

Are you aware of the ACCC's industry code audit powers?

Stephens Lawyers Consumer Law & Franchising Update: October 2011

Overview

Since the expansion of the ACCC's enforcement powers on 1 January 2011 under the Australian Consumer Law reforms, the ACCC now possesses extensive audit powers to monitor compliance with industry codes prescribed under the *Competition and Consumer Act 2010*. Currently, four industry codes are prescribed under this legislation, including: the *Franchising Code*, the *Horticulture Code*, the *Oil Code*, and the *Unit Pricing Code*.

The ACCC has issued alerts that it will be utilising its enforcement powers to **randomly audit franchisors'** compliance with the *Franchising Code of Conduct*. The ACCC will focus on those who have been the **subject of multiple complaints** and those with a **history of non-compliance**.

Audit Powers Explained

The ACCC has advised that it will use its new audit powers to quickly determine whether businesses who are required to adhere to an industry code are complying with them. [\[1\]](#) Under section 51ADD of the *Competition and Consumer Act*, the ACCC can monitor compliance with mandatory industry codes, by issuing businesses with a notice requesting any information or documents that the business is obliged to keep or generate under the relevant code. For a franchisor, this may include disclosure documents, franchise agreements, lease agreements, marketing fund financial statements and termination notices.

The written notice supplied by the ACCC should include instructions on how to respond to the notice, including:

- Specifying the information or documents the business must provide to the ACCC; [\[2\]](#)
- Informing the business that all information or documents must be produced within **21 days** of the notice; [\[3\]](#)
- Procedure for obtaining a time extension to produce the requested information; [\[4\]](#) and
- Warn the business against providing false or misleading information to the ACCC. [\[5\]](#)

If your business receives an audit notice

Being the subject of an audit does not necessarily mean non-compliance with an industry code. If your business is issued with an audit notice, Stephens Lawyers & Consultants can assist your business with complying with the ACCC's requests. Further, if you anticipate difficulties in providing the documents within 21 days, it is possible to apply for a time extension from the ACCC.

If the audit uncovers a breach of an industry code, the ACCC will handle the matter in accordance with its Compliance and Enforcement policy. For minor breaches, this may mean resolving the issues with a business administratively, however deliberate and severe breaches of an industry code may attract further enforcement action by the ACCC. [\[6\]](#)

The ACCC's audit alert acts as a timely reminder to franchisors to ensure that all disclosure documents, franchise agreements, lease documents, marketing material, financial statements and terminations comply with franchisor's obligations under the *Franchising Code of Conduct* and the *Competition and Consumer Act 2010*.

For more information on the ACCC's Audit Powers, please visit the ACCC's website. [\[7\]](#)

Stephens Lawyers & Consultants have a high level of expertise in franchising and consumer law.

Our lawyers represent leading companies and individuals in both litigious and commercial matters. We can assist franchisors with *Franchising Code* compliance.

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[\[1\]](#) ACCC Industry Code Audits, <http://www.accc.gov.au/content/index.phtml?itemId=1010797>.

[\[2\]](#) Section 51ADD(3)(b)(i) *Competition and Consumer Act 2010* (Cth).

[\[3\]](#) Section 51ADD(2) *Competition and Consumer Act 2010* (Cth).

[\[4\]](#) Section 51ADD(3)(c) *Competition and Consumer Act 2010* (Cth).

[5] Section 51ADD(3)(c) *Competition and Consumer Act 2010* (Cth).

[6] ACCC Industry Code Audits, <http://www.accc.gov.au/content/index.phtml?itemId=1010797>.

[7] ACCC Industry Code Audits, <http://www.accc.gov.au/content/index.phtml?itemId=1010797>.