



Australian  
Competition &  
Consumer  
Commission

# The Franchising Code of Conduct & E-Commerce

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# 1. The ACCC: Our Role

- **National regulator:** oversees laws on consumer protection, equitable competition, product safety, infrastructure access
- Also regulates some specific industries (such as energy, telecommunications), **industry codes (franchising, horticulture)** and price monitoring (airports, postage, stevedoring)
- An independent statutory agency within the Treasury portfolio
- **Court-based enforcement** of the law
- Dual educative and enforcement function
- Provides warnings and advice about scams via [Scamwatch.gov.au](https://www.scamwatch.gov.au)
- Enforcement agency...does not set policy

# 1. What Is The Future Of Franchising?

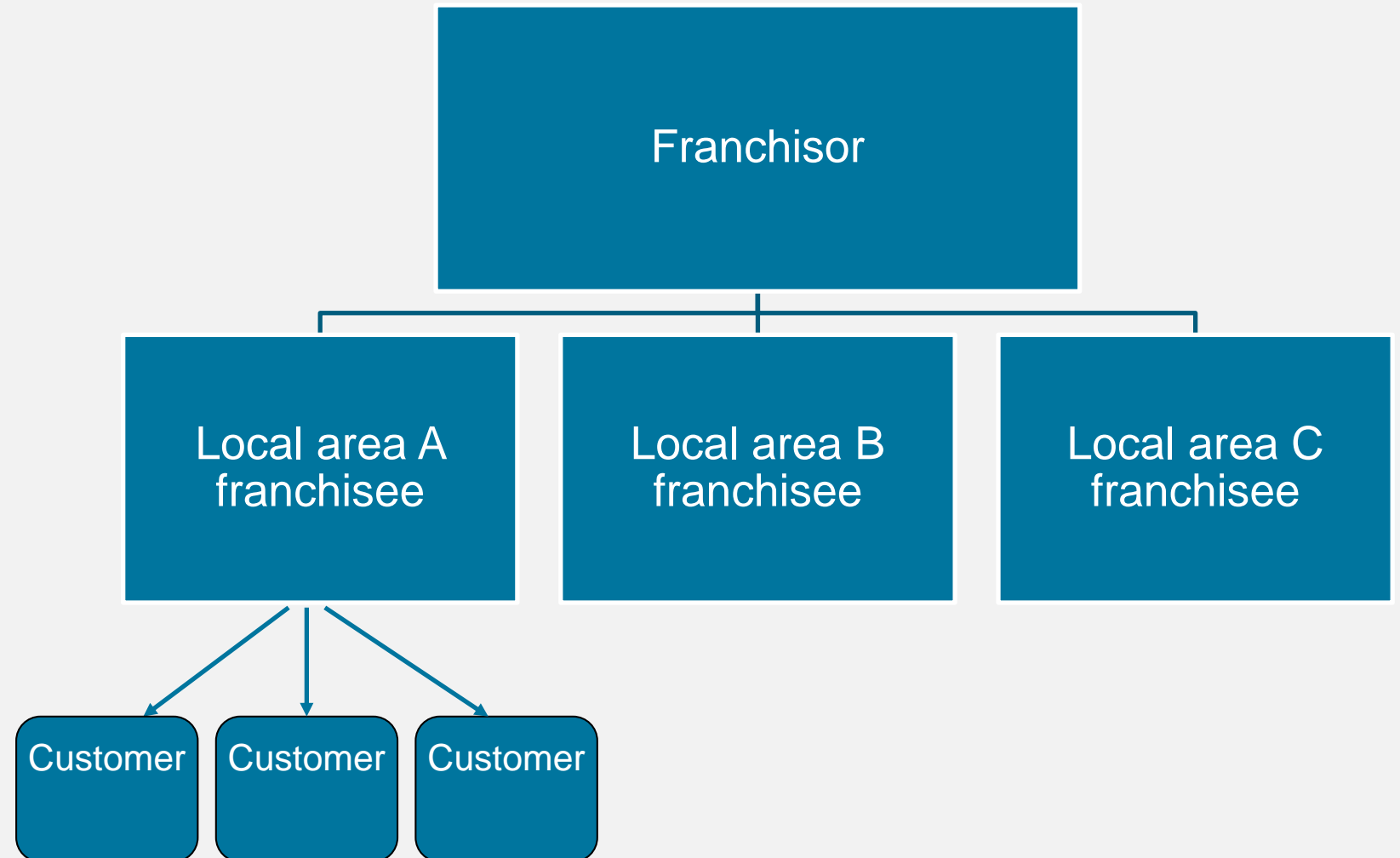
## The traditional franchising relationship

*Franchisor is a wholesaler/distributor, not retailer*

*Defined geographic territories*

*Franchisees have exclusive rights to sell to customers in their region*

*Customers can only buy from one franchisee*



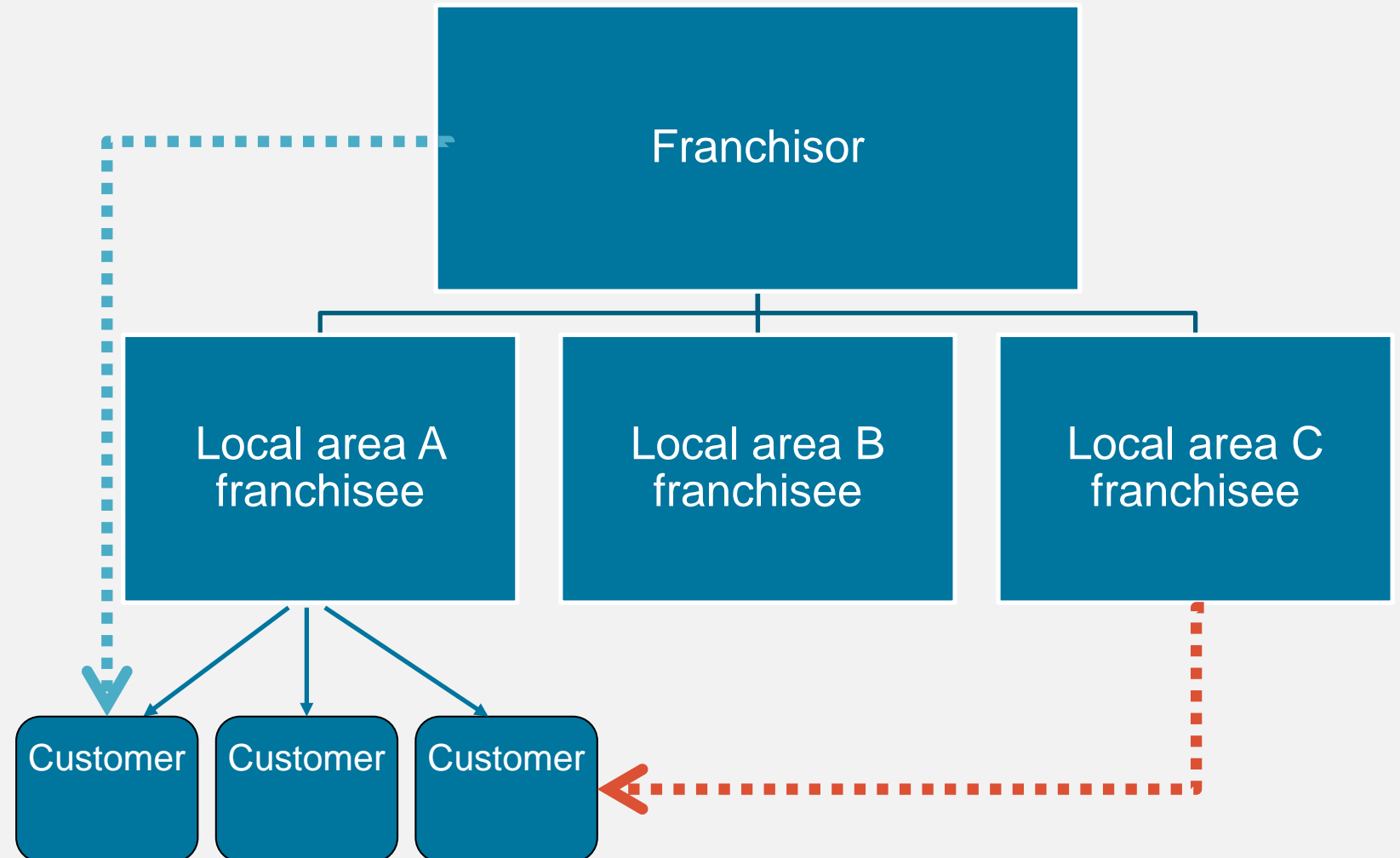
# But What If This Occurs?

## Online franchising relationship

*Franchisors can sell directly to customers at minimal cost*

*Customers can choose who they buy from*

*Exclusive rights to a franchise territory have limited value*



## 2. Disclosure & Online Sales

The new Code requires additional disclosure about the ability of the franchisor and a franchisee to sell online



### Franchisor must provide:

Information  
Statement

Disclosure  
Document

Franchise  
Agreement

Franchising  
Code

Under *item 12* the franchisor must disclose details on:

- Whether the franchisee can sell online including any restrictions or conditions.
- Whether the franchisor or other franchisees sell online
- Arrangements with third party websites
- Profit sharing arrangements

# Key Questions For Prospective Franchisees

Can I sell online? Are there any conditions or restrictions?

Will the franchisor sell online in direct competition with me?

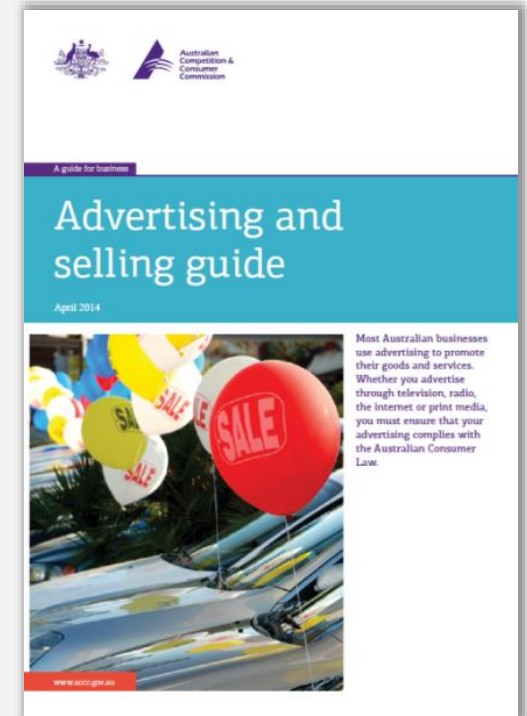
Will I get a cut of the franchisor's online sales (e.g. to customers in my territory)?

What are the arrangements for third party websites?

# 3. Selling Online

Two fundamental rules apply under the Australian Consumer Law:

1. Don't engage in conduct that is likely to mislead or deceive
  2. Don't make false or misleading claims or statements.
- The overall impression created is important
  - Same rules apply online and in-store



## PENALTIES

**Misleading or deceptive conduct:** injunction, damages

**False or misleading misrepresentations:**

Up to \$1.1 million for corporations and \$220,000 for individuals

# Electrodry Fake Testimonials



The Federal Court ordered the franchisor of Electrodry, A Whistle & Co (1979) Pty Ltd, to pay **\$215,000** for its involvement in publishing fake testimonials on popular product review websites including Google, True Local, and Yelp.

The Court found that Electrodry posted, and requested that its franchisees post, fabricated customer testimonials about the quality of its carpet cleaning services.




# True Value Solar Online Reviews

smart**company** BETA | Business Advice Lists Sponsored Content

LEGAL

## True Value Solar agrees not to resume online review incentive program following ACCC probe

ELOISE KEATING / Monday, April 11 2016



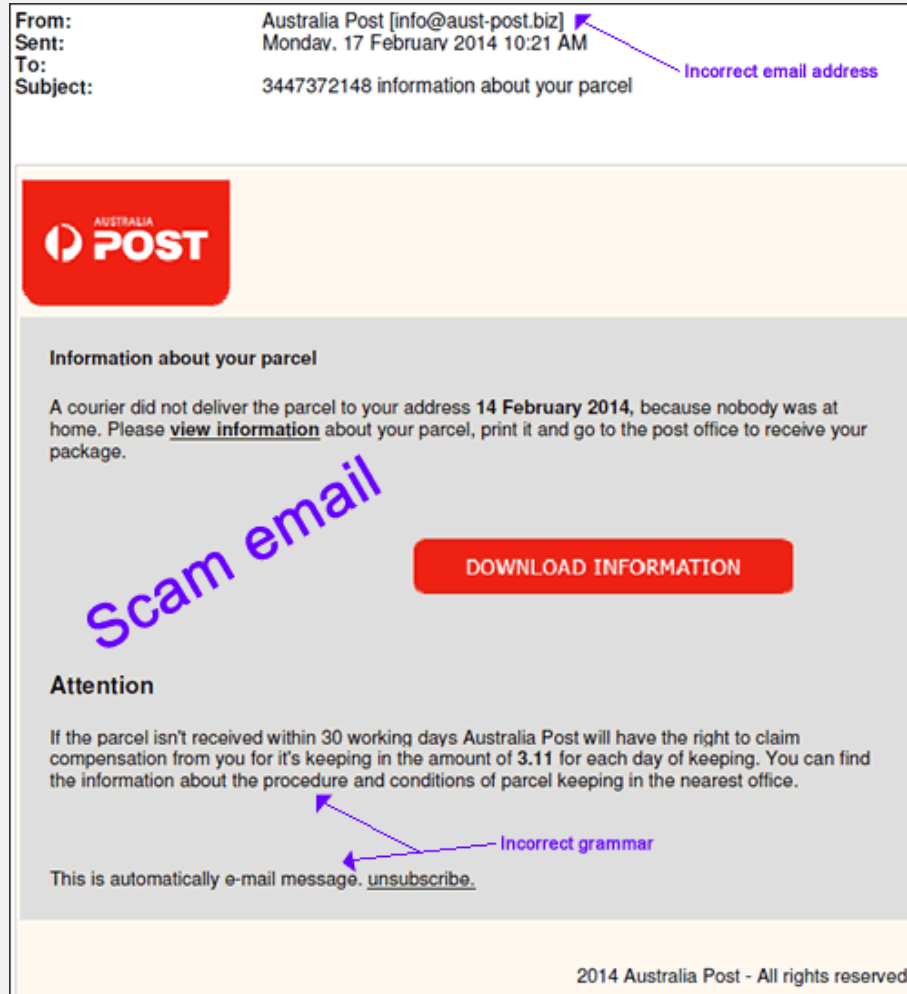
Energy retailer True Value Solar has agreed not to resume a program that offered customers an incentive if they published an online review of the business on a third-

- True Value Solar offered customers a free solar panel service valued at \$199 for posting a review on the Product Review website.
- True Value Solar only offered the incentive to happy customers who were likely to post a positive review. The offer of the incentive was not disclosed to readers of the review.
- Businesses offering incentives for unbalanced positive reviews risk misleading consumers and breaching the law.

# Current Online Pricing Issues

- Drip pricing
- Credit card surcharges – effective September 2016
- Pricing discrepancies

# 4. Online Scams: Ransomware



- Ransomware freezes your computer and demands a ransom to regain access
- Even if you pay the ransom, there is no guarantee that your computer will be unlocked
- In 2015, the ACCC received more than 4,400 reports about ransomware and malware scams with more than \$388,000 reported lost
- Ransomware comes in many guises such as Australia Post failed parcel deliveries or alleged AFP fines for speeding
- Don't follow links or download files from suspicious emails (especially .exe or zip files)
- Back-up your computer on a stand-alone hard drive, so you can restore factory settings and re-install your data

# Business CEO Email Compromise Scam

## “I’m a scam”: How it works

Scammer gets access to company’s email system via virus or phishing attack

Scammer sends email from ‘the boss’ advising a financial officer of an urgent \$ transfer

Scammer pressures the officer to quickly wire \$ to strike a major deal

Money sent is lost for good

## Protect your business

Install and update security software

Advise payments staff to be suspicious of requests for secrecy to transfer money

Put in place sound financial security procedures including a two-step verification process for wire transfer payments

# 5. ACCC Franchising Contacts & Online Training



**Small business helpline**

**1300 302 021**



**[www.accc.gov.au/franchising](http://www.accc.gov.au/franchising)**



**Franchising Info Network**  
Sign up at [www.accc.gov.au](http://www.accc.gov.au)



**Free Online Training Programs**  
[www.ccaeducationprograms.org](http://www.ccaeducationprograms.org)

The screenshot shows the ACCC website's 'Education programs' page. At the top, there is a navigation menu with links for Home, Small business, Tertiary students, Franchisees, About the ACCC, and Contact. Below the navigation is a banner for 'Competition & consumer law Education programs' featuring a book icon titled 'Competition and Consumer Act 2010'. A welcome message states: 'Welcome. This website contains a suite of learning tools funded and produced by the Australian Competition and Consumer Commission (ACCC) to help users increase their knowledge of the Competition and Consumer Act 2010.' Below the banner are three program cards: 'Small business' (10 modules, 'Read through the information then test your understanding with the quiz.'), 'Tertiary students' (12 modules, 'Tertiary program for students and teaching resources for educators.'), and 'Franchisees' (5 modules, 'Franchise education modules to help you assess franchise business opportunities.').