

## **1. Introduction**

Thanks for the invitation to be with you.

As the national competition and consumer protection regulator, the ACCC plays a distinct role in complaints handling.

Unlike Medicare, Centrelink or the Child Protection Agency, the ACCC does not strictly have any 'clients'.

But that does not mean we don't have a clear and defined focus.

As stated by section 2 of the Trade Practices Act, our role is to 'enhance the welfare of Australians through the promotion of competition and fair trading and provision of consumer protection'.

The vast majority of complaints received by us concern the actions of third parties – primarily business and individuals.

We also take seriously complaints made against the organisation itself. However it is the former that I will focus on today with respect to the following:

- The importance of a good contact centre to effective complaint management and handling, in this context I will discuss the ACCC InfoCentre experience, and pressures arising from increasing complaint numbers.
- How the ACCC prioritises the large number of complaints received through our compliance and enforcement policy.
- I will finally highlight the importance of the ability to share information between agencies to ensure cross agency coordination. I will illustrate this in the context of current developments in Australia's consumer laws.

Let me now begin by examining the work of the ACCC's Infocentre.

## **2. The Infocentre – the public face of the ACCC**

The Infocentre is the key interface between the public and the ACCC as it represents the first point of contact and for the vast majority of people who come in contact with the ACCC, it may be their only point of contact.

Not only does the InfoCentre provide information and advice to complainants, it is the intelligence heart of the ACCC's enforcement division. It has its finger on the market pulse; its role in recording and reporting on market issues is vital to the prioritisation of the ACCC's enforcement efforts.

Each year, it receives about 120,000 complaints and inquiries and provides a critical link in the enforcement chain – as the majority of enforcement actions run by the ACCC originate from consumer or business complaints.

Over the last three years there has been a significant increase in the workload of the Infocentre, including:

- an increased number of contacts – which are calls, emails and letters,
- an increased diversity of calls – highlighting the various new functions the ACCC has gained in recent times, and
- a requirement to capture more information from each call.

In 2006 the Infocentre received an average of 260 contacts each day consisting of 227 calls and 33 emails.

In 2007, the contacts received in the Infocentre increased steadily. The daily average over the year was 351 contacts per day consisting of 277 phone calls and 74 emails.

In 2008, the contacts received in the Infocentre increased sharply. The daily average over the year was 456 contacts per day consisting of 354 phone calls and 102 emails.

Undoubtedly, this has an impact on the Infocentre's staff, which is currently 14 full-timers.

The ACCC takes considerable care in the selection and training of its InfoCentre staff considering both technical competence and cultural fit. It is important that staff are able to get on top of a large range of complaints and to provide helpful advice without the use of scripts and can recognise important issues that may require further questioning. We made a conscious decision to use the name "InfoCentre" and we put effort into retaining an empathic culture.

Although training levels have come under pressure with increased work loads, we provide training on technical as well as call management issues and we seek to provide information on how cases develop from calls or letters received in the InfoCentre.

It goes without saying, quality complaints handling can only be achieved with quality staff who are engaged with the organisation's mission and robust processes.

The ACCC is putting a lot of effort into a change management program to get the most from the limited resources of the InfoCentre. This involves many issues common to contact centres such as better forecasting, quality monitoring and demand management (through better use of the ACCC's internet site). But I don't want to talk about this in any detail today.

Rather, I would like to explore in a little more detail how the ACCC determines which complaints warrant further investigation.

### **3. Discretion and ACCC investigations**

Obviously we cannot and do not undertake 120,000 investigations. For example, during 2008-09 only, 484 initial investigations were commenced. Nor can the ACCC take enforcement action with respect to every breach of the Trade Practices Act. It is important to remember that the Act also provides private rights of action.

The ACCC exercises its enforcement powers independently, in the public interest, with integrity and professionalism and without fear, favour or bias.

When assessing complaints that may require further investigation, the ACCC is guided by its published Compliance and Enforcement Policy.

The ACCC exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for consumers and business.

Factors that are important in determining the ACCC's enforcement priorities include:

- conduct of significant public interest or concern;
- conduct resulting in a significant consumer detriment including affecting disadvantaged or vulnerable consumer groups;
- conduct involving national or international issues;
- conduct involving significant new or emerging market issues;
- conduct that is industry-wide or likely to become widespread if the ACCC does not intervene;
- whether ACCC action is likely to have a worthwhile educative or deterrent effect; and
- the person, business or industry has a history of previous breaches of trade practices law.

Just because the ACCC does not pursue enforcement action in relation to complaints received, it does not mean the ACCC has washed its hands of the matter.

We may choose to:

- provide information to raise awareness of the Trade Practices Act even if contravention is unlikely,
- postpone an investigation when insufficient information is available with view to restart it if further information comes to hand,
- alert parties of possible contraventions and allow them to rectify the matter where it appears accidental or has limited detriment to consumers or business,
- place the parties on notice about the ACCC's concerns with the likelihood of further action if the contravening conduct continues, and
- deal with the matter informally where a business has promptly remedied the contravention and put measures in place to prevent future incidents.

It is also important to note that we are unlikely to pursue matters that:

- are one-off, isolated events, unless the conduct involves a blatant breach of the law,
- are more appropriately dealt under an industry code,
- involves issues more effectively dealt with by state and territory agencies,
- are primarily contractual or private right disputes – the Trade Practices Act provides complainants with a private right of action in these circumstances.

It is also worth mentioning that some complaints to the ACCC and about the organisation arise from expectations by the public and some media commentators that we can act on matters that fall outside our jurisdiction or where no such power exists to deal with the matter.

For instance there is a continuing misconception that the ACCC can regulate the price of petrol.

Recognising this as an issue, the ACCC is proactively informing the public of what we can and cannot do.

For example, last week Petrol Commissioner Joe Dimasi released a new set of detailed petrol fact sheets that have been published on our website for consumers and distributed to media.

#### **4. Challenges with sharing complaint information**

I'd finally like to touch upon the sharing of complaints data with state and territory enforcement agencies and some of the challenges that the ACCC faces in relation to the Australian consumer law reforms.

Notwithstanding important laws that are often seen as restricting information sharing such as the Privacy Act, in a period when connected or whole-of-government responses are demanded and where resources are limited; sharing of complaint information should be regarded as a legitimate part of an effective complaint handling process.

The proposed Australian consumer law reforms will see the current baker's dozen of consumer protection laws replaced with one national law that will apply throughout Australia.

This law will be primarily based on the Trade Practices Act and the 'best practice' areas of state and territory fair trading laws. Enforcement of the single national law will be shared between the ACCC and states and territories.

This makes cooperation between all consumer agencies vital. Without the ability to share and transfer information, the level of cooperation and coordination envisaged by COAG will not be possible and many of the benefits of a national regime will not be realised.

This is likely to raise both cultural and legislative issues. It is more natural for enforcement agencies, whose core business includes enforcement litigation, to first look to protect the integrity and confidentiality of information gathered than to look for opportunities to share information openly.

There is also the concern about losing control of information once it is passed to someone else and made subject to other avenues of disclosure such as FOI legislation.

The ACCC has the benefit of section 155AAA of the Trade Practices Act. This is a broad ranging power to share confidential information in certain circumstances.

Section 155AAA is actually a general provision that prohibits Commissioners, ACCC staff and consultants disclosing protected information except:

- in the performance of their duties or functions; or

- as required or permitted by law.<sup>1</sup>

Protected information is any information given to the ACCC in confidence or is obtained through the use of its coercive powers.

However the section also lists circumstances in which the ACCC is specifically permitted to disclose protected information, including (relevant for today):

- to certain other government agencies, bodies and persons, such as ASIC and state and territory fair trading agencies.<sup>2</sup>

In this instance, the decision to release the information is one for the ACCC Chairman who may impose conditions on disclosure. The Chairman must be satisfied that the information will assist the other agency perform its functions.

The Australian Securities and Investment Commission has a similar provision – section 28 of the ASIC Act. However, a provision in similar terms is not a feature of most other consumer protection laws.

It should be noted that the power is discretionary and its impact will have much to do with the information culture of an organisation.

In this regard, efforts are being made to ensure a culture of open cooperation is fostered through the development of an MOU between all agencies in promoting compliance with and enforcing the ACL. This is yet to be finalised but at its heart is recognition that collaboration, cooperation and coordination are desirable and necessary to:

- discharge each agency's respective functions;
- maximise the effective and consistent implementation of the regulatory powers of each agency; and
- promote and streamline resource allocation to facilitate compliance with, or enforcement of, the ACL.

While cooperation can and does occur within the existing framework, improvements at a structural level that formalise information sharing will also be of assistance.

Simply tailoring the way we collect information, or recognising complaints that might be relevant to other agencies and seeking consent to share information can facilitate effective complaint handling.

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<sup>1</sup> These statutory obligations are in addition to existing obligations under other laws, such: The *Trade Practices Act*; Section 11 of the *Privacy Act 1988* which sets out the Information Privacy Principles; Section 70 of the *Crimes Act 1914*; Section 13(4) of the *Public Service Act 1999* which contains the APS Code of Conduct; Regulation 2.1 of the *Public Service Regulations 1999*.

<sup>2</sup> The agencies to whom the ACCC can disclose protected information to is defined broadly: see s.155AAA(12) at Attachment 1 for the full list.

The architecture for information sharing is also important. Ad hoc information sharing is one thing, but the ACCC has recommended that if there is to be true cooperation, a single national database that can be interrogated by all relevant agencies should be considered.

Such a database must be comprehensive and hold complaint information that is gathered and entered in a consistent manner. It could also provide a mechanism for agencies to compare data across jurisdictions and facilitate the setting of priorities and detection of emerging consumer protection issues across Australia.

Moreover, the Australian Consumer Law reforms provide a timely opportunity for government agencies to review the way complaint information is shared and stored, especially since some of the current mechanisms in place lack clarity and consistency.

## **5. Conclusion**

That was just a taste of the ACCC's complaints handling mechanisms and I hope it may have raised some issues relevant to your agency, even if your legislation or procedures are very different.

The Infocentre continues to play an integral role as the first point of call for the public in dealing with the ACCC.

All complaints are taken seriously but only some result in further investigations and possible enforcement action.

In considering further action, the ACCC uses its discretion based on the guidelines set out in the Compliance and Enforcement Policy which emphasised public detriment, the extent of the contravention and a proportionate response to the harm caused,

Furthermore, information sharing may be important in some circumstances to ensure complaints are handled appropriately, efficiently and consistently.

Thank you.