

ACCC focus areas for 2020 – funerals, food & more

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The ACCC recently released its compliance and enforcement priorities for the year. When announcing these priorities at the annual CEDA event in Sydney on 25 February 2020, the ACCC Chair Rod Sims called the ACCC a ‘strong enforcer’ which needs to make tough judgement calls when enforcing Australia’s competition and consumer laws where outcomes can be uncertain and ultimately the Courts decide whether conduct breaches the law. A summary of the ACCC’s priorities for 2020 is available here:

<https://www.accc.gov.au/publications/2020-compliance-and-enforcement-priorities>

The key areas of enforcement focus for the year for the ACCC include:

- **Competition and consumer issues in the funeral services sector** – the ACCC has the funeral industry clearly in its sights on the back of consistently large number of complaints from the public, governments and in the media as well as heavy market concentration. The regulator will take a particularly keen interest in businesses that use their significant market power to bundle services and block new entrants to the market and/or engage in unconscionable or unfair conduct by way of high/complex and opaque pricing, product bundling and other unfair contract terms within funeral services and pre-paid funeral contracts. The ACCC is actively encouraging whistleblowers to come forward as it is hoping to improve its understanding of the market and undertake targeted action to reign in unwelcome, exploitative conduct.
- **Competition and consumer issues relating to digital platforms** – on the back of the ACCC’s recent Digital Platforms Inquiry and fines recently imposed on Facebook in the United States and the United Kingdom for mishandling the personal information of users, the ACCC is concerned about consumers being misled over the collection and use of their personal data amongst other things. The ACCC will continue its focus on these issues with the assistance of a newly created digital platforms branch and will continue its various investigations with the help of overseas regulators.
- **Misleading conduct in sale and promotion of food especially health and nutritional claims, credence claims and country of origin claims** – the ACCC is targeting misleading claims in food marketing both on pack and in associated marketing given growing community interest in the health and nutrition benefits of food products and the tendency for consumers to pay a premium for products that claim to provide these benefits. The ACCC is targeting businesses that either confuse consumers or deliberately make misleading or deceptive claims to gain an unfair advantage over suppliers who make ‘honest’ claims. This comes on the back of the ACCC’s successful court action against Heinz in 2018 for its ‘Little Kids Shredz’ high sugar ‘healthy’ product claims, with the ACCC no doubt hoping to secure some much higher penalties for misleading or deceptive conduct following the significant increase in maximum penalties that can be awarded by the Courts for breaches of the Australian Consumer Law from 1 September 2018.
- **Implementation of and compliance with the Dairy Code of Conduct** – the ACCC will be working closely with affected dairy farmers and processors to ensure the smooth implementation of the Dairy Code of Conduct that came into effect on 1 January 2020. It will also educate these groups about their rights and obligations under the Code and, where necessary, enforce the Code where there are areas of significant non-compliance. There will be a full review of the Code after 12 months.

- **Empowering consumers and improving industry compliance with consumer guarantees with a focus on high value goods like motor vehicles and electrical and whitegoods** – with the area of consumer or statutory guarantees remaining the number 1 issue for both the ACCC and other fair trading regulators to deal with and these 2 sectors being the most regularly complained about, the ACCC is anticipating both enforcement action in the consumer guarantee area and compliance initiatives by way of a combination of industry and consumer education. The ACCC is hoping this will drive a long overdue change in the attitude of industry to compliance with the consumer guarantee regime and the way consumers are handled where there is a problem with consumer goods or services that are supplied.

These particular focus areas are on top of the ACCC's enduring priorities which remain:

- **cartel conduct** (with a nod in the CEDA speech to the new cartel immunity and cooperation policy launched in October 2019 and the new anonymous whistleblower hotline – a link to the ACCC's September 2019 media release is available here: <https://www.accc.gov.au/media-release/cartel-immunity-policy-strengthened-whistleblowing-tool-launched>)
- **anti-competitive conduct** and unilateral conduct like **misuse of market power** (with the ACCC initiating a test case of the new effects test against Tasmanian Ports Corporation in December 2019),
- serious **product safety** issues.

This comes on the back of the Federal Government announcing at the end of last year that it would be committing around an additional \$28 million over the next 4 years to support the implementation of certain recommendations from the ACCC's Digital Platforms Inquiry that it finalised last year.

In his CEDA speech, Rod Sims also made it clear that the ACCC is planning on instituting at least four new competition cases on matters where it identifies a 'clear problem and a clear benefit' to intervening. The ACCC is also encouraging the Federal Government to push ahead with the debate about a general law against unfair practices by large business against consumers/small business where significant detriment is involved. This would see Australia following the likes of the United States, the United Kingdom, Europe and others. Sims also confirmed that the introduction of a new penalty regime for unfair contract terms is well advanced which, for the first time, would see an unfair contract term specifically expose a business in breach to a penalty rather than merely the risk the term being declared void by the Courts.

If your business operates in any of these focus areas, you'd be well served to get your house in order and make sure your internal compliance programs are robust and effective. Watch this space on developments in all of these areas.



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