products such as vehicle jacks, trolley jacks, vehicle support stands and vehicle ramps, and included a market surveillance component. A range of traditional and new media sources was used to raise awareness of the risks of working under a vehicle with an atypical target audience. Through innovative approaches such as discussions in car forums, a mobile website and an online competition, the channels became not only a mechanism to disseminate key safety messages but to also receive feedback and successfully engage with the audience.

Product Safety social media

Over the past 12 months, the ACCC's Product Safety Branch has increased its use of social media to communicate with a range of businesses and consumers on issues affecting them, including via a Product Safety Australia Facebook page, a Product Safety Recalls Australia iPhone application, *Keeping baby safe* eBook and a short animated film in the *Keeping baby safe* series (on household cots) which is available on the ACCC Product Safety YouTube channel.

The launch of the Product Safety Australia Facebook page in December 2011 has attracted over 300 'likes' reaching consumers, government agencies, companies and not for profit organisations. The ACCC posts recalls, safety alerts, tips and the latest happenings in the product safety world on Facebook, adding to the Twitter feed started in 2010 (@ProductSafetyAU). These channels encourage consumers to visit the Product Safety Australia website and the Recalls Australia website.

In October 2011, the ACCC Product Safety Recalls Australia iPhone application was launched via the ACCC YouTube channel. The application is based on the Recalls Australia website and enables consumers to readily access information on recalled products. An Android version (a different smartphone platform) and a Product Safety Recalls Australia mobile website are being developed.

Other social media initiatives during 2011–12 include a national DIY vehicle maintenance safety education campaign called *Don't be a jackass with jacks*, which was promoted on Facebook, Twitter, YouTube and a range of automotive forums and blogs. The campaign aimed to raise awareness of hazards associated with working under a vehicle. The campaign slogan—Don't be a jackass with jacks—was developed by seeking ideas from consumers on online car forums.

The ACCC launched the *Keeping baby safe* eBook via iTunes and released the short animated film on household cots on YouTube. The eBook provides parents and carers with guidance on how to ensure baby remains safe at home. The household cot safety video provides tips on choosing and using a cot safely.

The ACCC launched three online safety campaigns on social media channels during 2011–12—WinterSafe, SafeSummer and EasterSafe. The campaigns actively engaged with consumers, encouraging followers to tweet tips relating to the campaign theme. All three campaigns were popular and prompted a spike in Twitter followers. As at 30 June 2012, ACCC Product Safety has over 2000 followers on Twitter.

Delivering the product safety message through accessing a variety of social media channels is an effective way to reach and interact with our diverse stakeholders.



- In June 2012 the ACCC partnered with the Football Federation of Australia to launch its national consumer education campaign aimed at raising awareness of the hazards associated with moveable soccer goals and demonstrating safe behaviour while installing, using and storing these goals. As most of the injuries and deaths involve children who are using or playing around moveable soccer goal posts, the campaign was aimed at primary care givers, such as coaches, teachers, parents and volunteers, as well as sporting organisations that host or support the activity. This campaign will run into the 2012–13 financial year.

Product Safety Website

The ACCC continues to maintain the Product Safety Australia and Recalls Australia websites to ensure they are accessible and provide a source of relevant and up-to-date information. The Product Safety Australia website www.productsafety.gov.au continues to be a one-stop-shop for everyone who buys and uses consumer products and for businesses that make, import and sell them. The ACCC administers this site on behalf of all state and territory consumer product safety regulators.

The number of visitors to the Product Safety Australia website has increased during 2011–12 to 282 404 unique visitors, compared to 146 336 unique visitors last year. During 2011–12, the average number of visits per visitor was 19 and the average length of each visit was 2.78 minutes.

The number of visitors to the Recalls Australia website www.recalls.gov.au also increased during 2011–12, with 529 466 unique visitors compared to 448 315 last year. A combination of factors such as high-profile recalls and ACCC social media presence have increased overall traffic from last year.

Table 3.3: Recalls Australia website top 10 pages viewed

Top 10 pages	Number of views
Homepage	211 196
Mandatory standards	54 220
Baby and nursery	28 150
Toys	18 722
Clothing and accessories	17 602
Bans	14 464
Chemicals in consumer products	9 934
<i>Keeping baby safe—A guide to infant and nursery products</i>	6 710
Care labelling for clothing and textiles	5 578
Bans, standards and recalls	4 906

Table 3.4: Recalls Australia website top 10 recalls viewed

Top 10 recalls	Number of views
IKEA—Antilop Highchair	33 334
Sony Australia Limited—Sony BRAVIA LCD TV	25 992
Park Avenue Foods Pty Ltd—Torch Gift Pack with Milk Chocolate Eggs 68g	16 342
Legrand Australia—HPM Assorted Extension Leads	7 752
Brivis Australia Pty Ltd—Evaporative Coolers	6 604
Parmalat Australia Pty Ltd—Pura Milk, Daisy Fresh Milk and Woolworths Homebrand Milk	6 380
A2 Dairy Products Australia Pty Ltd—A2 Full Cream Milk 1&2 Litres	5 752
Rafferty's Garden Pty Ltd—Rafferty's Garden Italian Lasagne Premium Baby Food 10 months+	4 610
Vitaco Health Australia Pty Ltd—Healtheries Kidscare Rice Wheels and Wiggles Ricey Bites	4 494
Goodman Fielder Pty Ltd—MeadowLea Extra Light Margarine 500g	4 090

Targets and results for goal 2: Encourage fair trading, protection of consumers and product safety

Measure: Timely and effective identification, investigation and action responses to breaches of the ACL

TARGETS

No specific target

In 2011–12 the ACCC continued to identify breaches of the Australian Consumer Law through complaints investigations, surveillance programs and working with business, industry and co-ACL regulators to proactively identify and correct actual and potential breaches. Identified and corrected instances of unfair contract terms. See sections 2.2 and 2.3, pages 55–83.

RESULTS

Measure: Effective remedies achieved through court action

Outcomes from an expected 20 court cases (covering goals 1 and 2, i.e. competition, fair trading and consumer protection)

For Goal 2 the ACCC concluded 22 court cases for fair trading, consumer protection and product safety matters (see Appendix 10).

Measure: Effective remedies achieved through non-court action

Resolve expected 50 enforcement actions to prevent or stop conduct causing detriment to consumers or small business

In 2011–12, 72 enforcement actions were resolved for fair trading, consumer protection and product safety matters, including 22 court cases, 15 court enforceable undertakings, and 34 infringement notices (across 14 matters) (see Appendix 9 and 10).

Outcomes from an expected 40 court enforceable undertakings (predominately for consumer protection conduct that has breached or is likely to breach the CCA)

In 2011–12, for Goal 2, 15 court enforceable undertakings were obtained for fair trading, consumer protection and product safety matters, and in addition 34 Infringement Notices (across 14 matters) were paid (see Appendix 9 and 10).

Measure: Collective bargaining notification decisions affecting small business made within statutory timeframes

TARGETS

Collective bargaining notification decisions within statutory timeframes (assessment of validity within five days, initial assessment within 14 days) and communicated promptly

100 per cent of collective bargaining notifications were accessed for validity within five days.
 100 per cent of initial assessments of collective bargaining notification were completed within 14 days.
 All collective bargaining notification decisions were published on the ACCC website and communicated to applicants and interested parties in a timely manner.

RESULTS

Measure: Fair trading outcomes achieved through enforcement of mandatory codes of conduct

Enforcement of mandatory codes of conduct

The ACCC served 29 audits (20 franchisors and nine horticulture traders). Most traders were found to be compliant with the relevant codes.

Measure: Effective education and communication to inform business and consumers about their rights, responsibilities and obligations under the CCA, including the ACL

Publicity, liaison and education activities that are timely and reach the target audiences—750 000 publications and 250 media releases

The ACCC ran a campaign on consumer guarantees, increasing the confidence of consumers in dealing with guarantee issues, businesses understanding of their obligations. See 'Consumer guarantees, warranties and refunds' on page 63.
 The ACCC also ran information and education programs on scams to alert businesses and consumers about new scams and how to avoid them. See 'Scams' on page 66.
 The ACCC also focused on vulnerable and disadvantaged consumers in 2011–12, increasing engagement with these audiences to inform them of their rights. See 'Information programs for small, isolated or disadvantaged groups' on page 72.
 984 215 publications distributed.
 868 935 visits to online publications.
 273 ACCC media releases and 19 AER media releases issued.

Websites (www.accc.gov.au, recalls.gov.au, www.productsafety.gov.au and www.scamwatch.gov.au) that are accessible and a source of relevant and up to date information

Websites are updated daily.
 www.accc.gov.au—4 946 859 visits
 www.recalls.gov.au—1 092 095 visits
 www.productsafety.gov.au—455 628 visits
 www.scamwatch.gov.au—1 132 884 visits

Measure: Timely identification and response to product safety hazards

TARGETS

RESULTS

No specific target

The ACCC made increasing use of the Product Safety clearing house to identify and respond to emerging product safety hazards, with all reports referred to other agencies or entering assessment by the ACCC. See 'identifying emerging hazards' on page 75.

100 000 product lines and 2931 retailers were surveyed pre-Christmas 2011, with 493 failing to comply with the relevant mandatory standard or ban.

Measure: Product safety activities to effectively assess and address product safety hazards

No specific target

In 2011–12 the ACCC published 420 recalls, an increase of 9 per cent on the previous year. 135 assessments of potential breaches of mandatory standards or bans were investigated. See 'Product Safety compliance and enforcement' on page 77.

Measure: Effective education and communication to reduce product safety related injury and maximise industry compliance

No specific target

The ACCC ran education campaigns on button batteries, DIY vehicle maintenance and moveable soccer goals, and online campaigns on WinterSafe, SummerSafe and EasterSafe. The Product Safety Australia Website had 455 628 visits. See 'Effective education and communication' on page 80.