



ACHIEVING COMPLIANCE

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Introduction

This chapter outlines the Commission's compliance and enforcement activities in 2001–02. The Commission takes court action to enforce the Trade Practices Act and was involved in around 110 matters in the courts this year. Proceedings were instituted in over 60 matters and the Commission has been involved in several matters before the Full Federal Court and before the High Court.

The number of cases the Commission was involved in increased significantly compared to 2000–01. Like the previous year, compliance activities were strongly focused on the Commission's role under the New Tax System (see chapter 2—New Tax System). However the Commission also continued its role in promoting competition and consumer protection in other areas.

The Commission was party to a number of cases alleging collusive behaviour, misuse of market power and resale price maintenance. It concluded proceedings against cartels supplying electricity transformers, Colgate-Palmolive for resale price maintenance, NRMA Insurance for misleading conduct, and the Maritime Union of Australia for harassment and boycott activity. In the electricity transformers case, the court imposed further penalties on members of the cartels, bringing total penalties to over \$22 million.

The Commission also appeared as *amicus curiae* (friend of the court) in an intellectual property action brought by Sony regarding chipping of PlayStation game consoles, and received s. 87B undertakings from Qantas and Virgin Blue regarding advertising of flight prices. In the Sony case, the Federal Court established the right of Sony PlayStation owners to have their games consoles 'chipped', allowing consumers to play imported and copied games. Sony was unsuccessful in having the new anti-circumvention provisions of the *Copyright Act 1968* interpreted to outlaw the installation of modification chips that overcome region coding restrictions.

Proceedings commenced by the Commission included allegations against: Qantas for misuse of market power; various milk wholesalers and petrol retailers for price fixing; Wizard Mortgage, Mitre 10, Virgin Mobile and Total Communications for misleading price advertising; Pacific Access for misleading conduct concerning the Yellow Pages Connect service; Woolworths and Berri concerning the place of origin of food items; Esanda, Commonwealth Bank and Westfield for alleged unconscionable conduct; Internet Name Group, Com.Au.Register, Dataline and Free2aiR regarding Internet-related services; and numerous respondents concerning unconscionable and misleading conduct in business investment, leasing and franchising, and also concerning misleading health claims.

A lot of the more significant litigation undertaken by the Commission during the year concerning alleged collusive behaviour and misuse of market power is subject to appeal to the High Court or Full Federal Court (the Boral, Safeway, Visy, Rural Press, Warner and Universal cases). The Commission sought to intervene regarding specific legal issues in private actions concerning alleged collusive behaviour (the South Sydney Rugby League and Hoffmann-La Roche cases) and misuse of market power (the Northern Territory Power case). Appeals are also outstanding in Commission proceedings such as those against Berbatis Holdings (unconscionable conduct), Dell Computers (price advertising), Daniels and Meerkin & Apel (s. 155 and legal professional privilege), IMB (exclusive dealing), Schneider Electric (electricity transformers case re quantum of penalty) and Top Snack Foods (recovery action).

The Commission has maintained its enforcement activities in unconscionable conduct including towards small business with several cases instituted in this area. On one matter, Berbatis Holdings, the Commission has appealed to the High Court. Many enforcement actions were also commenced to directly protect consumers with a particular focus on price advertising and health-related claims.



Price fixing, market sharing, bid rigging, boycotts and other collusive behaviour

Cases and undertakings

Electricity distribution transformers

Wilson Transformer Company Pty Ltd, Robert Wilson, Schneider Electric (Australia) Pty Ltd, Russell Stocker, AW Tyree Transformers Pty Ltd and Raymond Boyce admitted to market sharing and price fixing of distribution transformers during the 1990s until 1999. On 3 May 2002 the Federal Court (Melbourne) imposed injunctions and nearly \$13.5 million in penalties on Schneider Electric—\$7 million, Russell Stocker (former Managing Director)—\$150 000, Wilson Transformer—\$2.5 million, Robert Wilson (Managing Director)—\$125 000, Tyree Transformers—\$3.5 million and Ray Boyce (Managing Director)—\$150 000. On 5 April 2001 the court had ordered Alstom to pay a \$1.5 million penalty. Schneider Electric has appealed the quantum of penalty imposed on it. Proceedings against ABB Transmission and Distribution Ltd continue.

Electricity power transformers

Wilson Transformer admitted to market sharing and price fixing of power transformers during the 1980s and in 1993 to 1995. On 3 May 2002 the Federal Court (Melbourne) imposed injunctions and penalties on Wilson Transformer—\$1.5 million, Robert Wilson (Managing Director)—\$100 000 and David Toogood (National Business Development Manager of ABB)—\$35 000. On 5 April 2001 the court had ordered Alstom to pay a \$5.5 million penalty and Sandy Elliott (Managing Director) a \$150 000 penalty. Proceedings against ABB Power Transformers Pty Ltd (in liquidation) continue.

Bray v F. Hoffmann-La Roche Ltd & Ors

In October 2001 the Commission sought leave of the Federal Court (Melbourne) to intervene in a private class action alleging price fixing and market sharing in the global market for vitamins, by Australian and foreign producers. The applicant obtained the court's leave to serve the proceedings on the foreign respondents. Some respondents applied to set aside extra-territorial service on grounds that the court lacked jurisdiction over them. The Commission sought leave to intervene regarding the interpretation and application of s. 5 of the Act that concerns the carrying on of business in Australia. On 13 March 2002 the Federal Court dismissed the foreign respondents' motion. The court did not decide the Commission's motion to intervene.

The Commission also commenced proceedings on 23 August 2001 in the Federal Court (Melbourne), alleging price fixing and market sharing by foreign vitamin producers in the global market for human vitamin C. The respondents are: F. Hoffmann-La Roche Ltd (Switzerland); Roche Vitamins Asia Pacific Pty Ltd (Singapore); BASF Aktiengesellschaft (Germany); BASF East Asia Regional Headquarters Ltd (Hong Kong); Takeda Chemical Industries Ltd (Japan); and several individuals involved in the marketing of vitamin C. The Commission had previously taken proceedings against Roche Vitamins Australia Pty Ltd, BASF Australia Ltd and Aventis Animal Nutrition Pty Ltd formerly known as Rhone-Poulenc Animal Nutrition Pty Ltd for price fixing and market sharing in animal vitamins. In 2001 the Federal Court (Sydney) imposed penalties, recommended by the parties, totalling \$26 million.

Australian Medical Association (Western Australia) and Mayne Group Ltd (formerly Mayne Nickless Ltd) & Ors

Proceedings commenced on 21 July 2000 in the Federal Court (Perth) alleging that AMA (WA), on behalf of visiting medical practitioners at Joondalup Health Campus, agreed with the Mayne Group on the doctors' terms of engagement. On 19 October 2001 the court



found that AMA (WA), Paul Constantine Boyatzis (Executive Director, AMA (WA)) and David Evan Roberts (former president, AMA (WA)) had engaged in price fixing and primary boycott conduct. On 12 December 2001 the court ordered by consent, injunctions, that they pay penalties of \$240 000, \$10 000 and \$10 000 respectively, and that AMA (WA) implement a trade practices compliance program and pay \$25 000 costs. The proceedings against Mayne Group, Martin Day (former General Manager WA and Asia—Health Care of Australia) and Ian MacDonald (former Joondalup Health Campus Chief Executive) are tentatively set for trial in March/April 2003.

Rural Press Limited & Ors

On 1 March 2001 the Federal Court (Adelaide), found that Rural Press and its subsidiary, Bridge Printing Office, had misused their substantial market power against Waikerie Printing House (a smaller regional newspaper publisher), and that the three companies had agreed that Waikerie Printing House would withdraw its paper *The River News* from the Mannum area. On 7 August 2001 the court imposed total penalties of \$600 000 on Rural Press and Bridge Printing Office. On 16 July 2002 the Full Federal Court found that the companies had made an agreement with the purpose or effect of substantially lessening competition in the Murray Bridge market for regional newspapers, and confirmed the penalties imposed. The court found that Rural Press and Bridge Printing had not misused market power, or entered into an arrangement with Waikerie Printing that contained an exclusionary provision. The Commission subsequently sought special leave to appeal to the High Court.

Visy Paper Pty Ltd

On 10 August 2001 the Full Federal Court found that Visy had attempted to induce Northern Pacific Paper into a market sharing agreement for recyclable waste paper collection. In May 2002 the High Court granted Visy Paper special leave to appeal the decision. A hearing date is to be set.

Recruitment and Consulting Services Association Ltd

(case and s. 87B undertaking)

On 13 November 2001 the Federal Court (Brisbane) made orders, by consent, against the RCSA concerning its Code of Ethics and Practice Models which restricted members' dealings, maintained prices and provided disciplinary provisions for non-compliance. The court restrained the RCSA from restricting its members supplying labour hire or employment services. The RCSA undertook to rescind the relevant provisions, withdraw disciplinary action, provide compensation to members subject to disciplinary proceedings in the last three years, and implement a trade practices compliance program.

Maritime Union of Australia & Ors

On 21 November 2001 the Federal Court (Sydney) ordered the MUA to pay penalties and costs totalling \$210 000 for engaging in secondary boycotts. The court also found that the MUA and some of its senior officials had unduly harassed and coerced people to prevent or hinder, or attempt to prevent or hinder, vessels from sailing unless the ship owner or charterer agreed to use MUA labour to clean the vessels' holds. Injunctions were made restraining the MUA and one senior official from using undue harassment and coercion in connection with the supply of hold cleaning services. The MUA and three senior officials also gave undertakings to the court not to engage in similar conduct in relation to the s. 45DB contraventions. The MUA was also ordered to implement a trade practices compliance program and to publish to each of its officers, employees and members a notice advising of the court's findings and orders.



***Pauls Limited, Malanda Dairyfoods Ltd,
Australian Cooperative Foods Ltd & Ors***

Proceedings commenced on 15 August 2001 in the Federal Court (Darwin) alleging a long-standing price fixing agreement in wholesale milk products and unprocessed milk in the Northern Territory. The Commission seeks declarations, injunctions, implementation of compliance programs, penalties and costs. The trial was set down to commence on 12 August 2002.

Mark Leyden, Stephen Robson, Paul Khoo

Proceedings commenced on 16 April 2002 in the Federal Court (Brisbane) against three obstetricians providing private in-hospital services in Rockhampton, alleging that they entered into agreements in December 2000 and January 2001 to boycott 'no-gap' billing arrangements offered by private health insurance funds. The Commission alleges that about 200 consumers consequently paid up to \$700 more than they would otherwise have done. The Commission seeks declarations, injunctions, reimbursement of the expense incurred by patients in meeting the gap between obstetricians' fees and rebates provided by health funds, information notices in local media, findings of fact and costs. A hearing has been set down for November 2002.

Australian Safeway Stores Pty Ltd & Ors

On 21 December 2001 the Federal Court (Melbourne) found that the respondents had not contravened the Act. The Commission had alleged that Safeway had taken advantage of its market power in refusing to buy premium-branded bread from plant bakers if the baker had supplied generic or secondary-branded bread to independent retailers who sold the bread cheaply. The Commission also alleged that Safeway had made a price fixing and market sharing arrangement with George Weston Foods Ltd in the Preston area. The court found that, while two employees had been instructed to discuss prices, it was not satisfied as to the identities of the senior staff who made the arrangement. The Commission

appealed and the Full Federal Court hearing is set down from 10 February 2003.

***Ithaca Ice Works Pty Limited, Queensland Ice
Supplies Pty Limited & Ors***

On 26 July 2000 the Federal Court (Brisbane) ordered QIS pay \$25 000 penalty, Kenneth John Smith (owner/operator, North Coast Ice) pay \$15 000 penalty and \$12 500 costs, and Roderick Ian Matheson (owner/operator, Caboolture Ice Works) pay \$7500 penalty and \$2500 costs, for price fixing in the south-east Queensland ice industry between August 1993 and September 1996, and enjoined them from similar conduct. Brian Bradley (Director, QIS) and Roderick Ian Matheson agreed to upgrade or implement trade practices compliance programs. On 4 December 2000 the court ordered Jack Numan Berry (owner/operator, Ipswich Ice Supplies) pay \$10 000 penalty and \$10 000 costs, and ordered consent injunctions restraining similar conduct. On 2 May 2001 the court ordered Ithaca pay \$100 000 penalty, Anthony John Mee (Manager, Ithaca) pay \$7500 penalty and Gregory Paul Mee (Manager, Ithaca) pay \$7500 penalty, and pay the Commission's costs. The Commission's application against Ansonguard Pty Limited, Leo Grevis and Gary John Grevis (Directors, Ansonguard) was dismissed, the Commission to pay those respondents' costs. On 13 June 2001 the court ordered, by consent, injunctions restraining Ithaca, Anthony Mee and Gregory Mee from similar conduct. On 7 December 2001 the Commission's appeal against the penalties imposed on Ithaca and Anthony Mee was dismissed.

SIP Australia Pty Ltd & Ors

On 28 June 2002 the Federal Court (Sydney) found that SIP and Filippo Ippaso (Director) had made a market sharing and price fixing agreement with Baker Bros, a competing supplier of compressors, and had attempted to induce Baker Bros to enter into a market sharing agreement in 1997-98. The penalty hearing will take place on 28 August 2002.



Pan Australian Industries (WA), Pink Panther Paints and Panel Beaters, Rob's Panel and Paint, & Pardoo Panel and Paint

On 11 December 2001 the Federal Court (Perth) found, by consent, that four Pilbara-based vehicle repairers colluded on prices to insurance companies for repair work. The Commission alleged that in mid-2000 the repairers discussed the prices they would charge the insurers, and made a price agreement from 1 September 2001. On 25 August 2000 the repairers wrote to 18 insurance companies about the agreed charges. The court ordered, by consent, injunctions, implementation of trade practices compliance programs and payment of the Commission's costs.

DM Faulkner Pty Ltd, David Faulkner, Riverside Metal Industries Pty Ltd, Paul Clingan, Michael Neitner, Ferndale Recyclers Pty Ltd, Ronald Bagnall, Metals Recovery Pty Ltd, Keith Burnett, Ajax Sheet Metal Pty Ltd, Sidney Forrester, Peter Dunn, T&D Metals and Demolitions Pty Ltd, Anthony Franke, Hendricus Franke t/a Coast Metal Recyclers, Allan Higgins & William Robinson

Proceedings commenced on 24 December 2001 in the Federal Court (Sydney) alleging price fixing and boycotts at scrap metal auctions in New South Wales. The Commission seeks declarations, injunctions and penalties. The next directions hearing is set down for 17 October 2002.

Leahy Petroleum Pty Ltd & Ors

Proceedings commenced on 21 May 2002 in the Federal Court (Melbourne) against seven companies and seven individuals alleging petrol price fixing by retailers in the Ballarat region. The Commission alleges that the respondents colluded on the sizes and times of price rises, and that agreements were put into effect on 69 occasions between June 1999 and December 2000. The Commission seeks injunctions, declarations, findings of fact, implementation of a trade practices compliance program, penalties and costs.

News Limited & Ors v South Sydney District Rugby League Football Club Ltd & Ors

In July 2001 the Full Federal Court found that News and others had agreed to restrict the number of teams in the 2000 National Rugby League competition, thereby excluding South Sydney from participating. The High Court granted News special leave to appeal. On 6 August 2002 the Commission was granted leave to intervene in the proceedings and the matter was heard. Judgement was reserved. The Commission considered that the matter raised significant issues about the prohibition on exclusionary provisions under the Act.

International Maritime Correspondence College Pty Ltd trading as Labrador Children's Playschool

On 6 September 2001 the Federal Court (Brisbane) found that IMCC and its owner operator Terry Balson had attempted to make a price agreement with six other Gold Coast childcare centres. The court, by consent, imposed injunctions and ordered Terry Balson to undertake trade practices compliance training.

The Hoyts Corporation Ltd and The Greater Union Organisation Pty Ltd.

(s. 87B undertaking)

Hoyts and GU co-located their cinema operations in the Brisbane CBD. On 19 July 2001 they undertook not to share screens and to independently determine ticket prices and which films to exhibit.

Cash Services Australia Pty Ltd-Australian and New Zealand Banking Group Limited, Commonwealth Bank of Australia & Westpac Bank

(s. 87B undertaking)

These banks made an arrangement for the acquisition and management of transportation and cash processing activities. In doing so, they gave the Commission various undertakings on 28 August 2001, including concerning restrictions on carriers, new members, new customers, exclusivity and dispute resolution.



Taxis of Portland Pty Ltd

(s. 87B undertaking)

On 15 October 2001 Taxis of Portland undertook not to operate a roster system that stopped taxi operators from working during specified times, or which allocated out-of-town work acquired directly by drivers on a next-in-line basis. Also, that owners, drivers and lessees would be made aware that using mobile phones to take bookings was not prohibited by the company's rules. The company also undertook to implement a trade practices compliance program.

1968 allowing parallel importation of CDs. The Commission's allegations of collusive conduct were dismissed. On 6 March 2002 the court imposed injunctions and penalties of \$450 000 on each of Universal and Warner, penalties of \$50 000 and \$45 000 respectively on two former PolyGram executives (since taken over by Universal) and \$45 000 each on two Warner executives. The companies appealed the decision and the Commission appealed the quantum of penalties. The appeal is set down for hearing by the Full Federal Court from 25 November 2002.

Misuse of substantial market power

Cases and undertakings

Boral Ltd & Boral Masonry Ltd (formerly Boral Besser Masonry Ltd)

Proceedings commenced on 6 March 1998 in the Federal Court (Melbourne) alleging predatory pricing in the supply of concrete masonry products. On 22 September 1999 the court found that the companies had not contravened the Act. On 27 February 2001 the Full Federal Court held that Boral Masonry Ltd had contravened the Act, and dismissed the Commission's appeal concerning Boral Ltd. On 14 December 2001 the High Court granted special leave to appeal and the appeal was heard on 21 and 22 May 2002, judgement reserved. The Commission seeks declarations, injunctions, findings of fact, penalties and costs.

Warner Music Australia Pty Ltd & Ors/Universal Music Australia Pty Ltd & Ors

On 14 December 2001 the Federal Court (Sydney) found that Warner and Universal had misused their market power and engaged in exclusive dealing by threatening to and actually withdrawing trading benefits from CD retailers stocking parallel imports. The conduct followed amendments to the *Copyright Act*

Qantas Airways Limited

Proceedings commenced on 7 May 2002 in the Federal Court (Sydney) alleging Qantas misused its market power by substantially increasing seat numbers, and matching and undercutting airfares, on the Brisbane–Adelaide route in response to Virgin Blue Airlines Pty Ltd's entry to the Australian aviation sector in December 2000. The Commission seeks declarations, injunction, implementation or upgrade of a trade practices compliance program, findings of fact, penalty and costs. A directions hearing was held on 12 June 2002 and a strike-out application is set down for hearing on 16 August 2002.

NT Power Generation Pty Ltd v Power and Water Authority Ors

In August 2001 the Commission sought to intervene in the appeal to the Full Federal Court in this matter. The substantive issues of the matter involve allegations of misuse of market power. The Commission's involvement is limited to submissions concerning the application of the Act to government businesses and whether non-government businesses dealing with governments are subject to the Act. Judgement reserved.

Australian Safeway Stores Pty Ltd & Ors

—see page 32

Rural Press Limited & Ors

—see page 31

***Taxis of Portland Pty Ltd* (s. 87B undertaking)**

—see page 34



Exclusive dealing

IMB Group Pty Ltd, Logan Lions Ltd, Redbeak Pty Ltd & Ors

Proceedings commenced on 20 September 1993 in the Federal Court (Brisbane) alleging that the respondents engaged in misleading conduct, and were forcing the purchase of Legal & General and National Mutual savings plans to purchase shares in a proposed rugby league football club. On 5 April 2002 the court found that IMB and relevant individuals had engaged in misleading conduct on some of the allegations, and had not engaged in exclusive dealing. On 26 April 2002 the Commission appealed the judgement regarding exclusive dealing and the Full Federal Court will hear the matter from 18 November 2002.

Johnstone Shire Council, Giandomenico Holdings Pty Ltd, Francesco Giandomenico and Remo Giandomenico.

(s. 87B undertaking)

On 7 August 2001 Johnstone Shire Council and IQC Quarries undertook: to delete a condition in their lease agreement specifying that all contracts with the council requiring quarry products stipulate that the products be purchased from ICQ Quarries; to register a variation of the lease with the Registrar of Titles; and to implement a trade practices compliance program. The council has undertaken not to require tenders and contracts that contractors must purchase quarry products from a specific supplier other than the council itself.

Warner Music Australia Pty Ltd & Ors/Universal Music Australia Pty Ltd & Ors

—see page 34

Resale price maintenance

Colgate-Palmolive Pty Ltd

(case and s. 87B undertaking)

On 15 May 2002 the Federal Court (Melbourne) found that in 1994 Colgate refused to supply Tasmanian retailer Chickenfeed Bargain Stores and its wholesaler with Colgate toothpaste because Chickenfeed would not agree not to advertise the product below the normal retail price in Woolworths' supermarkets. The court also found that in 1997 Colgate required Chickenfeed not to advertise Colgate toothpaste, Palmolive detergents and Ajax cleaners below Woolworths' normal price. The court enjoined Colgate from engaging in similar conduct, imposed penalties of \$500 000 and ordered it to pay the Commission's costs. Colgate undertook to implement a trade practices compliance program.

Leahy Petroleum Pty Ltd and Robin Palmer

Proceedings commenced on 21 May 2002 in the Federal Court (Melbourne) against Leahy Petroleum and Robin Palmer (General Manager) concerning the termination of petrol supplies to a Buangor service station owner. The Commission alleges that the owner was contacted by Leahy Petroleum about a petrol price rise and that, after he contacted the Commission, Leahy Petroleum ceased supply to him. The Commission seeks declarations, injunctions, findings of fact, implementation of a trade practices compliance program, penalties and costs.

Archery Wizard Australia

(s. 87B undertaking)

Around February 2001 Archery Wizard sent a letter and price list to five Australian archery retailers inviting them to become Merlin Bow retailers. A subsequent letter stated: 'The Recommended Retail, as per attached amended pricing schedule is to be stringently adhered to'. Archery Wizard undertook not to engage in resale price maintenance, to write to its retailers advising them that they can sell at prices of their choice, and to take all reasonable steps to make itself aware of the Act.



Exercise of powers under section 155

Section 155 empowers the Commission to compulsorily acquire information.

The Daniels Corporation International Pty Ltd and Meerklin & Apel (a firm), Woolworths Limited, Coles Myer Ltd & Liquorland (Australia) Pty Ltd

Proceedings commenced on 12 September 2000 in the Federal Court (Sydney) in the *Daniels* matter seeking declaration that the Commission's power regarding compulsory acquisition of documents under s. 155 of the Act extends to documents the subject of legal professional privilege. On 18 December 2000 the matter was referred to the Full Federal Court, which on 16 March 2001 unanimously found for the Commission. On 15 February 2002 the High Court granted special leave to appeal. In October 2001 Woolworths, Coles Myer and Liquorland raised the same issue with the High Court after receiving s. 155 notices. The court enjoined the Commission from proceeding with s. 155 notices issued to those companies in relation to documents to which legal professional privilege attaches. All the matters were heard on 18 June 2002, judgement reserved.

Leniency and cooperation policies

The Commission's draft leniency policy in relation to cartel conduct was launched at its Competition and Consumer Law Conference in July 2002. The draft policy has been disseminated for comment, particularly among professional advisers to business. The policy aims to facilitate the detection of, and to dismantle, cartels fostering secret collusive behaviour such as price fixing, market sharing and bid rigging. The policy will complement the Commission's revised *Cooperation in Enforcement Guidelines* first published in 1998 that relate to non-cartel civil contraventions of the Act.

The Commission's Competition and Consumer Law Conference featured international speakers and

covered topical law enforcement issues including criminal sanctions for hard core cartel activity.

Intervention guidelines

The Commission has developed *Intervention in private proceedings guidelines*, which were launched at the Commission's Competition and Consumer Law Conference in July 2002. The Commission is increasingly interested in intervening, and appearing as a friend of the court (*amicus curiae*) in private proceedings raising trade practices and associated law enforcement issues, and is receiving more frequent requests from private litigants to do so. In this way, the Commission can offer to assist the court in considering trade practices matters from a public interest perspective wider than the interests of parties to actions.

Intellectual property

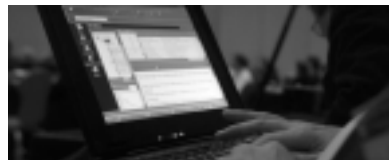
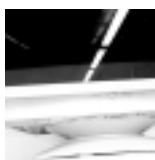
Kabushiki Kaisha Sony Computer Entertainment v Stevens

In July 2001 the Commission sought leave to be heard as a friend of the Federal Court (*amicus curiae*) on the interpretation of section 116A of the *Copyright Act 1968*. The proceedings concerned an individual involved in modifying region coding in PlayStation consoles. This practice, also called 'chipping', allows consumers to use imported games and legitimate backup copies. Sony alleged that chipping contravened anti-circumvention provisions of the Copyright Act. The respondent was unrepresented. These are the first Australian proceedings concerning alleged circumvention of copyright protection. In September 2001 the court granted leave to the Commission to be heard as *amicus curiae*, and the matter was heard on 17–19 April 2002. On 26 July 2002 the court found there had been no contravention of the Copyright Act.

Warner Music Australia Pty Ltd & Ors/Universal Music Australia Pty Ltd & Ors

—see page 34





E-commerce

Electronic communications are an integral part of business and the Commission's enforcement activities routinely address matters involving electronic documents and Internet trading. In August 2001 the Commission established the Electronic Investigation Support Unit, which has contributed to around 150 inquiries and investigations.

More accessible telecommunications facilities and growing acceptance of web-based marketing have allowed practices like pyramid selling, referral selling, miracle cures, unsolicited and undelivered goods and services, and scams in general to migrate to these networks. Get-rich-quick schemes and dubious health claims thrive in this environment. The borderless nature, relatively low cost and high speed of transactions, and instant payment and money transfer facilities, enhance returns for unscrupulous traders around the globe.

The Commission is working to address these circumstances, again leading the annual international Internet Sweep Day to detect web-based misrepresentation. The fourth sweep day involved 58 agencies from 19 countries and targeted misleading health claims. In Australia, the Therapeutic Goods Administration, Treasury, NSW Health Care Complaints Commission, Victorian Health Services Commission, ACT Community & Health Services Complaints Commissioner, WA Office of Health Review, and all state and territory fair trading authorities participated. Around 10 000 sites were visited, and 77 Australian sites were flagged. Australian fair trading authorities have contacted these traders: around 20 sites appropriately modified their claims; 3 sites closed; and many traders satisfied the Commission's concerns. The Commission is continuing to investigate others.

The Commission liaises with the au Domain Administration, and with Australian and international law enforcement agencies to share

appropriate information. It also participated in the National Office for the Information Economy's examination of spam (unsolicited bulk email), options for protecting Internet users from problematic spam, and alternative dispute resolution. In January 2001 the Commission published *Consumer Alert* and *Fair.com* to inform consumers about business domain name registration and renewal processes.

In October 2001 the Commission published its *E-commerce and competition issues under the Trade Practices Act discussion paper*. The Commission is inquiring into competition issues in the e-commerce environment.

The Commission held its *practising.trade* E-commerce Conference on 19–20 November 2001, to increase consumer and business awareness of trade practices issues in online trading. The main issues raised concerned potential regulatory responses to consumer concerns about service levels, privacy, security; and access in B2B marketplaces.

In April 2002 the Commission made a submission in response to the Treasury's discussion paper *Dispute Resolution in E-Commerce*.

Cases

Internet Name Protection Pty Ltd trading as Internet Name Group

Proceedings commenced on 17 April 2002 in the Federal Court (Melbourne) alleging notices sent by ING and Mark Specktor (Director) were likely to mislead consumers that ING was responsible for registering Internet domain addresses, and that it had dealt with recipients previously. On 6 May 2002 the court made interlocutory orders restraining ING from sending unsolicited 'Renewal Advice Forms' and using the words '.bz means business'. On 24 May 2002 Sasha Sudakov (Director) and Craig Missell



(Corporate Department Manager) were added to the action. A directions hearing is set for 13 December 2002.

Stephen Henry Wayt trading as COM.AU.REGISTER

Proceedings commenced on 28 March 2001 in the Federal Court (Brisbane) alleging that Stephen Wayt misled potential customers that the business was responsible for registering Internet domain addresses, and that it had dealt with them previously. On 26 February 2002, by consent, the court declared that Stephen Wayt had engaged in false, misleading or deceptive conduct, required that he send corrective facsimiles and display a corrective notice on the business website, and that he implement a trade practices compliance program.

Dataline.net.au Pty Ltd & Ors

—see page 57

Internet TV Australia Pty Ltd trading as Free2aiR and James Young

—see page 58

The professions

Increasingly, the Commission is focusing on how various members of professions behave and the impact of that behaviour on consumers.

The Commission engaged extensively with relevant organisations during the year, and made submissions to governments about professions issues. Organisations the Commission liaised with included: the National Competition Council, various professions' boards and associations, Department of Health and Ageing and state and territory health departments, Therapeutic Goods Association, Australian Council of Professions, bar associations, law societies, various health and insurance commissioners, natural health care groups, the Australian Consumers Association, Private Health Insurance Ombudsman, Consumers' Health Forum, Private Health Insurance Administration Council, and hospital groups.

In 2001–02, claims about insurance coverage and other health-related goods and services have attracted particular Commission attention.

One of the Commission's important roles is to educate the professions about their responsibilities under the Act. To this end the Commission released the draft *General Practitioners—a guide to the Trade Practices Act* in March 2001.

The draft was released following the Commission's participation in a workshop of peak industry and government organisations convened by the Australian Divisions of General Practice on 12 February 2001. The first draft was released on 6 March 2001 after consultation with all the workshop participants and a revised draft was released on 30 March 2001 following further consultation. The Commission and Department of Health and Aged Care travelled throughout Australia workshopping the revised guide and meeting with general practitioners and representative groups. The guide will be finalised after final determination of the Royal Australian College of General Practitioners authorisation application to the Commission, and completion of the federal government's *Review of the impact of Part IV of the Act on the recruitment and retention of medical practitioners in rural and regional Australia*. The guide will be distributed to GPs, their practice managers and advisers and the Commission also proposes to issue a summary and short pamphlet.

The Commission made submissions to the federal government including:

Submission to Review of the impact of Part IV of the Act on the recruitment and retention of medical practitioners in rural and regional Australia:

The federal government announced this review on 29 August 2001. The Commission provided submissions on 29 November 2001 and 1 February 2002. The Review Committee is yet to report its findings. The Commission's key submissions are: there is a shortage of doctors in rural and regional communities due to reasons such as lifestyle, remuneration, lack of services, family issues, education for children, indemnity insurance and leaving social networks, but no evidence that the Act impacts on rural doctors; genuine medical rosters do not contravene the Act because their purpose is to ensure supply of



medical services (the opposite of a primary boycott prohibited by the Act); if doctors wish to engage in anti-competitive conduct that is of overriding public benefit, the Commission's rigorous and transparent authorisation process is available to allow such conduct to take place; and exemption from the Act for price fixing and boycotts by doctors would be very detrimental to patients, rural communities, and competitive practitioners.

Submission to Departments of Treasury and Health and Ageing on medical informed financial consent: The Commission participated in the consultation process conducted by the Departments of Health and Ageing and the Treasury during the second half of 2001, concerning their medical informed financial consent discussion paper, and has made a submission. The Commission awaits the outcome with interest and, should the recommendations not bring about significant compliance among medical practitioners, the Commission would support a mandatory code of conduct to secure informed financial consent.

Other submissions: The Commission has made numerous submissions to other government agencies with responsibilities in the professions area, especially relating to deregulation of professions under National Competition Policy Reform. These include submissions to:

- The Department of Health and Ageing: regulation of prostheses in the private health sector; and regulation of private health insurance
- The Victorian Department of Human Services: regulation of medical practitioners and nurses
- The Victorian Medical Practitioners Board: Draft Advertising Guidelines
- The Queensland Government's National Competition Policy Review: Regulation of Legal Profession
- The Queensland Health Department: including dentistry profession restrictions; restrictions on use of title for cosmetic and plastic surgeons and physicians; terms used by

medical practitioners' regulations; medical radiation technologists' regulations; chiropractors registration regulations; osteopaths registration regulations

- The Victorian Dental Practice Board Specialist Advisory Committee: proposed restrictions for the specialities in dentistry
- The New South Wales Dental Therapists Association regarding proposed practice restrictions on therapists.

The Commission's reports to the Senate included:

Senate reports on Anti-competitive and other practices by health funds and providers in relation to private health insurance: On 30 August 2001 the Commission tabled its 3rd report for the periods 1 July 2000–31 December 2000 and 1 January 2001–30 June 2001. Key issues in the report were: the role of health funds in providing information on no-gap services to consumers; the extent to which consumers are provided with meaningful informed financial consent; the deregulation of the prostheses market and the action undertaken by the Commission during the periods to protect consumers' health interests.

On 25 June 2002 the Commission tabled its 4th report for the period 1 July 2001–31 December 2001. The key issues in the report were that: health funds may be misleading policyholders about coverage; private and day hospitals have generally failed to adopt their voluntary industry Code of Practice concerning contract negotiations between health funds and hospitals; doctors have not obtained informed financial consent from patients; and health funds and their agents should be aware they may be liable under the Act for misleading conduct.

Senate report on Tobacco industry: On 24 September 2001 the Senate requested the Commission to report on the tobacco industry. The report was tabled on 30 April 2002 and on 27 June 2002 the Senate requested the



Commission to report further on matters including its liaison with stakeholders and investigations.

The Commission liaises with the Department of Health and Ageing, and participated in a departmental review of health warnings on tobacco products. Tobacco product labelling is a mandatory standard under the Act. The Commission is a member of the Commonwealth Cross-Government Tobacco Liaison Meeting which meets several times a year to discuss advertising, labelling, health effects and the work of the WHO Framework Convention on Tobacco Control.

On 18 April 2002 the Treasurer asked the Commission to review, as specified in recommendation 5(c) of the *Final Report of the National Competition Policy Review of Pharmacy*, the relative financial and corporate differences between friendly society dispensaries and pharmacist-owned community pharmacies, and whether this adversely affects competition in the pharmacy industry. This report is to be provided to the Treasurer by October 2002.

Cases and undertakings under the ASIC Act

The following five matters involve proceedings instituted or undertakings given under the *Australian Securities and Investment Commission Act 1989* (ASIC Act). Until March 2002 health insurance advertising was regulated through the ASIC Act with delegated power to the ACCC. From March 2002 the Commission has assumed direct responsibility for health insurance advertising.

NRMA Health Pty Ltd trading as SGIC Health and SGIO Health, NRMA Insurance Ltd and Saatchi & Saatchi Australia Pty Ltd

Proceedings commenced on 5 November 2001 in the Federal Court (Sydney) and on 3 July 2002, the court made orders against NRMA, by consent, concerning advertisements appearing in various newspapers in September 2001 and its website. The print advertisements depicted a woman nursing a new born baby and stated: 'free delivery ... no matter how advanced your pregnancy is', and contained fine print disclaimers that full coverage for obstetric services was subject to

any excess or co-payment and service of a 12-month waiting period with NRMA or another health fund. The orders included declarations that NRMA Health breached the relevant provisions of the ASIC Act, a requirement that NRMA Health inform consumers of the misleading conduct, waiver of waiting periods for those who were misled and the availability of refunds for excesses and co-payments. The Commission alleges that Saatchi & Saatchi, NRMA's advertising agency, was involved in the contraventions and trial of the matter is set down for 18 September 2002.

Medical Benefit Funds of Australia Limited (MBF) and John Bevins Pty Ltd

Proceedings commenced on 8 February 2001 in the Federal Court (Sydney), concerning print and television advertisements containing pregnancy-related images. The Commission alleges that fine print in the advertisements—that the 12-month waiting period for pregnancy-related services would not be waived—was inadequate and unlikely to come to the attention of consumers. The Commission alleges that John Bevins, MBF's advertising agent, was involved in the alleged contraventions. The Commission seeks declarations, injunctions, publication and broadcast of corrective advertisements, waiver of the 12-month waiting period for pregnancy-related services for women or families who transferred to or joined MBF in the period 28 May 2000 to 16 September 2000, review of trade practices compliance programs and costs. The matter was heard on 3 and 4 June 2002, judgement reserved.

Medibank Private

Proceedings commenced 26 October 2000 in the Federal Court (Melbourne) regarding two advertising campaigns. The Commission alleges that: from early March 2000 Medibank advertised no rate increase in 2000 on PackagePlus products; that through its call centre, newspaper advertising, website, brochures and mail to customers, Medibank failed to properly disclose that rates would increase on 1 July 2000. The Commission alleges that a second campaign in major



newspapers in August 2000 offered consumers switching from other funds 'any waiting periods waived' and 'get 30 days free if you change to Medibank Private'. The Commission alleges that the advertisements failed to properly disclose that only the 2-month general waiting period and the 6-month optical waiting period were waived, and that this was only indicated in fine print at the bottom of the advertisements. The Commission is seeking orders including waiver of waiting periods, provision of 30 days free health insurance, and refunds or credits for PackagePlus purchasers. On 21 March 2002 the Federal Court refused Medibank's application for certain remedial orders sought by the Commission to be struck out. Medibank Private has appealed this decision to the Full Federal Court.

Western District Health Fund Ltd

Proceedings commenced on 23 January 2002 in the Federal Court (Sydney) alleging that television advertisements, stating 'all operations covered' with 'no excesses or co-payments' and that 'there's nothing hidden or complicated', were misleading, as were similar statements in website advertising and brochures. The Commission alleges that print stating that coverage was 'as per Government Medicare Benefits Schedule' and that no excesses or co-payments applied to 'hospital accommodation only' was inadequate, and unlikely to come to consumers' attention. The Commission seeks injunctions, the publication of corrective television and website advertising, refunds of excesses or co-payments, refund of 12-months membership, reimbursement of hospital and medical expenses for operations for a 12-month period, review of Westfund's trade practices compliance program and costs. Trial is set for 17 and 18 October 2002.

HCF

In August 2001 HCF undertook to waive waiting periods applicable to members who joined HCF between 3 and 30 June 2001. A HCF television advertisement had stated: 'Join HCF before June 30th and receive instant cover' and that the two and six-month waiting periods were waived. A visual fine print statement read: 'the waiver does not apply to waiting periods of more than six months, including those for pregnancy and related conditions. Pre-existing ailments and conditions are also excluded'. The Commission considered the advertisement represented that, by joining HCF before 30 June 2001, the public would be entitled to benefits from the time of joining for all hospital, medical and ancillary services included in the cover.

Cases and undertakings under the TPA

Pacific Dunlop Ltd

Proceedings commenced 21 January 2000 in the Federal Court (Melbourne), alleging that packaging of Ansell latex gloves did not warn that latex could cause serious allergic reactions in some people. The Commission seeks declaration, injunction and compensation for a consumer. Court ordered mediation took place on 10 October 2000 and 12 December 2001. On 18 June 2001 the Commission was granted leave to amend its pleadings to include misleading or deceptive conduct. Proceedings are continuing.

David Zero Population Growth Hughes trading as Crowded Planet

In March 2002 the Federal Court (Sydney) found that David Zero Population Growth Hughes engaged in misleading and deceptive conduct and made false representations about the supply of oral contraceptives through his Crowded Planet website by not disclosing significant health risks associated with the use of oral contraceptives by particular people and that, in Australia and the United States of America (where the server for the site was based) it is illegal to buy or supply



oral contraceptives without a prescription. The court made orders restraining the supply of oral contraceptives in Australia without making specific disclosures, and supply to persons in the United States of America. The respondent sought leave to appeal beyond the statutory time for appeal but this was refused.

Purple Harmony Plates Pty Ltd, Neal Arthur Lyster and Helen Therese Glover

Proceedings commenced on 23 May 2001 in the Federal Court (Melbourne). The court found, on 6 August 2001, that Purple Harmony Plates had published misleading health claims on its website about pieces of anodised aluminium plate. The court ordered injunctions, corrective statements in writing to customers and on its website, and refunds. In September 2001 the Commission commenced contempt proceedings and, on 9 April 2002 the court imposed a fine of \$20 000 on Purple Harmony Plates and fines of \$10 000 on each of Helen Therese Glover and Neal Arthur Lyster (Directors) for contempt.

Chaste Corporation Pty Ltd & TRIMit

Proceedings commenced on 26 November 2001 in the Federal Court (Brisbane) alleging resale price maintenance, unconscionable, misleading and deceptive conduct, breach of the mandatory industry franchising code and false representations concerning its Area Management Agreements for a claimed weight-loss product TRIMit. The Commission seeks injunctions, refunds for area managers, provision of disclosure documents, implementation of a trade practices compliance program, costs and penalties for resale price maintenance conduct. Chaste undertook that: it will not enforce the alleged resale price maintenance provisions of the agreement and not enter into agreements with this provision; not suspend or terminate, or threaten to suspend or terminate, area managers if they attempt to meet to discuss Chaste; and that Chaste will write to all area managers advising them of this. The matter has been adjourned to a date to be fixed.

Danoz Direct Pty Ltd

Proceedings commenced on 3 May 2002 in the Federal Court (Brisbane) concerning the 'Abtronic'. The Commission alleges that Danoz, Moshe Ozana (sole Director) and others misrepresented the capabilities of the device, promoted on Channel 10's *Good Morning Australia* and *Bright Ideas* programs, during 'infomercials' on Channels 10 and 7, in a Danoz product catalogue and on its website. The Commission seeks injunctions, including about claims about the Abtronic such as: it is a brilliant training and toning tool; can be used to work out and tone different muscle groups; provides a vigorous workout for the abdominal region, the 'love handles', arms, buttocks, thighs; can flatten your stomach 'once and for all', you just sit, relax and watch your 'abs' tighten; your 'love handles' disappear and your thighs and bottom firm up with no sweating involved; and you can get the results of up to 600 sit-ups in just 10 minutes without any effort. The matter is down for trial for seven days from 28 October 2002.

Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd

Proceedings instituted on 19 July 2000 in the Federal Court (Perth) concerned alleged misrepresentations about the health and cosmetic benefits of an electronic muscle stimulation product. The court granted leave to the respondents to join their parent company, Bio Medical Research Ltd located in Ireland, as a cross respondent. On 4 April 2002 the court ordered that hearing of the cross claim would take place with trial of the action. The trial commenced on 22–29 July 2002 and is set down to continue on 16–19 December 2002.

The Buyers Group Pty Ltd & Ors

Proceedings commenced 27 July 2001 in the Federal Court (Brisbane) concerning the 'Feminique' muscle stimulation device promoted in infomercials on Channel 10's *Good Morning Australia* and *Bright Ideas* programs, Channel 7's *Morning Shift*, and the company's website. On 10 August 2001 the



court, by consent, imposed interlocutory injunctions restraining The Buyers Group, Josephus Schoonenberg (sole Director) and employees Marianne Schoonenberg and David Simons from representing that the Feminique or any other muscle stimulation product can: exercise, tone, firm or pull back into shape any part of the user's body without effort by the user; burn up fat; flatten the user's stomach without any effort by the user; result in the user losing 3 kilograms in weight and reduce the user's waist measurements by 3 centimetres in 4 weeks; and is ideal for people who want to see effective and immediate results.

Advanced Medical Institute Pty Ltd

Proceedings commenced on 19 April 2002 in the Federal Court (Sydney) alleging that AMI and Jacov Vaisman (Managing Director) engaged in false, misleading and deceptive conduct concerning the promotion of claimed treatments for male impotence and erectile dysfunction. The Commission is seeking various orders including declarations, injunctions, refunds, the publication of corrective print and electronic advertisements, and the implementation of a trade practices compliance program. The matter has been listed for further directions on 11 October 2002.

Collagen Aesthetics Australia Pty Ltd

Proceedings commenced on 17 May 2002 in the Federal Court (Adelaide) alleging false and misleading representations in *Vogue Australia*, *She* and *Marie Claire* magazines, about collagen and hylaform products. The Commission alleges that the advertisements incorrectly stated that: because Collagen Aesthetics' products are registered on the Australian Register of Therapeutic Goods, they are safer to use than its competitor's products which are merely listed; the collagen and hylaform products are safe; treatment with the collagen products is painless; the collagen products are natural; and three types of hylaform products are available to be supplied to the public. The Commission seeks declarations, injunctions, corrective advertisements, implementation of a trade practices compliance program and costs.

Australian Indoor Tanning Association Pty Ltd

(s. 87B undertaking)

In early 2000 AITA distributed promotional material suggesting that solarium tanning has health benefits and carries no risks. On 3 August 2001 the AITA undertook to cease making the statements, and to distribute a corrective statement to its customers warning of the risks of solarium tanning.

Ergoline (Australia) Pty Limited

(s. 87B undertaking)

In early 2000 Ergoline distributed brochures concerning sunbeds suggesting that solarium tanning has health benefits and carries no risks. In August 2001 Ergoline undertook to cease making the statements and to publish corrective notices to its customers, in newspapers and in promotional material, warning of the risks of solarium tanning. The undertaking was given in August 2001, and a variation to it accepted by the Commission in October 2001.

Smaji Management Pty Ltd, trading as ITP Income Tax Professionals

(s. 87B undertaking)

In July 2001 ITP published print and television advertisements offering a 48-hour tax refund service without disclosing that the service was a loan against the refund customers might receive from the Australian Taxation Office, and that an extra fee was payable. ITP undertook to qualify any further such advertisements, publish corrective television advertisements, make refunds to those who paid the fee but did not receive a refund within 48 hours, and to implement a trade practices compliance program.

Eyelines Tasmania Pty Ltd

(s. 87B undertaking)

Eyelines, an optical dispenser with eight stores in Tasmania, advertised on a Hobart radio station in March 2002 that: 'Eyelines is the only Tasmanian-owned and operated optical provider. It has 8 stores state wide' and 'Eyelines is the only Tasmanian-owned and



operated optical provider with 8 stores state wide'. Both claims were wrong. Eyelines undertook to broadcast approved corrective notices on radio and to instigate specified compliance measures and training.

F. Hoffmann-La Roche Ltd & Ors

—see page 30

Mark Leyden, Stephen Robson, Paul Khoo

—see page 32

Australian Medical Association (Western Australia) and Mayne Group Ltd (formerly Mayne Nickless Ltd) & Ors

—see page 30

Giraffe World Australia Pty Ltd

—see page 62

Consumer protection

The Commission has retained its traditional focus on protecting consumers in the areas of product safety, scams and other misleading conduct. However, it also looks at other areas such as: expanded cooperation with other government agencies, health issues, fine print advertising, e-commerce, undue harassment and coercion, and the actions of professions, in order to protect consumers from unscrupulous businesses.

Consumer initiatives

Consumer Consultative Committee: In November 2001 the Commission established its Consumer Consultative Committee which meets four times per year to ensure better communication between the Commission and peak national consumer advocacy and research organisations.

Consumer express: In August 2001 the Commission commenced monthly publication of *Consumer express* to provide a snapshot of matters affecting consumers, and 'how to' guides to help consumers

resolve concerns. The publication is available by electronic subscription. As well as consumers and their representatives, subscribers include business people, people in the media and lawyers.

Insurance

On 7 June 2001 the Hon. Joe Hockey MP (then Minister for Financial Services & Regulation) asked the Commission to report on changes in insurance markets and insurance premiums. The Commission presented its report to Senator Ian Campbell, Parliamentary Secretary to the Treasurer, on 12 March 2002.

After a ministerial forum on public liability on 27 March 2002, Senator Campbell asked the Commission to update the report by July 2002, to take into account the full impact of the failure of HIH and the September 11 terrorist attacks in the US on premiums, and to analyse the competitiveness of public liability and professional indemnity sectors. The Commission is finalising its report.

Cases and undertakings

NRMA Health Pty Ltd trading as SGIC Health and SGIO Health, NRMA Insurance Ltd and Saatchi & Saatchi Australia Pty Ltd

—see page 40

Medical Benefit Funds of Australia Limited (MBF) and John Bevins Pty Ltd

—see page 40

Medibank Private

—see page 40

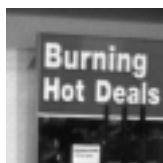
Western District Health Fund Ltd

—see page 41

HCF

—see page 41





Advertising and prices

Misleading and deceptive advertising continues to be the Commission's enforcement priority in the protection of consumers, with the misuse of fine print and deceptive pricing of special concern.

There appears to have been increasing problems in advertising in the year 2001–02, with the Commission noting problems in the area of price advertising, use of fine print and adequate disclosure in advertisements generally. The Commission continues to examine advertising conducted through infomercials and advertorials.

Cases and undertakings

Qantas Airways Limited and Virgin Blue Airlines Pty Ltd—all inclusive flight prices

(s. 87B undertaking)

In May 2002 the Commission accepted undertakings from both Qantas and Virgin Blue that they would include additional taxes, levies and charges in their advertised flight prices, except where the purchaser would be directly liable to pay such costs (e.g. departure taxes at some international airports). All-inclusive price advertising informs consumers about the full direct cost of flights.

Travel industry—all-inclusive prices

In May 2002 the Commission informed the travel industry that, following the undertakings of Qantas and Virgin Blue, it anticipated that any transition necessary to ensure all-inclusive price advertising would be completed by 30 June 2002. The Commission is providing guidance to the travel industry in this regard, and is investigating price advertising that does not disclose full costs.

Info4pc.com Pty Ltd and James Rae (director)

Proceedings began on 23 January 2001 in the Federal Court (Adelaide) alleging misleading or deceptive conduct, bait advertising and accepting payment without intending to supply computers. The matter was transferred to the Federal Court (Perth) on 24 January 2001. The court has restrained Info4pc.com from accepting orders for the computers and dealing with its bank account.

On 31 July 2002 the Federal Court fined Info4pc.com Pty Ltd and James Rae a total of \$14 000 for contempt of court orders made in early 2001. The matter is continuing in the Federal Court.

Dell Computers

Proceedings were instituted in the Federal Court (Sydney) in December 2001. On 2 July 2002 the court found Dell had engaged in misleading conduct by failing to make it clear that customers had to pay a delivery charge in addition to the purchase price of computers, and ordered corrective advertising. The court found that the company had not made false or misleading price representations contravening ss. 53(e) and 53C of the Act. The Commission has appealed these aspects of the case. A hearing date has not yet been set.

Commercial & General Publication Pty Ltd & Anthony Robert Hassett

Prosecution began on 28 September 2001 in the Federal Court (Hobart) by the Commonwealth Director of Public Prosecutions, following a Commission investigation. On 22 July 2002 Commercial & General Publications Pty Ltd (CGP) and its managing director, Anthony Robert Hassett, were convicted on charges of accepting payments from five Tasmanian small businesses for



advertising in a proposed publication when CGP and Mr Hassett were aware, at the time of accepting payment, that CGP would be unable to supply the advertising. Separate charges that CGP and Mr Hassett made payment demands on eight small businesses for unsolicited and unauthorised advertising in CGP publications were not found to have been proved beyond reasonable doubt. Penalty submissions will be heard before Justice Heerey on a date in October 2002.

Chubb Security Australia Pty Ltd trading as Vitalcall

In August 2001 the Federal Court ordered, by consent, that Chubb Security Australia Pty Ltd publish corrective radio and print advertising. Chubb had claimed that its Vitalcall personal response systems cost about \$1 a day. However, an additional installation fee of between \$80 to \$279 was also payable, as well as a monitoring fee of \$1.16 to \$1.26 per day. The court also ordered by consent an injunction and corrective letters offering customers refunds.

Universal Sports Challenge Ltd and Mr Michael Kotowicz (Shark Challenge)

Proceedings commenced on 8 April 2002 in the Federal Court (Sydney) alleging misrepresentations that the Shark Challenge 2000 Golfing Competition final would be held overseas when it would in fact be held in Queensland. In May 2002 the court ordered, by consent, that USCL had contravened the Act, imposed injunctions and required that a corrective letter be sent to affected consumers. USCL had previously refunded the entry fees. The proceedings against Michael Kotowicz continue. A second directions hearing is set down for 13 September 2002.

Quality Bakers Australia Limited

Proceedings commenced in May 2001 in the Federal Court (Canberra) concerning the 'Help Buttercup to Help Our Babies' promotion from 17 March 2001 to 1 June 2001, that 30 cents from the sale of each additional Buttercup product purchased would be donated to helping babies in The Canberra

Hospital. Fine print on the bread labels stated that the promotion was limited to product sales, excluding hot cross buns, above the average number of products sold in the Canberra Buttercup bakery area over the 11-week period preceding the promotion. On 21 December 2001 the court made orders, by consent, that Buttercup had contravened the Act, imposing an injunction for three years, and requiring review of its trade practices compliance program. Buttercup made a \$40 000 donation to The Canberra Hospital.

Orbit Homes Australia Pty Ltd

Proceedings commenced 7 September 2001 in the Federal Court (Melbourne) concerning home packages advertised March–May 2001 in the *Herald Sun* newspaper, which allegedly offered features at no extra cost when their cost (\$14 700–\$18 600) was built into the price. The court ordered, by consent, that the company had contravened the Act, injunctions, public disclosure notices in the press and on its website, implementation of a trade practices compliance program, and costs.

Alex Salter Pty Ltd trading as Salters of Moorooka

Proceedings commenced 15 March 2002 in the Federal Court (Brisbane) in relation to the advertised price of a vehicle at Salters of Moorooka, which did not include additional dealer costs including administration fees. The advertisement also failed to disclose that the vehicle was not registered. On 3 April 2002, by consent, the court made declarations, injunctions, ordered implementation of a trade practices compliance program, and that Alex Salter undergo trade practices compliance training, and pay costs.

Fire Fighting Enterprises

(case and s. 87B undertaking)

Proceedings commenced on 30 April 2002 in the Federal Court (Brisbane) alleging that between 1990 and 2001, FFE had not properly inspected and maintained fire protection systems, and did not have in place an adequate system to ascertain whether it



was performed. FFE admitted the conduct. The court ordered, by consent, injunctions for three years. FFE undertook to write to affected customers offering compensation, publish public notices in a newspaper to alert customers to potential missed services, conduct an internal review to identify the causes of the contraventions, and to upgrade its trade practices compliance program.

McDonald's Australia Ltd

On 24 September 1999 the Commission instituted proceedings in the Federal Court (Sydney—later transferred to Brisbane) alleging unconscionable conduct against consumers, misleading or deceptive conduct and false representations regarding the 1999 McDonald's McMatch & Win Monopoly competition. On 9 March 2001 Justice Dowsett of the Federal Court (Brisbane) found that the 34 claimants who presented evidence in a private representative proceedings regarding the same competition had not made out their claim (*Hurley v McDonald's Australia Limited*). On 20 August 2001 Justice Dowsett, by consent of the parties, dismissed the proceedings brought by the Commission.

Mitre 10 Australia Ltd

Proceedings commenced on 21 September 2001 in the Federal Court (Melbourne) alleging that television, newspaper and radio advertisements for Mitre 10's '15 per cent off storewide' and '15 per cent off everything' sales on 15–17 June 2001, did not properly disclose that a large range of goods was not reduced by 15 per cent. The Commission seeks declarations, injunctions, publication of corrective notices on television and in the press, findings of fact, implementation of a trade practices compliance program and costs. The proceedings continue.

Allans Music Group Pty Ltd

Prosecution commenced on 30 April 2002 in the Federal Court (Adelaide) by the Commonwealth Director of Public Prosecutions, following a Commission investigation. It is alleged that Allans Music made various

statements about the price of musical instruments and other equipment which were advertised in its Christmas 2000 catalogue. It is further alleged that Allans Music had not sold 18 of the items referred to at their 'was' price since January 2000 or at all during that year and that, for this reason, these 18 representations were false or misleading representations concerning price. Proceedings are continuing.

Architectural & Structural Adhesives

Proceedings commenced on 30 November 2001 in the Federal Court (Sydney), concerning labelling of products as 'wholly Australian owned' or 'Australian owned' when a substantial proportion of shares in the company had been held by a French company since June 2000. On 14 December 2001 the court declared, by consent, ASA had engaged in misleading or deceptive conduct and ordered, by consent, injunctions, corrective advertising and consumer refunds.

Wizard Mortgage Corporation Ltd

Proceedings commenced 7 February 2002 in the Federal Court (Melbourne) alleging that around June and July 2001 Wizard advertised its Rate Breaker loan at 5.64 per cent interest with features such as direct salary crediting and the ability to change monthly repayments to fortnightly or weekly repayments, when those features were only available with loans at higher interest rates. The Commission is seeking declarations, injunctions, corrective notices, and costs. A directions hearing is set down for 23 August 2002.

Furniture Direct Pty Ltd, Furnelect Pty Ltd & Monty Khoury (companies' director)

Proceedings commenced 21 December 2001 in the Federal Court (Brisbane) alleging that a Furniture Direct 'Store Cost Plus \$1' advertising campaign misrepresented the amount of price reductions. The Commission seeks declarations, injunctions, refunds of 30 per cent of the price paid by affected consumers, implementation of a trade practices compliance program, and costs. Proceedings are continuing.



Rod Turner Consulting Pty Ltd

Proceedings commenced on 3 July 2000 in the Federal Court (Melbourne) alleging that Rod Turner falsely claimed to be a chartered accountant, and misrepresented that GST was payable on residential rent and water supply. The Commission seeks declarations, injunctions, apologies for consumers involved, findings of fact, implementation of a trade practices compliance program and costs. A case management conference was held on 3 July 2002. The trial is set for 3 October 2002.

Custom Security Services Pty Ltd

(s. 87B undertaking)

On 18 June 2002 Custom Security Services in Canberra undertook to offer refunds to customers who were charged for security system upgrades made without prior consultation. Customers only became aware of the upgrades when they received a bill. CSS then misinformed customers that the upgrades were required under an Australian Standard, and that insurance claims might otherwise be denied. CSS undertook to write to affected customers offering refunds of the \$99 upgrade fee and related telephone charges.

Hotelcheque Pty Limited

(s. 87B undertaking)

In April 2001 the Commission received a complaint that Hotelcheque Pty Limited had offered for sale a product consisting of a book of hotel accommodation vouchers, each voucher entitling the purchaser to hotel accommodation for two people at the rate of approximately \$5 per person per night twin share.

The product was advertised in television advertorials and a radio advertisement. The Commission was concerned that the advertisements failed to adequately inform the audience of the condition that the purchaser and their companion must also buy breakfast and dinner at the hotel in order to qualify for the discounted room rate. This further amount would have been on average \$50.50 per person per day for breakfast and dinner. In March 2002 the Commission accepted the undertakings provided by

Hotelcheque to cease the offending conduct, offer full refunds to all affected purchasers, publish a corrective advertisement, and for company management and staff to undertake a trade practices compliance program.

Aussie Breaks Pty Limited

(s. 87B undertaking)

In April 2001 the Commission received a complaint that Aussie Breaks Pty Limited advertised a book of hotel accommodation vouchers, for accommodation of \$5 per person per night twin share. The advertisement failed to adequately disclose that the purchaser must also buy breakfast and dinner at the hotel to qualify for the discounted room rate, on average \$50.50 per person per day. In March 2002 Aussie Breaks undertook to cease the offending conduct, offer full refunds to all affected purchasers, and to undertake a trade practices compliance program.

Forrester Kurts Properties Ltd

(s. 87B undertaking)

In July 2001 the Commission accepted undertakings from Forrester Kurts who acknowledged its representations regarding negative gearing opportunities of real estate, and the availability of Qantas Frequent Flyer Points for purchasers contravened ss. 52 and 53(e) of the Trade Practices Act. Forrester Kurts undertook to write to purchasers identified as likely to have seen the advertisement, and for those purchasers who claim to be misled by the advertisement, offer to rescind their contracts and refund all moneys paid. It also undertook to clarify future statements regarding Frequent Flyer promotions and negative gearing calculations, and to implement a trade practices compliance program.

A. Royale & Co (Aust) Pty Ltd

(s. 87B undertaking)

A. Royale & Co. (Aust) Pty Ltd is one of the leading suppliers of belts in Australia. In August 2000 A. Royale informed the Commission that the NZ Commerce Commission was investigating its labelling of belts as leather



though they contained less than 50 per cent leather. A. Royale undertook to cease the conduct, publish corrective advertisements, offer refunds to all affected consumers and implement a trade practices compliance program.

Carpet One Australasia Limited

(s. 87B undertaking)

Carpet One made misrepresentations about savings on floor coverings and did not adequately disclose that the 12 months interest free was only available on selected items. On 12 October 2001 Carpet One undertook not to engage in similar misleading advertising, to publish a corrective notice and an article about two-price advertising, to implement a trade practices compliance program and to hold a seminar for its members.

Health insurance undertaking and cases x 5

—see page 40–41

Total Communications (Tas) Pty Ltd

—see page 49

Virgin Mobile Australia Pty Ltd

—see page 50

Oceana Commercial, NAPC, Greenwich and Commonwealth Bank of Australia

—see page 58

Internet TV Australia Pty Ltd trading as Free2aiR and James Young

—see page 58

Smaji Management Pty Ltd, trading as ITP Income Tax Professionals

—see page 43

GST cases—Domaine Homes (NSW) Pty Ltd, Strasburger Enterprises (Properties) Pty Ltd trading as Quix Food Stores, Marsh Pty Ltd, Mike Carney Motors Pty Ltd, Metropolis Real Estate Pty Ltd, Flipstock Pty Ltd trading as A Man's Toyshop, Commodore Homes (WA) Pty Ltd, Tangent Nominees Pty Ltd trading as Summit Homes, Signature Security

—see chapter 2.



Telecommunications

Misleading and deceptive conduct in telecommunications services was also an area of Commission attention.

Cases

Telstra

In July 2001 the Commission obtained urgent interim orders against Telstra in relation to its conduct following the collapse of One.Tel. The Commission alleged that Telstra had misled former One.Tel customers about the transfer of mobile services to Telstra, including that customers would be liable for early termination fees if they did not switch their service to Telstra before a certain date. In December 2001 the Federal Court in Melbourne made orders against Telstra, by consent, for the partial repayment of minimum monthly access fees and costs to about 3000 former One.Tel mobile phone customers.

Total Communications (Tas) Pty Ltd

Proceedings commenced on 7 December 2001 in the Federal Court (Hobart) alleging that Total Communications published a misleading newspaper advertisement showing mobile phones priced at '\$0' with an inconspicuous small print disclaimer '*conditions apply', with no conditions disclosed. On 12 December 2001 the court declared, by consent, that the company had engaged in false, misleading or deceptive conduct because essential conditions of the associated airtime contract, such as the minimum monthly rental, the number of months the contract must run, and the total cost of the contract, were not set out in the advertisement. The court ordered, by consent, a five-year injunction, publication of a corrective advertisement, and implementation of a trade practices compliance program which



adopts the Australian Telecommunication Industry Forum consumer code.

Pacific Access Pty Ltd

Proceedings began on 14 December 2001 in the Federal Court (Melbourne) alleging that Pacific Access misrepresented that the Yellow Pages Connect 12451 telephone service would provide the best or closest match to search criteria specified by a consumer, whereas Priority Advertisers in the Yellow Pages are referred to consumers calling Yellow Pages Connect ahead of non-Priority Advertisers, even when the latter is the closer or better match to the search criteria. Consumers are charged \$1.21 per call to the service, and an additional fee if they wish to be connected to the advertiser offered. The Commission seeks declarations, injunctions, corrective advertising, refunds, implementation of a trade practices compliance program and costs.

Virgin Mobile Australia Pty Ltd

Proceedings commenced on 3 May 2002 in the Federal Court (Perth) alleging that Virgin Mobile's advertising for 'Dial High Club' packages failed to state the full cash price of the mobile phone packages and was likely to mislead consumers as to the minimum and/or total cost commitment of the package (over \$1000 in one case) and about the conditions on the packages. The Commission seeks declarations, injunctions, corrective advertising, refunds, implementation of a trade practices compliance program and costs.

Billbusters Pty Ltd & Miles Kendrick-Smith

On 23 November 1998 the Commission obtained interim orders in the Federal Court restraining Billbusters Pty Ltd and its director Miles Kendrick Smith from representing that the company performs audit services on accounts or invoices of Telstra; using or dealing in any manner with money received from its customers for the purpose of paying Telstra accounts or invoices of Telstra; and representing that the ACCC has the power to prevent Telstra from disconnecting telephones of Telstra customers. The orders were

discharged on 8 November 1999. A directions hearing was held on 13 December 2001. The proceedings are continuing.

Axxess Australia Pty Ltd, Benchmark Sales Pty Ltd, Peter Edward Russell Slaney & Stephen Vincent McGovern

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Country of origin

In 1998–99 the Department of Industry, Science and Resources funded the Commission to secure compliance with the Act regarding the correct statement of the country of origin of goods. The Commission convened and led working parties to visit manufacturers and produce guides for the:

- textile, clothing and footwear industry (*Textiles, clothing and footwear industries, Country of origin guidelines to the Trade Practices Act*, published December 2001)
- foods and beverages industry (published August 2002)
- electrical and whitegoods industry (preparing draft report and guide)
- toy industry (site visits completed, preparing draft report and guide)
- furniture and furnishings industry (visits being organised).

The Commission has completed a first round of inserts into trade journals, and a second round will be done when all guides have been published. The Commission has published a Country of origin section on its website including Frequently Asked Questions.

Cases and undertakings

Woolworths Ltd

Proceedings commenced on 29 October 2001 in the Federal Court (Sydney) alleging that the Woolworths 'Beefing up the Economy' advertisements published in regional newspapers in New South Wales were false and misleading. The advertisements claimed that all the beef sold in Woolworths regional



supermarkets were sourced from cattle suppliers in the north-west and New England regions and that the cattle were fed on locally produced grain. The matter was heard by the Federal Court on 13 June 2002 and judgment was handed down on 12 August 2002. The court declared that Woolworths had made false or misleading representations about the place of origin of cattle ultimately sold as beef in some of its regional supermarkets, and that it had engaged in misleading or deceptive conduct concerning this beef and the grain used to feed the cattle.

GIA Pty Ltd trading as Tamar Knitting Mills & Eric Ian Thompson (former Managing Director)

Prosecution commenced on 2 September 2001 in the Federal Court (Hobart) by the Commonwealth Director of Public Prosecutions, following a Commission investigation. It is alleged that GIA removed the original labelling from Chinese-made polo shirts, and added swing tags representing the shirts were 'Tasmanian' or 'Made in Tasmania by Tamar Knitting Mills' before offering them for sale to the public. It is also alleged that the company furnished false information to the Commission in response to a statutory notice. Before the trial that was listed to commence on 31 July 2002, Eric Ian Thompson entered a guilty plea to all charges. The company (in liquidation) has not entered a plea.

Entee Food & Beverage Distributors and Wholesalers Pty Ltd

(case and s. 87B undertaking)

Proceedings commenced on 17 August 2001 in the Federal Court (Darwin) concerning orange juice labelled: 'product of Australia', 'Australian Squeezed', 'Darwin squeezed', 'pure Australian fruit' and 'Locally squeezed' when, from January 2001 to June 2001, the products contained 15 per cent reconstituted juice from Brazil and contained juice prepared in Brisbane. The 'Darwin Squeezed Orange Juice' did not list sugar as an ingredient or additive. On 21 August 2001 the court ordered, by consent, declarations, injunctions, that Entee become a signatory to the Fruit

Juice Industry Code, and contribute to the Commission's costs. Entee undertook to implement a trade practices training program.

Berri Ltd

Proceedings commenced on 13 August 2001 in the Federal Court (Melbourne) alleging that Farmland orange juice concentrate labelled 'Made in Australia from Australian Fruit Juice' contained imported juice. The Commission alleges that the claim 'Made from a blend of quality Australian and Imported fruit juices depending on seasonal availability' and similar claims on various Farmland, Just Juice and Sunburst fruit juice varieties was misleading, because an insufficient amount of available Australian juice was used. On 17 December 2001 the Commission commenced further proceedings alleging the labelling of several pineapple juice products represented that the proportion of imported and Australian juice in the products depended on seasonal availability. It is alleged that the Australian pineapple juice is not subject to seasonal availability. The proceedings have been consolidated. The Commission seeks declarations, injunctions, corrective advertisements and implementation of a corporate compliance program.

Pauls Victoria Limited

On 13 September 2001 the Federal Court found, by consent, that Pauls Victoria Limited had supplied Coles Supermarkets Australia Pty Ltd between February 1999 to May 2001 with fruit drinks incorrectly labelled as 'Product of Australia' when they contained imported juice. As part of the consent orders Pauls was restrained from making false representations regarding the country of origin and composition of its fruit juice products, agreed to give consumers a discount and to implement a corporate compliance program.

HPM Industries Pty Ltd

(s. 87B undertaking)

HPM sells fluorescent tube DF40 starter units which, between September 1998 and March 2000 and between mid-2001 and



October 2001, were sold in packaging stating 'Australian Made' with the image of a kangaroo, as well as stating: 'Made in India'. The products were made in India. HPM undertook to cease the conduct, offer consumer refunds, publish corrective advertising and undertake a trade practices compliance program.

Australian Disc Brakes Pty Ltd and Ampco Automotive Pty Ltd

(s. 87B undertaking)

Ampco and Australian Disc Brakes manufactured and distributed disc brake pads, in packaging that may have given the impression they were Australian made whereas some were imported. The companies undertook to cease the conduct, send a corrective notice and provide refunds to customers in the last three years and to implement a trade practices compliance program.

Food and beverages

The Commission works closely with peak industry bodies and the Food Standards Australia New Zealand (FSANZ formerly ANZFA) about food labelling. It is negotiating a memorandum of understanding with FSANZ to assist in managing false and misleading claims where there is an overlap between the Joint Food Standards Code and the Act. The Commission was a member of the External Advisory Group for ANZFA Proposal P234—Nutritional content and other related claims. It commented on Standard 1.5.2/A18—Food produced using gene technology. Mandatory labelling of genetically modified foods commenced in December 2001, and the Commission then released a News for Business publication on advertising of *Genetically modified organisms and foods*. The Commission also participated in the Commonwealth Food Regulators Officials Group in the Department of Health and Ageing Food Secretariat.

Submissions: The Commission has made submissions to FSANZ on various food standard proposals.

Grocery pricing inquiry: This inquiry arises from an order of the Australian Senate on 8 February 2001, to inquire into price discrimination by grocery wholesalers. The Commission's report will be made in September 2002.

Cases and undertakings

Cadbury Schweppes Pty Ltd

Proceedings commenced on 22 March 2002 in the Federal Court (Melbourne) concerning Cotte's Banana Mango Flavoured Cordial and Apple Kiwi Flavoured Cordial Concentrate. The Commission alleges that, while the relevant fruits are depicted on the labelling, the products do not contain any of these fruits. The Commission seeks declarations, injunctions, corrective advertising and implementation of a trade practices program. The matter is continuing.

Woolworths Ltd

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Entee Food & Beverage Distributors and Wholesalers Pty Ltd

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Australian Safeway Stores Pty Ltd & Ors

—see page 32

Pauls Limited, Malanda Dairyfoods Ltd, Australian Cooperative Foods Ltd & Ors

—see page 32

Berri Ltd

—see page 51

Pauls Victoria Limited

—see page 51



Employment and education

Cases and undertakings

Crackerjack Productions and Network Ten

Proceedings commenced on 6 May 2002 in the Federal Court (Sydney) alleging that Crackerjack, with the knowledge of Network Ten, placed advertisements offering employment as a 'Girl/Boy Friday' when in fact the successful applicants were to be used as subjects in a 'candid-camera' type television show. The matter is set down for directions on 23 August 2002.

inthebigcity.com Pty Ltd and APN Newspapers Pty Ltd

(case and s. 87B undertaking)

Proceedings commenced on 9 April 2001 in the Federal Court (Brisbane) alleging misleading conduct regarding a 1900 premium-rate phone service that promised job seekers employment, and removal and accommodation discounts. The service was mostly used by unemployed rural youth. The court ordered, by consent, against inthebigcity.com Pty Ltd and its directors on 3 August 2001, and APN Newspapers Pty Ltd and its Group Product Development Manager on 1 November 2001. These undertakings provided for refunds of \$60 000 to 3000 consumers, publishing of corrective notices and the implementation of trade practices compliance programs.

Black on White Pty Ltd, trading as the Australian Early Childhood College

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Product safety

Product safety and compliance with mandatory product standards and bans under the Act remains a priority for the Commission.

The Commission concentrates on improving industry awareness of mandatory standards and bans, and surveying for compliance. It accepted

s. 87B undertakings and took proceedings concerning non-complying bicycles, toys, sunglasses, vehicle ramps and vehicle and trolley jacks. The Commission is also interested in competition issues that can arise from the formulation of, and adherence to, industry standards generally.

Education, liaison and guidance: The Commission provides guidance to industry on the interpretation of mandatory standards under the Act (this year this included guidance on amendments to the bicycles and paper patterns standards). It also participates in Standards Australia technical committees' reviewing and devising of standards (this year concerning children's nightwear, sunglasses, car jacks, helmets for vehicle users, vehicle restraints for children, children's cots, folding cots, bunk beds, and highchairs).

In April 2002 Commission Chairman, Professor Allan Fels, delivered the keynote address to the inaugural Infant & Nursery Products Association of Australia (INPAA) conference. The conference focused on product liability risk management, with reference to the Safe Baby Code initiated by INPAA.

In February 2002 the Manager of the Commission's Product Safety Unit attended the 8th European Consumer Safety Association International Conference on Product Safety and the International Consumer Product Health & Safety Organisation annual workshop.

In September 2001 the Commission liaised with the European Commission's Product and Service Safety Health & Consumer Directorate, concerning Prodsafe (OECD communications system), Prosafe (an EC enforcement forum), the EC directive on product safety, and the need for greater international communication. The Commission also liaised with Local Authorities Co-ordinators of Regulatory Services in the United Kingdom concerning enforcement coordination among member states.

Fuel standards: The Commission has been helping industry to inform consumers about whether the petrol they are purchasing contains additives and any effects of those additives on vehicles. It has also been liaising with Environment Australia regarding a compliance



regime in the mandatory national fuel standards on the addition of ethanol to fuel.

Amendments and new mandatory standards and bans

Bicycle helmets: Both the standard and laws on the wearing of helmets have significantly reduced cyclist injuries and deaths. A revised standard, effective 5 October 2001, requires compliance with either: AS/NZS 2063/1996; or the 1995 Snell Standard including the Child Helmet Addendum to Standards for Protective Headgear. AS/NZS 2063 amendments were made regarding testing requirements.

Bunk beds: Standard effective 1 November 2002, based AS/NZS 4220/1994. Some injuries to children have been due to falls from top bunks or head entrapment gaps. The standard requires guardrails for the sides and ends of the top bunk, specifies gap sizes to prevent entrapment and eliminated protrusions that create a hanging hazard.

Babywalkers: Standard based on the American Society for Testing and Materials standard F977-00, requiring a step-locking mechanism to prevent falling down stairways. Expected to take effect from 1 March 2003. Babywalkers have caused more injuries than any other nursery product, mostly due to falls of children less than one year of age.

Tinted headlight covers: Temporary ban effective August 2001 preventing supply of covers that allow less than 85 per cent luminous transmittance.

Mini jelly cups: Possible 18-month ban regarding adding of konjac, a thickening agent that does not readily dissolve in saliva and is a choking hazard. There are recorded deaths overseas and one in New South Wales, and two known near deaths in Queensland and Victoria. Already banned in three Australian states and the Northern Territory.

National survey program

The Commission conducts biannual market surveys, taking account of the relative hazard, distribution, complaint history and whether the standard or ban is recent. This year's surveys covered cots, disposable cigarette lighters,

flotation toys, pedal bicycles, tobacco labelling, child restraints in vehicles, cosmetics, exercise cycles, vehicle jacks, paper patterns, toys for children under three years of age, tinted headlight covers, sun visors and elastic luggage straps.

Cases and undertakings

Hyundai Automotive Distributors

Vehicle jacks: Proceedings commenced on 23 October 2001 in the Federal Court (Sydney), and on 21 December 2001 the court found, by consent, that Hyundai had supplied vehicle jacks that did not comply with the standard, imposed an injunction and the implementation of a trade practices compliance program. About 185 000 jacks did not carry the warning, safe use and operating instructions as required by the standard. Hyundai implemented a voluntary recall of the jacks and published recall notices in major newspapers.

Autobarn Pty Ltd, Northern Accessories Pty Ltd and Dictomax Pty Ltd

Car ramps: On 29 April 2002 the Federal Court (Darwin) made orders by consent preventing Autobarn and Northern Accessories from supplying non-compliant car ramps, and requiring Autobarn to conduct additional staff training to supplement its existing trade practices compliance program. On 17 May 2002 the court made further orders by consent against Dictomax Pty Ltd preventing it from supplying non-compliant car ramps.

Apollo Optical (Australia) Pty Ltd & Monza Imports Pty Ltd

Sunglasses: On 17 October 2001 the Federal Court (Perth) ordered by consent, declarations, injunctions, refunds, publication of safety notices, and costs against these importers of SPY ISIS brand sunglasses. The court also found that Apollo had supplied non-complying CAB55 002 fashion spectacles to retailers.



Easybuy.com.au Pty Ltd, trading as Bikes Direct

(s. 87B undertaking)

Pedal bicycles: In April 2002 Bikes Direct undertook to recall non-complying bicycles, fix them, and implement a trade practices compliance program. Some faults were identified during testing by Bikes Direct although no major structural problems were identified. Bikes Direct also corrected statements on its website about consumers' rights and warranties.

Tele Choice Pty Ltd

(s. 87B undertaking)

Pedal bicycles: Tele Choice imported mountain bikes and in 2001 supplied them with mobile phone purchases. The bicycles did not comply with labelling, seat-clamp strength, front hub retention and bell requirements. Tele Choice advised that 2200 bikes had been supplied between February–June 2001. The company advised that it stopped supplying the bikes in early June 2001 after it became aware that they did not comply with the mandatory standard. Tele Choice undertook to recall the bicycles, to implement a trade practices compliance program and ensure that any bicycles supplied in the future comply with the standard.

Apollo Bicycle Co Pty Ltd

(s. 87B undertaking)

Bicycle helmets: On 11 July 2001 the Commission received court enforceable undertakings from Apollo following a survey of bicycle helmets. Apollo was supplying 'Free Agent' brand helmets and these did not comply with the mandatory consumer product safety standard for bicycle helmets. The undertaking required Apollo to cease supply of the helmets as suitable for bicycle use, undertake corrective advertising that included a refund offer, and agreement to a compliance program. Apollo was also required to have sales agents visit retailers to check helmets in stock to ensure labelling as suitable for bicycle use had been removed.

Freelaw Pty Ltd, trading as Super Toyworld

(s. 87B undertaking)

Pedal bicycles: Non-compliant bicycles were located at Super Toyworld during a Commission survey in October 2001. Super Toyworld undertook to stop selling the bikes, publish newspaper advertisements offering to fix any sold, and to implement a trade practices compliance program.

Golden Sun Pty Ltd

(s. 87B undertaking)

Trolley jacks: In April 2002 Golden Sun supplied jacks that did not carry the required warnings and safe usage information, it conducted testing and recalled the jacks. After the Commission raised its concerns the company ceased to further supply the jacks and recalled those it had supplied. The company also undertook to train staff and implement a trade practices compliance program.

Freedom Group Ltd

(s. 87B undertaking)

Beanbags: Commission surveys resulted in the recall of various beanbags, covers and ottomans containing polystyrene beads. Freedom Furniture, and smaller suppliers, offered refunds. Freedom Furniture undertook to implement a trade practices compliance program.

Unconscionable conduct

The Commission has maintained its high level of enforcement activities in relation to unconscionable conduct with a number of new cases instituted. The Commission lost its appeal to the Full Federal Court on one matter, Samton Holdings Pty Ltd, and on another matter, Berbatis Holdings trading as Farrington Fayre, the Commission has been granted special leave to appeal to the High Court.



Cases and undertakings

CG Berbatis Holdings trading as Farrington Fayre Shopping Centre & Ors

Proceedings commenced on 6 April 1998 in the Federal Court (Perth). The trial was held from 31 January to 3 February 2000. On 26 September 2000 the court found that the conduct of the landlords and their representatives towards a tenant was unconscionable. The owners appealed and the Commission cross-appealed. The Full Court heard the matter on 31 May 2001, and on 27 June 2001 upheld the appeal and dismissed the Commission's cross-appeal. On 29 August 2001 the Commission sought special leave to appeal to the High Court, which was granted on 31 May 2002. The matter will be heard on 21 October 2002.

Samton Holdings Pty Limited & Ors

On 26 February 1999 the Commission commenced proceedings against Samton, a landlord, and six individuals alleging unconscionable conduct towards a commercial tenant. On 26 November 2000 the matter was dismissed. The Commission's appeal to the Full Federal Court was dismissed on 6 February 2002.

Axxess Australia Pty Ltd, Benchmark Sales Pty Ltd, Peter Edward Russell Slaney & Stephen Vincent McGovern

(case and s. 87B undertaking)

Proceedings began on 25 May 2001 in the Federal Court (Melbourne) alleging transfer of consumers' pre-selected telephone service without their informed consent, following door-to-door and telephone marketing. This practice is known as 'slamming'. On 13 March 2002 the court ordered declarations and injunctions restraining similar conduct. Axxess, Benchmark, Peter Slaney and Stephen McGovern undertook to engage an independent assessor approved by the Commission to review the companies' trade practices compliance training, to adopt Australian Telecommunication Industry

Forum consumer codes, to pay \$60 000 to an ACCC-managed public education campaign about consumers' rights regarding telecommunication services, and to pay up to \$20 000 costs.

Avanti Investments Pty Ltd and Dr Giuseppe Barbaro

Proceedings commenced on 27 April 2001 in the Federal Court (Adelaide) concerning water supply under market garden leases from 1994 to persons lacking formal education, English language skills or commercial experience. Demands for payment of excess water usage totalled more than \$67 000. The court, by consent, declared that Avanti had contravened the Act and granted injunctions restraining Avanti from demanding payment for excess water charges and requiring it to indemnify the farmers for such charges until their leases expired. Avanti and its then director were ordered to pay the Commission's costs.

Suffolke Parke Pty Ltd and Gregory John Bradshaw

Proceedings commenced on 18 September 2001 in the Federal Court (Adelaide) concerning Suffolke Parke's (a master franchisee for The Cheesecake Shop) leasing of premises to a franchisee, alleging it refused to allow the franchisee to sublet in reprisal for complaints by franchisees concerning the franchisor's conduct; and that when the franchisee sought mediation under the mandatory Franchising Code of Conduct, the franchisor refused to attend. The court, by consent, declared that Suffolke Parke and Gregory John Bradshaw (director) had acted unconscionably and that the company had not complied with the franchising code by refusing to attend mediation. The court ordered injunctions, payment of \$10 000 compensation to the franchisee, undertaking of a trade practices compliance training program and payment of the Commission's costs. This dispute was unrelated to The Cheesecake Shop national franchise.



Lux Pty Ltd

Proceedings began on 27 July 2001 in the Federal Court (Perth) alleging unconscionable conduct, and undue harassment and coercion towards an intellectually impaired couple to secure the sale of a Lux vacuum cleaner. The trial commenced on 22 April 2002 and is set down to continue on 6–8 November 2002.

Esanda Finance Corporation Ltd & Ors

Proceedings commenced on 12 April 2001 in the Federal Court (Perth) alleging the use of physical force, undue harassment and coercion, and unconscionable conduct relating to the payment for goods and services by a consumer. The Commission also alleges some individuals engaged in harassment and coercion in contravention of s. 23 of the *Fair Trading Act 1987* (WA). The Commission seeks declarations, injunctions, corrective notices, compensation, undertaking of a trade practices compliance program and costs.

Westfield Shopping Centre Management Co (Qld) Pty Ltd, Westfield Management Ltd, Westfield Design and Construction Pty Ltd & Ors

Proceedings commenced on 29 October 2001 in the Federal Court (Brisbane) against Westfield and two employees, one of Westfield Design and Construction Pty Ltd and the other of Westfield Shopping Centre Management Co (Qld) Pty Ltd and/or Westfield Management Ltd alleging misleading and deceptive conduct concerning initial lease negotiations. The proceedings also allege unconscionable conduct by Westfield concerning the subsequent refusal to settle a dispute regarding the misleading and deceptive conduct unless the tenant withdrew a complaint to the Commission and stated they were satisfied, and unless the Commission undertook to cease its investigation. The Commission seeks declarations, findings of fact, injunctions, damages for the former tenants and costs.

Dataline.net.au Pty Ltd & Ors

Proceedings began on 21 December 2001 in the Federal Court (Brisbane) alleging unconscionable, misleading and deceptive conduct, false representations, undue harassment and resale price maintenance in the supply of Internet-related services to small businesses and consumers. On 25 January 2002 the court ordered Dataline to permit the Commission to enter its premises to seize and remove personal computers. On 26 January 2002 the court ordered, by consent, that images of the personal computers and copies of servers at Dataline's premises be made and delivered to the custody of the court. On 8 February 2002 the court restrained Dataline, Australis and WPS from making debits to consumers' credit cards without prior written, signed authorisation. The court ordered, by consent, that Dataline and Australis not take any steps towards trial in District Court actions against business customers in Queensland and Western Australia, until the conclusion of the Commission's proceedings. The Commission seeks declarations, injunctions, findings of fact, damages, refunds, implementation of a trade practices compliance program, costs and penalties. The next directions hearing is set down for 2 September 2002.

4WD Systems Pty Ltd and 4WD Systems Australia Pty Ltd

Proceedings commenced on 26 September 2001 in the Federal Court (Adelaide) against the companies, Raleigh Julian Hobert and Thomas David Hewitson (directors of both companies) alleging: failure to deliver stock or to deliver within a reasonable time; supply of low quality, damaged and unusable stock and failure to refund franchisees for same; misrepresentation regarding Difflocks supplied; that the franchisors competed with franchisees in their franchised areas; non-compliance with the mandatory franchising code by refusing to negotiate and failing to provide franchise agreements or disclosure documents; and unconscionable conduct. The Commission seeks injunctions, refunds and compensation for franchisees, implementation of a trade practices compliance program and costs. A



mediation took place on 24 May 2002 and a directions hearing was set for 14 August 2002.

Australian Industries Group Pty Ltd, trading as Half Price Shutters

Proceedings commenced on 4 August 2000 in the Federal Court (Perth) alleging that Half Price Shutters, Tony Gulloti (national manager) and Robert Keirle (a former director) made false claims about the potential profitability of a franchise, did not provide a disclosure document contrary to the mandatory franchising code, and acted unconscionably towards its franchisees when they complained about poor profitability. On 1 March 2002 the court ordered, by consent, declarations, injunctions, compensation, implementation of a trade practices compliance program and costs.

Internet TV Australia Pty Ltd trading as Free2aiR and James Young

Proceedings began on 17 May 2002 in the Federal Court (Brisbane) alleging that Free2aiR and James Young (sole director) misrepresented that free Internet access time was included in Internet access services, and that there were no ongoing fees other than a charge for any downloads above a specified amount each month. The Commission alleges a quarterly administration fee was not disclosed and that some customers received demands for payment and threats of disconnection. It is alleged that Free2aiR engaged in unconscionable conduct and undue harassment and coercion in its dealings with customers. It is further alleged James Young was involved in the alleged conduct. The Commission seeks declarations, injunctions, refunds, establishment of a trade practices compliance program and costs.

Oceana Commercial, NAPC, Greenwich and Commonwealth Bank of Australia

Proceedings commenced on 14 November 2001 in the Federal Court (Brisbane) alleging two-tier marketing of investment properties on the Gold Coast. Two-tier marketing is the

practice of having two price tiers for real estate, one for locals who know local values and one for people from another area who do not. The proceedings also allege the involvement of two lawyers who allegedly failed to advise their clients of the marketing fees and inflated prices. Further, it is alleged that the Commonwealth Bank engaged in unconscionable conduct by proceeding to provide a loan despite having reason to believe that its customers had been misled. A directions hearing was held on 8 February 2002. The trial is set down for three weeks from 7 October 2002. The Commission is seeking declarations and injunctions.

Arnold's Ribs and Pizzas

Proceedings commenced on 12 March 2002 in the Federal Court (Sydney) alleging misleading and unconscionable conduct in promotion of a fast food franchise. It is alleged that Arnold's misrepresented the likely levels of sales and profits, targeted people with little or no business experience, failed to ensure franchisees understood important terms of the franchise contract and imposed conditions that were not reasonably necessary for the protection of Arnold's legitimate interests. The matter is set down for further directions on 26 September 2002.

Daewoo Australia Pty Ltd, Daewoo Heavy Industries and Machinery Limited & Eui Hwan Kang

Proceedings commenced on 17 December 2001 in the Federal Court (Sydney) alleging Daewoo engaged in misleading and unconscionable conduct concerning the 1998 appointment of a Queensland dealer in excavators and wheel loaders. On 26 June 2002 Justice Wilcox made an order for substituted service of the originating notice of these proceedings against Daewoo Heavy Industries and Machinery Limited in Korea, on Daewoo Heavy Industries Australia Pty Ltd (a subsidiary of Daewoo Heavy Industries and Machinery Limited in Korea). The Commission seeks declarations, findings of fact, injunctions, compliance programs and costs. A directions hearing is set down for 4 September 2002.



Kwik Fix International Pty Ltd & Ors

Proceedings commenced on 24 April 2002 in the Federal Court (Brisbane) against Kwik Fix, David Bruckshaw (director) and Kerry Bruckshaw (former director) alleging unconscionable and misleading conduct and non-compliance with the mandatory franchising code, concerning a mobile vehicle repair franchise. The Commission seeks declarations, injunctions, findings that the franchise agreement and related loan agreement are of no effect, a refund of money paid by a franchisee with interest, implementation of a trade practices compliance program and costs. Proceedings are continuing.

Black on White Pty Ltd, trading as the Australian Early Childhood College

Proceedings commenced on 1 August 1997 in the Federal Court (Brisbane). On 4 April 2001 the court found that the company had engaged in misleading, deceptive and unconscionable conduct towards students enrolled in its child care and related training courses offered during 1997. The conduct related to enrolment cancellation, a HECS-like deferred payment scheme, representations that the courses were accredited and that the college qualified for the use of trade marks or logos relating to accreditation. For some, the liability of tuition fees was more than \$9000, and students and some parents were sued for unpaid fees. The court also found that Mr James Poteri, the Manager, was knowingly concerned in misleading and unconscionable conduct and that Nicholas Poteri was knowingly concerned in the company's accreditation misrepresentations. On 22 November 2001, after representative action taken by the Commission, the court ordered that James Poteri compensate a number of individuals. On 12 June 2002 the court ordered that James Poteri and Nicholas Poteri compensate a number of individuals in relation to the accreditation representations.

Solutions Software International Pty Ltd & Ors

Proceedings commenced in the Federal Court (Brisbane) on 29 June 2001 against Solutions

Software (formerly known as Acepark Pty Ltd and Offtrack Investments Pty Ltd), related companies, Robert James Price (former director), William Greig Millar (former director) and Ronald James Curtin (former sales manager of Offtrack) concerning the capabilities of horse-race betting software sold in Australia and New Zealand. On 21 September 2001 the court, by consent, restrained the respondents from making similar representations, including that the betting system has an average strike rate of more than 58 per cent in selecting successful place bets. The Commission alleges that unfair and high pressure sales tactics were used to induce some consumers to purchase the program, for example that the program should be purchased immediately to avoid imminent price rises. The Commission seeks declarations, injunctions, refunds, corrective advertising and costs. The matter is set down for trial on 2 September 2002.

Chaste Corporation Pty Ltd & TRIMit

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Undue harassment and coercion and debt collection

Cases

Waterman Collections Pty Ltd

Proceedings commenced on 22 March 2002 in the Federal Court (Adelaide) alleging misleading and deceptive conduct when attempting to recover debts on behalf of an insurance company, by claiming in letters to over 850 persons involved in accidents that \$3171 was owing. This sum bore no relationship to the amounts actually owed. On 18 April 2002 the court, by consent, declared Waterman had engaged in misleading and deceptive conduct and restrained Waterman from making similar representations without a reasonable basis for doing so. Waterman was ordered to review and upgrade its current trade practices compliance program and pay the Commission's costs.



Maritime Union of Australia & Ors

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Esanda Finance Corporation Ltd & Ors

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Dataline.net.au Pty Ltd & Ors

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Internet TV Australia Pty Ltd trading as Free2aiR and James Young

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Lux Pty Ltd

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Business investment, leasing and franchising and finance

Cases

Hartwich Pty Ltd, John Moon (Director), Wayne Baker (Director) and Back to Basics Worldwide Education Aids Systems Pty Ltd

Prosecution commenced on 17 May 2000 in the Federal Court (Adelaide) by the Commonwealth Director of Public Prosecutions, following a Commission investigation. It was alleged that claims about profitability and feasibility of a business selling educational aids to schoolchildren and their parents were false or misleading. The business, costing up to \$65 000, was advertised in newspapers in several states and at least seven distributors were recruited. John Moon and Wayne Baker pleaded guilty and, on 19 March 2002, the court convicted all respondents, injunctioned them, and ordered fines and compensation totalling \$720 000. Back to Basics was fined \$180 000, Hartwich \$40 000, John Moon \$10 000 and Wayne Baker \$10 000; compensation orders \$486 000. The court ordered payment of the Commission's costs.

Top Snack Foods Pty Ltd

The Commission had successfully secured access as a creditor to \$400 000 awarded as damages to franchisees of Top Snack Food Limited. In this matter, the Supreme Court found that the deed of the KN Trusts indemnified the former trustee (Nick Kritharas Holdings Pty Ltd) except in the case of fraud. As the Federal Court had made a specific finding that there was no case of fraud, the right of indemnity of Nick Kritharas Holdings Pty Ltd extended to the damages awarded in the Federal Court. The NSW Court of Appeal dismissed an appeal that had sought to deny the Commission access to the funds. Special leave to appeal the decision to the High Court of Australia is being sought.

Michigan Group Pty Ltd & Ors

Proceedings began on 6 October 2000 in the Federal Court (Brisbane) alleging that, from early 1998, the promoters of commercial orange-juicing machines incorrectly promised that the business would take very little time to operate, the machines would be installed in nominated stores very quickly and would make significant profits. The Commission seeks declarations and injunctions. The matter was heard in December 2001 and April 2002, judgment reserved.

Will Writers Guild Pty Ltd and Sidney James Murray

Prosecution commenced on 26 September 2001 in the Federal Court (Hobart) by the Commonwealth Director of Public Prosecutions, following a Commission investigation. It was alleged that Will Writers and its director Sidney James Murray misled franchisees about the risk involved in carrying on the business of writing wills for reward (state and territory laws require that such activity may only be carried out by legal practitioners). On 15 July 2002 the court commenced hearing the trial, with submissions to be presented in August 2002. The Commission has civil proceedings pending against Will Writers and Sidney James Murray (see below).



Will Writers Guild Pty Ltd and Sidney James Murray
(civil proceedings)

On 27 March 2001 the Commission instituted civil proceedings in the Federal Court (Hobart) alleging that Will Writers and its director, Sidney James Murray, misled and failed to provide to prospective franchisees appropriate disclosure documents as required by the mandatory Franchising Code of Conduct. The Commission is seeking declarations and orders for injunctions and damages for losses suffered by franchisees. These proceedings have been stayed pending completion of criminal proceedings against Will Writers and Sidney James Murray filed by the Commission on 26 September 2001. The DPP is prosecuting Will Writers and Sidney James Murray (see above).

Multigroup Distribution Services Pty Ltd

Proceedings commenced on 11 July 2001 in the Federal Court (Brisbane) alleging that, from January 1999 to September 1999, Multigroup misled Wayne Parker (a director of Parker Freight Express Pty Ltd) about the provision of a freight transport contract that would be provided to Parker Freight Express in North Queensland. The Commission seeks declarations, injunctions, findings of fact, damages for Parker Freight Express and costs.

CG Berbatis Holdings trading as Farrington Fayre Shopping Centre & Ors
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Samton Holdings Pty Limited & ors
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IMB Group Pty Ltd
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Avanti Investments Pty Ltd and Dr Giuseppe Barbaro
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Suffolke Parke Pty Ltd and Gregory John Bradshaw
—see page 56

Arnold's Ribs and Pizzas
—see page 58

Westfield Shopping Centre Management Co (Old) Pty Ltd, Westfield Management Ltd, Westfield Design and Construction Pty Ltd & Ors
—see page 57

Australian Industries Group Pty Ltd, trading as Half Price Shutters
—see page 58

4WD Systems Pty Ltd and/or 4WD Systems Australia Pty Ltd
—see page 57

Oceana Commercial, NAPC, Greenwich and Commonwealth Bank of Australia
—see page 58

Chaste Corporation Pty Ltd & TRIMit
—see page 42

Kwik Fix International Pty Ltd & Ors
—see page 59

Daewoo Australia Pty Ltd, Daewoo Heavy Industries and Machinery Limited & Eui Hwan Kang
—see page 58

Solutions Software International Pty Ltd & Ors
—see page 59

Unsolicited goods and services

Cases and undertakings

IT&T AG

Proceedings commenced on 28 March 2002 in the Federal Court (Perth) alleging that, from May 2001 until about March 2002, IT&T AG mailed unsolicited documents from Switzerland to Australian business about the IT&T International Fax Directory, available on the Internet and on CD-ROM from IT&T AG, and demanding payment for entries. The Commission seeks declarations, injunctions, corrective notices, refunds, implementation of a trade practices compliance program and costs.

Custom Security Services Pty Ltd
—see page 48



Pyramid/referral selling

Cases

ACCC v Guardian Finance & Insurance Consultants Pty Ltd

The Commission instituted proceedings on 5 April 2001 in the Federal Court (Brisbane) alleging that Guardian Finance & Insurance Consultants Pty Ltd promoted a home loan scheme that amounted to an illegal pyramid selling scheme or referral selling scheme. The Commission also alleged that its sole director, Mr Peter Martin St James, was knowingly concerned in the conduct. On 12 April 2001 the court granted interlocutory injunctions restraining the promotion of the scheme. On 11 June 2002 the court declared that the scheme breached the pyramid and referral selling scheme provisions of the Act and ordered Guardian Finance & Insurance Consultants Pty Ltd and Mr St James to provide refunds to the people who participated in the scheme. The orders also included injunctions to restrain similar conduct, the implementation of a trade practices compliance program and payment of the Commission costs of \$40 000. The orders were made with the consent of Guardian Finance & Insurance Consultants Pty Ltd and Mr St James.

World Netsafe Pty Ltd and Terence Butler

On 8 December 2000 the Federal Court (Brisbane) made extensive orders regarding the ATTM Card pyramid and referral selling scheme, including for global refunds. The Commission alleged the refunds were not made and on 1 November 2001 commenced contempt proceedings against World Netsafe and Terence Butler (sole director). The matter was heard in April and May 2002, judgment reserved. Orders made earlier in the contempt proceedings remain in place: Mr Butler is unable to leave Australia without the Commission's written consent, and his passports remain with the Registrar of the Federal Court. Many of the members of the World Netsafe scheme were members of the Greenstar scheme referred to below.

Greenstar Cooperative Ltd

Proceedings commenced on 5 June 2001 in the Federal Court (Perth) alleging pyramid and referral selling of earthworms, an organic fertiliser product, and a transaction card, and alleged misleading and false representations regarding the transaction card. On 14 June 2001 the court imposed interlocutory injunctions, and on 31 July 2001 made an order freezing the assets of Greenstar and Kevin Smith (director). The trial was held on 24–28 June 2002, judgment reserved. Many of the members of the Greenstar scheme were members of the World Netsafe scheme referred to above.

SkyBiz.Com Inc.

Proceedings commenced on 17 September 2001 in the Federal Court (Perth) alleging misrepresentations about the profitability and risk, and referral and pyramid selling, of a home-based business scheme by US company SkyBiz. The Commission alleges that scheme participants paid SkyBiz US\$100 for a website and that SkyBiz claimed participants could then earn a substantial income for introducing new members. The court documents were served through the US court-appointed receiver for SkyBiz. A directions hearing is set for 2 August 2002.

Giraffe World Australia Pty Ltd

Proceedings commenced on 6 May 1998 in the Federal Court (Sydney). On 23 April 1999 Giraffe undertook to the court not to represent that the 'negative ion' mat it marketed produced negative ions, relieved health ailments or promoted health. On 29 June 1999 the court found that Giraffe World had breached that undertaking. On 26 August 1999 the court found that Giraffe World (in liquidation) had engaged in misleading or deceptive conduct and promoted a referral and pyramid selling scheme. The court found that Akihiko Misuma, founder and director of Giraffe World, and Robin Han, its president and chief executive officer until November 1998, were knowingly concerned in, and a party to, Giraffe World's contraventions.



In November 1999 the Commission commenced a representative action under the Act on behalf of those persons who suffered a loss as a result of the conduct of Giraffe World and its representatives. In June 2002 the action was dismissed, though the order of dismissal is not to be entered except on the application of the Commission. The liquidator has commenced a recovery action against the directors of Giraffe World in the New South Wales Supreme Court.

Small business and rural and regional programs

The Commission's Small Business Program entered its fourth year of providing specialised information and guidance for small business about the Act and alternative dispute resolution.

In October 2001 the Commissioner for Small Business, John Martin, delivered his annual report to the Franchise Council of Australia conference. The Commission continued as an official observer at the Franchising Policy Council and continued liaising with its Small Business Advisory Group. The group is comprised of business and professional representatives who meet biannually to discuss trade practices matters affecting small business.

Rural and Regional Outreach Program

On 19 March 2002 the Chairman of the Commission, Professor Allan Fels, and the Minister for Regional Services, Territories & Local Government, the Hon. Wilson Tuckey, launched the Commission's Rural and Regional Outreach Program in Bendigo, Victoria. The program aims to improve communication between the Commission and people in rural and regional Australia, promoting understanding of the Act.



The Commission has appointed Regional Outreach Officers (or ROOs) in each of its offices to implement the Rural and Regional Outreach Program, and complement its Small Business Program in maintaining and developing a contact network.

The network consists of over 300 support organisations including state, territory and local government agencies, area consultative committees, business enterprise centres and chambers of commerce.

In 2001–02 the ROOs' fieldwork included participating in: Farmfest (Toowoomba 17–21 June 2002), Agfest (Launceston 2–4 May 2002), Business Opportunities Expo (Sydney 19–21 April 2002), Agfair (Broken Hill 3–4 April 2002), Woolarama (Wagga 8–9 March 2002), Expo (Alice Springs 8–10 March 2002), Local Government Conference (Canberra 25–28 November 2001), Business World Expo (Sydney 1–4 November 2001), Field Day (Orange 15 October 2001) and Franchising & Business Opportunities Expo (Melbourne 5–7 October 2001).

The Commission continued its biannual Competing Fairly Forum satellite broadcasts to rural and regional communities. The forum provides an opportunity to communicate with the Chairman of the Commission, Commissioners and other experts in related fields. The forum on 2 October 2001 on advertising and selling, was received in 90 locations. The forum of 21 May 2002 on how to avoid trade practices problems in business was received in over 110 locations.

Small business publications

Publications targeting small business included:

- revised existing publications including the *Best and Fairest Compliance Manual* (July 2002), *Small Business and the Trade Practices Act* (February 2002), *The Franchisees Guide* (November 2001) and *Franchising Code of Conduct Compliance Manual* (October 2001)
- a third edition of *Retail Flash* in December 2001, with the Australian Retailers Association
- the ACCC Briefing newsletters and a brochure series concerning compliance for small business in retailing, primary produce and service industries.



Rural Doctors Review

On 29 August 2001 the Federal Government announced a review of the impact of Part IV of the Act on the recruitment and retention of medical practitioners in rural and regional Australia, chaired by Mr Warwick Wilkinson. The Commission has made two submissions to the review—see page 38.

Enforcement action

The Commission took extensive enforcement action of particular benefit to small business, including action concerning unconscionable conduct, landlord and tenant relationships, and franchising arrangements.

Aviation

In November 2001 the Commission commenced a study into the desirability of developing an Airline Industry Competition Guideline. The Commission conducted research both here and overseas and consulted widely with industry, inviting submissions from over 50 parties. Divergent views were expressed concerning whether there was any anti-competitive conduct in the Australian industry and the merits of a guideline. In May 2002 the Commission notified interested parties that it had decided to defer its decision on the desirability of developing a guideline until the results of certain international and domestic litigation were known.

The Commission also began an inquiry (in June 2000) into frequent flyer programs, to secure fairer and more transparent programs. After extensive work the Commission is considering how best to proceed.

Cases and undertakings

Qantas Airways Limited and Virgin Blue Airlines Pty Ltd

—see page 45

Qantas Airways Limited

—see page 34

Industry codes of conduct

Franchising Code of Conduct: This is the only mandatory code under the Act. It was amended on 1 October 2001 to allow a short-form disclosure document for some franchises and disclosure by electronic means. The Commission liaises with the Federal Office of Small Business concerning the code. Most franchising disputes are addressed by informal, alternative dispute resolution or mediation under the code.

Voluntary codes of conduct: In 2001–02 the Commission liaised with the Department of Treasury and other interested parties concerning review of the Film Exhibition and Distribution Code, the Fruit Juice Industry Code, the Jewellery and Timepieces Industry Code, and the working party developing a Vehicle Hire Industry Code.

Compliance programs

The Commission encourages implementation of trade practices compliance programs and liaises with compliance professionals including the Association of Compliance Professionals of Australia. It publishes relevant information, requires implementation and review of compliance programs in s. 87B undertakings, and seeks relevant orders in court proceedings. The Commission provides general guidance, and reviews audit reports as a result of Commission enforcement action, concerning such programs.

Cooperation with other government agencies

The Commission continued to work closely with other agencies responsible for competition and consumer protection—exchanging information, developing complementary policies, and coordinating activities.

In Australia these agencies include: the National Competition Council, the Privacy Commissioner,



Treasury, Attorney-General's Department, Director of Public Prosecutions, Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Australian Federal Police, Australian Customs Service, Department of Health and Ageing, Therapeutic Goods Administration, Office of the Employment Advocate, and state and territory fair trading agencies.

The Commission also participated in forums such as the Ministerial Council on Consumer Affairs, Standing Committee of Officials of Consumer Affairs, Fair Trading Operations Advisory Committee and Consumer Products Advisory Committee, and engaged in mutual staff secondment with other authorities. The Commission is assisting the Royal Commission into the Building and Construction Industry.

Internationally the Commission participates in competition working groups of the OECD, APEC and WTO, and is a member of the International Marketing Supervisory Network (IMSN). Australia, through the Commission, assumed the presidency of the IMSN in May 2002. The Commission works very closely with its international counterparts to cooperate in enforcement, including the US Department of Justice, US Federal Trade Commission, UK Office of Fair Trading, Canadian Competition Bureau and New Zealand Commerce

Commission. It participated in the annual International Cartel Workshop, engaged in mutual secondment of enforcement staff, and provided briefings to visiting personnel from competition and consumer agencies in other countries.

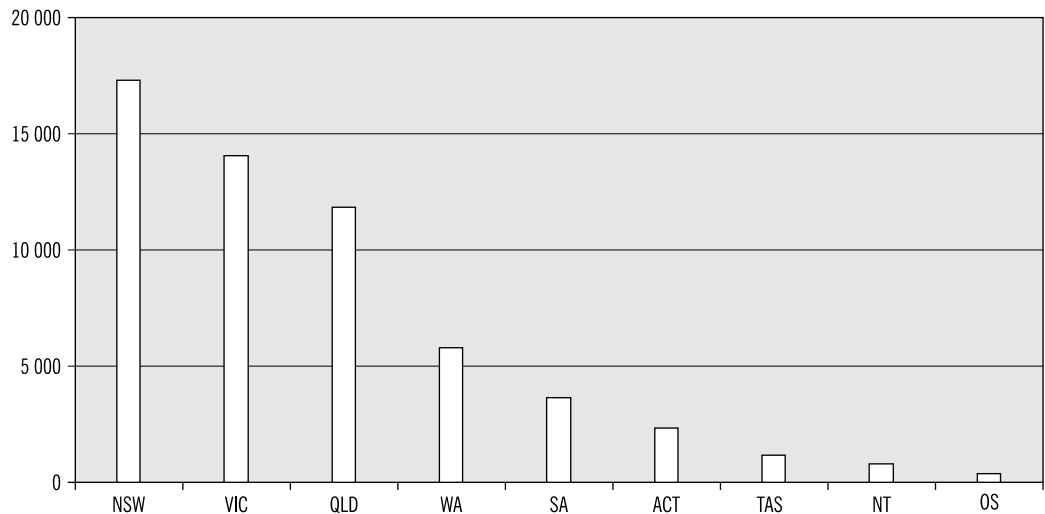
The Commission accesses Consumer Planet Sentinel (protected complaints database of North American law enforcement agencies and consumer groups) and Econsumer (public international complaints database) to help decide what its education and enforcement priorities should be. It also participates in the Ministerial Council for Consumer Affairs' working groups developing a complaint data-sharing platform for Australia and New Zealand.

Infocentre

During 2001–02 the Infocentre handled a total of 87 441 customer contacts. Of these, 75 108 contacts were made by telephone and 12 333 by email. A total of 57 120 complaints and inquiries were relevant to the Commission and the remainder were passed on to other organisations.

The following chart indicates the geographic location of complaints.

Figure 3.1 Complaints/inquiries 2001–02



Top ten conducts where the matter may breach provisions of the TPA

The following table indicates the top 10 conducts where the matter may breach provisions of the Trade Practices Act for 2001–02.

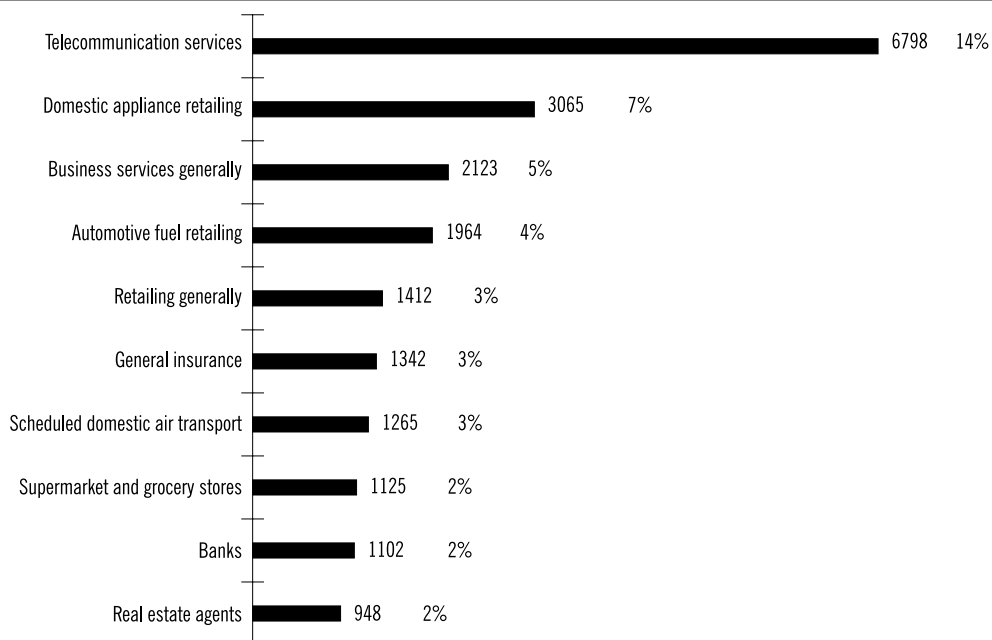
Table 3.1 Top ten conducts where the matter may breach provisions of the TPA for 2001–02

| Conduct | Number of complaints | Percentage of overall complaints |
|--|----------------------|----------------------------------|
| Part V s. 52 misleading or deceptive conduct | 11106 | 25% |
| Part V-2 s. 69–74 retail warranties | 2805 | 6% |
| Part V s. 53(e) misrepresentation price | 1881 | 4% |
| Part VB GST | 1756 | 4% |
| Part IV s. 46 misuse of market power | 830 | 2% |
| Part V s. 53(c) misrepresentation performance | 808 | 2% |
| Part IV s. 45 agreements lessening competition | 713 | 2% |
| Part IV s. 47 exclusive dealing | 688 | 1% |
| Part V s. 53(g) misrepresentation warranties, rights | 639 | 1% |
| Part V s. 58 accepting payment no supply | 616 | 1% |

Complaints for top ten industries for the period 2001–02

These are the top ten industries about which complaints were received by the Commission in 2001–02.

Figure 3.2 Top ten industries for 2001–02



Small business

During the period 1 July 2001 to 30 June 2002, 8864 complaints or inquiries (16 per cent of total) were made by small business, 9008 complaints or inquiries (16 per cent) were about small business traders and 1279 (2 per cent) were about franchise matters. The following table indicates the business information for each state.



Table 3.2 Small business complaints and inquiries

| Complaints and inquiries | NSW | VIC | QLD | WA | SA | ACT | TAS | NT |
|------------------------------|------|------|------|------|-----|-----|-----|-----|
| Small business (trader) | 2469 | 2095 | 1918 | 1099 | 653 | 323 | 224 | 166 |
| Small business (complainant) | 2597 | 1934 | 2015 | 1027 | 612 | 204 | 265 | 188 |
| Franchisee | 403 | 250 | 308 | 138 | 107 | 28 | 17 | 23 |



International overview

The Commission's international activities are targeted at helping other countries achieve effective competition and consumer protection regimes. It aims to foster a culture of competition in the interests of developing more competitive and fair overseas markets, while improving access to those markets for Australian exporters.

The breadth and importance of this work is increasing as the Commission is more often faced with competition and consumer protection issues with an international dimension.

International cooperation

Formal cooperation agreements

- On 21 March 2002 Australia entered into an administrative arrangement with the European Commission to facilitate information sharing on consumer policy and protection, recognising the mutual benefits of strengthened cooperation.
- On 16 May 2002 the Commission entered into a memorandum of understanding with the Commerce Commission of the Fiji Islands to promote cooperation and coordination of enforcement, training and technical assistance activities in consumer protection and competition issues.



Negotiations with many other competition and consumer protection agencies around the world are currently under way. These negotiations will increase the Commission's network of formal cooperation arrangements to facilitate information exchange, cooperation and assistance in enforcement matters, and to help provide technical assistance to emerging economies.

Cooperation in enforcement matters

The Commission is increasingly cooperating with its international counterpart agencies on competition, consumer protection and regulatory matters to facilitate the effective enforcement of laws both in Australia and overseas. In an environment where illegal conduct is increasingly occurring across borders, the Commission places great importance on establishing and using its international networks to achieve successful results for consumers in Australia and overseas.

Matters involving enforcement cooperation over the past year have included merger and cartel cases, health issues and lottery and marketing scams.

International forums

OECD

Competition

The OECD Competition Committee and the Joint Group on Trade and Competition meet three times a year in Paris. A priority over the past year has been hard-core cartels, considering the use of sanctions, leniency policies and other investigative tools, and cooperation between competition authorities to combat global cartels. In 2001 the OECD also created the Global Forum on Competition (GFC) as part of its outreach activities to include government officials from non-member countries in OECD discussions.

During 2001–02 roundtable discussions were also held in relation to loyalty programs, transnational mergers, merger assessment in emerging markets, and cost of access services in telecommunications.

Consumer protection

The OECD Committee on Consumer Policy meets twice yearly in Paris to discuss emerging issues and ongoing work in consumer protection. Work during 2001–02 assessed the impact and implementation of the *Guidelines for Consumer Protection in the Context of Electronic Commerce*, consensus building on core consumer protection provisions, for example looking at common approaches between member countries to defining a deceptive or misleading practice, and dispute resolution in cross-border transactions.

APEC

Competition

The Commission continued its active participation in the Asia-Pacific Economic Cooperation (APEC) Group on Competition Policy and Deregulation. Meetings in 2002 have taken place under the presidency of Mexico. Work within this group continues to focus on regulatory reform in APEC economies, technical assistance and development programs, and capacity building and institutional development in the region.

E-commerce

The Commission is continuing to contribute to the APEC E-Commerce Steering Group (ECSG) which is looking at several consumer protection issues. It has started to draft the *Principles on consumer protection in the online environment* which aims to establish a consumer protection framework across the Asia-Pacific region, allowing consumers to transact online between economies with greater confidence.

WTO

The Commission continues to take a keen interest in developments in the WTO Working Group on the Interaction between Trade and Competition Policy. At the WTO Ministerial Meeting in Doha in November 2001 it was agreed that negotiations on competition policy will take place after the Fifth Session of the Ministerial Conference in 2003 on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. Until then, the Working Group will focus on:



- core principles, including transparency, non-discrimination and procedural fairness, and provisions on hard-core cartels
- modalities for voluntary cooperation
- support for progressive reinforcement of competition institutions in developing countries through capacity building.

ICN

Australia is a member of the Interim Steering Group for the International Competition Network (ICN) which was launched in October 2001. The ICN is a project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries. It is examining enforcement and policy issues of common interest and formulating proposals for procedural and substantive convergence. The focus is on improving worldwide cooperation and on enhancing convergence.

IMSN

The International Marketing Supervisory Network (IMSN) is a network of consumer protection agencies from over 30 countries. The IMSN meets twice yearly to:

- further international cooperation through information sharing and joint investigations
- analyse latest developments in cross-border enforcement actions
- explore non-enforcement alternatives for gaining redress for consumers.

Switzerland held the presidency for 2001–02 and hosted meetings in Berne (September 2001) and Montreux (March 2002). Australia (the ACCC) has been appointed president of the IMSN for 2002–03, and will host two meetings during that time. The IMSN is considering issues such as best practice examples of consumer protection and enforcement in member agencies, and working groups on effective cross-border enforcement, eConsumer.gov and Internet

Sweep Days (coordinated by the Commission). A new 'observer status' introduced in early 2001 has been used by two countries (Latvia and Estonia) as a means of participation before a decision is made regarding full membership.

Technical assistance

The Commission has been involved in many technical assistance activities in the past year, where it makes available its resources and expertise in competition, consumer protection and utility regulation to countries with less developed regimes. One example was the Commission's involvement in a competition policy event organised by the OECD in conjunction with South Africa, in Pretoria in June 2002. The conference on promoting competition in telecommunications and seaports was for staff of the South African Competition Commission and other officials of the SADC (Southern Africa Development Community) countries. The Commission was represented by Mr Richard York, Director, Regulatory, Telecommunications Group.

The Commission also hosts visits to Australia by our international counterparts. During 2001–02 government officials from the following economies visited Australia: Belgium, Canada, the People's Republic of China, Egypt, East Timor, Fiji, France, Germany, Ghana, Hong Kong, India, Indonesia, Japan, Kenya, Korea, Malaysia, New Zealand, Papua New Guinea, the Philippines, Singapore, South Africa, the United Kingdom, and the United States of America.

Over the past year the Commission has had officers from the South African Competition Commission attend its investigations training course in Canberra. This training is part of the Commission's program of support to help develop an effective competition regime in South Africa. An officer from the Hong Kong Consumer Council also attended a course in Melbourne.



In July 2001 the Commission took part in an APEC workshop in Hanoi which considered the development of a competition regime in Vietnam. The Commission was represented by Mr Hank Spier, its former CEO and now a consultant to the Commission.

In April 2002 the Commission participated at an UNCTAD Regional Seminar on Competition Policy and Multilateral Negotiations. The seminar, focusing on the outcomes of the WTO Doha round, was held in Hong Kong. Ms Elizabeth Davidson, Director, International Unit, represented the Commission.

The Philippines

With funding assistance from AusAID, the Commission undertook an extensive consultancy project to help develop a consumer movement in the Philippines. The project included: development of a website and database; work placements in Australia to learn how the consumer movement operates here; preparation of position papers on issues of concern for Filipino consumers; conducting press campaigns on consumer issues; and holding regional conferences for consumer groups throughout the Philippines.

An important result of the project was the drafting of competition legislation for the Philippines. Amendments to the existing Consumer Act were also drafted to allow consumers to take action at a local court level for possible contravention of the Consumer Act. The project was completed in September 2001.

