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# Guidance and information

## Small business

### **Ethnic small business education and awareness program**

Until July 1996, Australian competition law did not apply to many small businesses. One of the main objectives of the Commission's Small Business Program is to raise the awareness of small business about its rights and obligations under the Trade Practices Act. Ethnic communities are an important target audience because one in five small businesses are owned or operated by people of non-English speaking backgrounds.

The Commission has identified seven ethnic groups in Australia in which there is a high level of participation in the small business sector and relatively low exposure to mainstream English-language sources of information. They are the Chinese, Arabic, Turkish, Korean, Vietnamese, Italian and Greek communities. The Korean community was identified as the priority group because it is small, highly concentrated (in Sydney), and has well-established channels of communication.

The Commission has begun a trial project with the Korean business community, and plans to extend the initiative to other ethnic business communities over the year. The trial began in October 1996 with a seminar and dinner before a regular meeting of the Korean Chamber of Commerce and Industry. The chamber has 75 members, more than 40 of whom attended the meeting. Their businesses are in areas such as the retail trade (for example, restaurants, clothing and gift shops), wholesaling (imports and exports), marketing and services (such as travel agencies and contract cleaning).

The seminar involved a general introduction to the Trade Practices Act and an explanation of the ethnic business initiative. The businesspeople then had an opportunity to raise matters that might have a direct impact on their own operations. This enabled Commission officers to provide relevant information of immediate concern to the business community and also highlighted areas where the Commission should concentrate its follow-up work.

Because of the interest expressed at the meeting, the Commission is planning another seminar for Korean businesspeople on the labelling of goods, particularly relating to representations about country of origin.

### **1997 Business Expos**

The Commission will participate in a number of Business Expos in 1997. Information relevant to small business will be available from its stand. The Commission will also provide a speaker at each of the Expos to discuss the rights and obligations of small business under the Trade Practices Act.

The Business Opportunities and Franchising Expo will be held in each of the five mainland capital cities between March and October. Although it will focus on the franchising sector, it will also address other areas of opportunities and growth in business including advice, products, services and technology. The Sydney and Melbourne Expos will also have a strong investment orientation.

The Business World Expo, to be held in Melbourne, is specifically aimed at small to medium enterprises as well as people intending to establish a business. Participating organisations include government agencies,

industry associations, small business associations, and a number of women's business organisations.

The Commission will attend the following Expos:

- 21–23 March, Business Opportunities and Franchising Expo, Sydney
- 11–13 April, Business World Expo, Melbourne
- 2–4 May, Business Opportunities and Franchising Expo, Perth
- 14–15 June, Business Opportunities and Franchising Expo, Adelaide

### Franchising Code of Conduct

The Franchising Code Council (FCC) ceased operating on 31 December 1996, leaving the future of the Franchising Code of Practice in some doubt.

The code came into operation on 1 February 1993, following recommendations from the Franchising Task Force to the Commonwealth Government, as a means of addressing market failure in the franchising sector. The task force report, released in December 1991, noted that franchise failure was, in part, the result of inadequate disclosure by the franchisor and an inadequate assessment of the business by the franchisee. The report's recommendations were endorsed at a meeting of Commonwealth, State and Territory Small Business Ministers.

The Franchising Code Administration Council, which later changed its name to the Franchising Code Council, was established on 28 January 1993 as a non-profit company limited by guarantee. Its main role was to establish and maintain a register of persons agreeing to comply with the code; to monitor code performance and report on this to the Commonwealth Minister for Small Business; and to deregister persons who failed to comply. It comprised five franchisors, five franchisees, two service providers, one lawyer, one chairperson and one government representative as an observer.

The Commonwealth Government announced a review of the code in 1994. The terms of reference required the consultant undertaking the review, Mr Robert Gardini, to report on the strengths and deficiencies of the code and its administration. He was also required to make recommendations to enhance the performance of the code and to address any deficiencies; to assess the implications of adopting each recommendation; and to suggest strategies for implementing the recommendations.

The Gardini report was provided to the then Minister for Small Business, Customs and Construction on 28 October 1994. One of the main findings of the report was that the code had contributed substantially to improving the level of disclosure of information by franchisors to prospective franchisees, thus assisting informed decision making.

However, it found that the main weakness of the code was its lack of coverage across the franchising sector, with approximately 40–50 per cent of franchisors choosing not to register under the code (including the motor vehicle industry and significant areas of the real estate sector). It also found that the code's standard of conduct provisions had not been effective in addressing serious franchising disputes, but that any attempt to strengthen the standards of conduct or to provide some additional disciplinary provisions was likely to result in loss of registrations. The report concluded that these main weaknesses could be overcome by making the code mandatory (through legislative action).

In respect of the dispute resolution procedures, the Gardini report concluded that the main problem was the lack of a specifically defined role for FCC in assisting parties to resolve franchising disputes. The code was subsequently amended to provide that either party to a dispute which could not be resolved through mutual negotiation could notify FCC. The Council would provide assistance for facilitating resolution of the dispute (but would not itself act as a conciliator or mediator).

As a result, FCC appointed a national mediation coordinator and a panel of 37 mediators across Australia to provide quick and reliable responses to requests for

mediation. The FCC also began a review of disputation in the sector to analyse the level of disputes, examine factors which may influence the disputes arising, and ensure it had systems to prevent, as far as possible, disputes arising and manage disputes that did arise.

Since then the Commonwealth Government has decided to cease funding of the FCC from 30 June 1997. As a result of this and other circumstances, the Council ceased trading on 31 December 1996. The Council will meet on 30 January 1997 to consider winding up the organisation.

In its advice to all Franchise Code registrants the Council advised that:

The termination of Government funding beyond 30 June 1997 and the occurrence of subsequent related events has led to this decision. The Government has been fully informed of the steps leading up to this decision and the reasons for it being taken.

The decision flows, in part, from the belief of Directors that, in the face of the potential costs associated with threats of legal action against the company, its Directors and officers, the company may not be able to trade solvently for 1997. While a majority of Directors believed such an action could have been successfully defended, there was concern about the costs associated with any such proceedings.

The Directors also hold the belief, based on the advice from the Government at a meeting on Christmas Eve and subsequently at the Director's meeting, that there may be a significant risk that payment of the balance of the government grant for 1996/7 would not be forthcoming should these funds have to be applied to legal action.

All of these matters and a number of other factors led the Directors to conclude that the position of the Company, its Directors and officers, is untenable.

In a media release on 31 December 1996 the Minister for Small Business and Consumer Affairs stated: 'The decision by Franchising Code Council Ltd to begin the process of winding up its operations is disappointing for the franchising industry in Australia'. He went on to say:

The Government considers that self regulation is the best course for the franchising industry. I encourage the industry to come forward with options for the continuation of the Franchising Code of Practice in 1997 and future years.

On 6 January 1997 the Australian Franchise Association Limited (AFA) responded with its own media release stating: 'The AFA is now the only truly independent body which can ensure the successful future of franchising in this country'. It added that it '... will now continue to ensure the principles of the voluntary Code of Practice are adhered to by franchisors and to offer advice and assistance to franchisees in difficulty'.

## New publications

### Access undertakings guide

Part IIIA of the Trade Practices Act establishes a legal regime to facilitate access to the services of certain facilities of national significance. The Commission will play an important administrative and regulatory role in the implementation of Part IIIA. It has a role in arbitration of disputes over access to facilities declared to be essential under the terms of the Act. It also has a role in the assessment of undertakings by owners/operators of facilities.

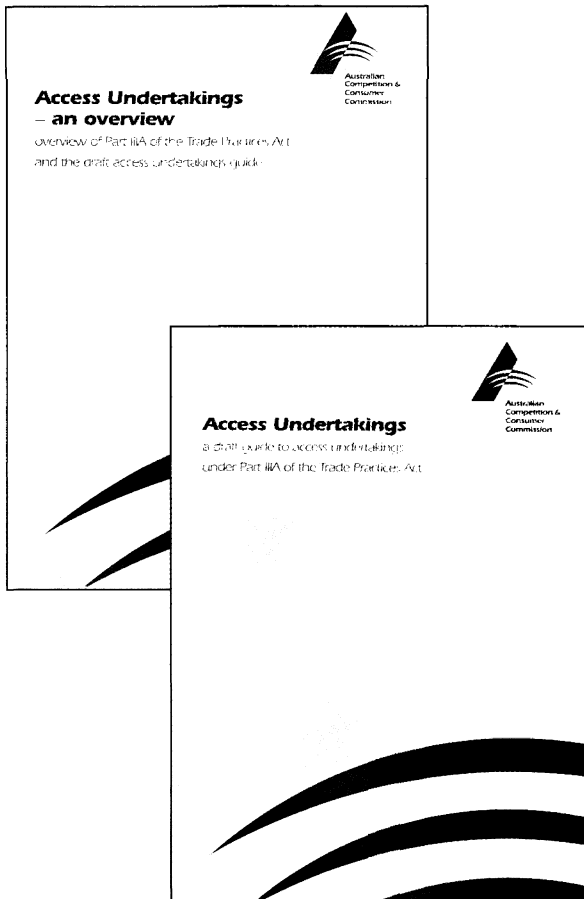
The Commission has published a draft guide to access undertakings under the Trade Practices Act, together with an overview of Part IIIA of the Act and the draft guide. These two volumes are designed to assist owners and operators of essential facilities, potential third party users of such facilities and other interested parties understand and use access undertakings. The latest two publications follow the general guideline to Part IIIA, *Access Regime*, published in November 1995.

The draft guide:

- sets out procedures for assessment and lodgment of access undertakings;
- provides an overview of the legislative criteria for assessment of undertakings and the main factors that the Commission will take into account in applying them; and
- provides guidelines on what an owner/operator of a facility should include in an undertaking.

In publishing the draft guide the Commission aims to promote discussion and comment on the issues. The Commission will use feedback to revise and refine the guidelines and its approach to undertakings.

The two volumes are available for \$10.00 from all Commission offices and from the Commission's Internet site at <http://www.accc.gov.au>.



## Warranties and refunds

The Commission has produced a booklet on warranties and refunds to help consumers and retailers to understand their rights and responsibilities under the Trade Practices Act.

The booklet explains the difference between voluntary and statutory warranties, and the circumstances in which consumers are entitled to a refund for goods and services.

It is available free from all Commission offices and consumer affairs bureaus. It is also available from the Commission's Internet site at <http://www.accc.gov.au>.

