

# Litigation

For details of the litigated matters listed in this appendix, please refer to the publication in brackets. The *ACCC Journal* is a bi-monthly subscription journal published by the Commission, and *ACCC update* is its free quarterly magazine.

## Matters instituted in 1999–2000

### Anti-competitive practices

**Ithaca Ice Works Pty Ltd, Queensland Ice Supplies Pty Ltd, Ansonguard Pty Ltd and ors**

*Alleged price fixing (s. 45A) and market sharing in Queensland ice market (s. 45) (ACCC Journal 27)*

On 12.8.99 the Commission instituted proceedings in the Federal Court, Brisbane. A penalty hearing in relation to some respondents was on 31.3.00 and penalties were handed down on 26.7.00. The trial for the remaining respondents will begin on 4.12.00.

### Maritime Union of Australia

*Primary boycotts (s. 45DB(1)), harassment and coercion (s. 60) (ACCC Journal 27)*

See chapter 2 for details of this case.

### Rural Press Limited and ors

*Alleged misuse of market power (s. 46) and anti-competitive agreement in the market for regional newspapers (s. 45) (ACCC Journal 23)*

Proceedings were instituted on 14.7.99 in the Federal Court, Adelaide. The trial was held from 8–17.12.99. Closing submissions were heard on 10–11.2.00. The decision was reserved.

### Major record companies

*Alleged misuse of market power (s. 46) and exclusive dealings in relation to the prevention of CD parallel imports (s. 47) (ACCC Journal 28)*

The Commission instituted legal proceedings in the Federal Court, Sydney on 30.8.99 against Universal Music, Sony Music, Warner Music, the Australian Record Industry Association (ARIA) and Music Industry Piracy Investigation Pty Ltd and other individuals. Proceedings were discontinued against ARIA. The matter is listed for hearing commencing 2.4.01.

### Tubemakers of Australia, Associated Water Equipment and Geoff Clegg Enterprises formerly known as Watergear Distributors

*Alleged price fixing (s. 45A), market sharing, tender rigging and exclusionary provisions (s. 45) (ACCC Journal 27)*

Proceedings were instituted on 13.7.99 in the Federal Court, Brisbane. Penalties were handed down against Tubemakers of Australia (\$1.2 million) and Coastline Foundry (Qld) (\$555 000) on 12.11.99. Compensation was also offered to affected customers by Tubemakers, costing \$1.75 million.

Penalty of \$1 million plus costs to be taxed was handed down against Associated Water Equipment on 6.3.00. Proceedings against Geoff Clegg Enterprises continue with joint submissions likely.

**ABB Power Transmission Pty Ltd, Alstom Australia Limited, Wilson Transformer Company Pty Ltd and ors**

*Alleged price fixing (s. 45A) and market sharing in relation to an understanding between three principal Australian manufacturers and suppliers of power transformers to maintain market shares at certain levels (s. 45) (ACCC Journal 22)*

Proceedings were instituted on 1.10.99 in the Federal Court, Melbourne. The Commission is seeking a range of relief including pecuniary penalties and injunctions. The trial date is yet to be set.

**Consumer protection**

**Stephen Frederick Grant, director  
Furniture Wizard Pty Ltd**

*Misleading and deceptive conduct (s. 52), false or misleading representations about business earnings (s. 59(2)) (ACCC Journal 25)*

On 29.10.99 the Commission instituted proceedings in the Federal Court, Adelaide. The company is now in liquidation. The trial date is set for 24.7.00.

**World Netsafe Pty Ltd and Terence Butler**

*Alleged misleading and deceptive conduct (s. 52), false representations (s. 53), referral selling (s. 57) and pyramid selling scheme in connection with the marketing of an 'ATM card' (s. 61) (ACCC Journal 27)*

See chapter 2 for details of this case.

**Cash Return Mercantile Pty Ltd and Sharyn McCaskey**

*Misleading and deceptive conduct (s. 52), false representations (s. 53(g)), alleged harassment and coercion in relation to payments of goods and services (s. 60) (ACCC Journal 27)*

Proceedings were instituted on 13.10.99 in the Federal Court, Perth.

**Taj Food Sales Pty Limited (trading as U.V. Enterprises) and Sah Dev Varma**

*Misleading and deceptive conduct (s. 52), false and misleading representations (s. 53(eb))*

On 26.5.00 the Commission instituted proceedings in the Federal Court, Sydney against Taj Food Sales Pty Limited, trading as U.V. Enterprises, and Sah Dev Varma alleging that the company and Varma, its managing director, misrepresented the country of origin of rice imported by the company.

**McDonalds Australia Ltd**

*Misleading or deceptive conduct (s. 52), unconscionable conduct in relation to the 1999 McMatch and Win Monopoly promotion (s. 51AB) (ACCC Journal 22)*

Proceedings were instituted on 24.9.99 in the Federal Court, Sydney. The matter was transferred to the Federal Court, Brisbane in October 1999. The Commission applied to join the representative proceedings and has reserved the right to re-apply to have its case relisted pending the outcome of the representative action.

### **Cheap as Chips Franchising Pty Ltd and anor**

*Alleged unconscionable conduct by the company towards its franchisees (s. 51AC) and breach of the Franchising Code of Conduct (s. 51AD)*

Proceedings were instituted on 30.6.99 in the Federal Court, Melbourne. The Commission alleged that Cheap as Chips Franchising Pty Ltd and its director, Mr Peter Hudousek have engaged in unconscionable conduct and contravened the mandatory Franchising Code of Conduct.

### **Back to Basics Worldwide Education Aids Systems Pty Ltd and Hartwich Pty Ltd**

*Misleading representations about business earnings (s. 59(2)), a representation as to future matter without reasonable grounds (s. 51A) (ACCC Journal 27)*

Proceedings were instituted on 31.3.00 in the Federal Court, Adelaide. The Commission, through the Director of Public Prosecutions, is seeking refunds and repeal of contracts, as well as penalties.

### **Listen Systems Pty Ltd and Stephen John Alexander**

*Misleading or deceptive conduct (s. 52), false representations (s. 53(c)) (ACCC Journal 28)*

On 7.4.00 Listen Systems Pty Ltd gave undertakings to the Federal Court, Sydney not to make certain representations about the 'EQ4 Quick Check' and 'EQ4 Computerised Electrodermal Screening Systems' to provide refunds and to publish corrective advertisements on the Internet. Mr Stephen Alexander, director of Listen Systems Pty Ltd, also gave an undertaking to the court not to publish advertisements or promotional material containing representations in breach of the Trade Practices Act.

### **Accounting for GST**

*Alleged misleading or deceptive conduct in promoting GST Start-Up Assistance and GST information seminars to small business (s. 52), false representations (ss 53(c)(d)(e)(f)), unsolicited goods (s. 64(1)), harassment and coercion (s. 60)*

The Commission instituted proceedings on 22.5.00 in the Federal Court, Sydney against the principals of Accounting for GST. The Commission received a number of complaints from small business in regional NSW alleging that this company had misrepresented its affiliation with the Australian Tax Office and the GST Start-Up Assistance Office, as well as the cost of their services.

### **Video Ezy Australasia Pty Ltd**

*Alleged misleading or deceptive conduct (s. 52), price exploitation in relation to the New Tax System (s. 75AU) (ACCC update, issue 7, ACCC Journal 28)*

See chapter 2 for details of this case.

### **Meriton Apartments Pty Ltd**

*Misleading representations in relation to the New Tax System (s. 53) (ACCC update, issue 7)*

The court granted declarations against Meriton for falsely advertising that the value of apartments in the Sydney CBD would rise instantly by 10 per cent in July 2000.

## **Matters finalised in 1999–2000**

### **Anti-competitive practices**

#### **Construction Forestry Mining Energy Union (CFMEU)**

*Secondary boycott (s. 45D) (ACCC Journal 22)*

See chapter 2 for details of this case.

**Mr David Charles Miller**

*Third line forcing in relation to his involvement in a real estate auction program promoted by Sure Sale Systems Pty Ltd and Sure Sale Systems (Australasia) Pty Ltd (s. 47) (ACCC Journal 22)*

Proceedings were instituted on 3.7.98 in the Federal Court, Perth. The court made consent orders on 21.4.99 including an order that Mr Miller pay Commission costs to be taxed which were finally agreed before the Deputy Registrar of the Federal Court on 20.4.00.

**Simsmetal Ltd**

*Attempted market sharing arrangement (s. 45), pecuniary penalties (s. 76) (ACCC Journal 27)*

See chapter 2 for details of this case.

**Real Estate Institute of Western Australia (REIWA)**

*Anti-competitive agreements (s. 45) and price fixing (s. 45A) (ACCC Journal 24)*

The Commission instituted proceedings in June 1998 in the Federal Court, Perth alleging that the REIWA's rules and regulations were anti-competitive. The matter was finalised through consent orders on 8.10.99.

**Sundaze Australia Pty Ltd**

*Resale price maintenance (s. 48) (ACCC Journal 25)*

See chapter 2 for details of this case.

**CC (New South Wales) Pty Ltd, Holland Stolte Pty Ltd, Multiplex Constructions Pty Ltd, Leighton Contractors Pty Ltd, Australian Federation of Construction Contractors (AFCC) and ors**

*Anti-competitive agreements (s. 45), misleading or deceptive conduct (s. 52),*

*misrepresentation in relation to the New Tax System (s. 53), misleading conduct in relation to services (s. 55A) (ACCC Journal 25)*

Proceedings were instituted on 30.8.94 in the Federal Court, Canberra in relation to alleged collusive tendering practices for the building project known as the Commonwealth Offices Haymarket project. The matter was finalised with penalties.

**Visy Paper Pty Ltd and the Amcor Printing Papers Group Ltd and ors**

*Market sharing agreement in relation to the collection of recyclable waste paper (s. 45) (ACCC Journal 26)*

Proceedings were instituted on 18.11.98 in the NSW District Registry. The Commission's application was dismissed in December 1999 after a no-case submission was upheld.

**Associated Water Equipment Pty Ltd**

*Price fixing (s. 45A) and market sharing in relation to the supply of fittings and valves for use with ductile iron cement-lined pipes (s. 45) (ACCC Journal 27)*

On 6.3.00 the Federal Court, Brisbane ordered Associated Water Equipment to pay penalties of \$1 million for anti-competitive behaviour, starting 1.3.01.

The court issued injunctions restraining the company from engaging in similar conduct. Since then the company has implemented a trade practices compliance program.

**J McPhee & Son (Australia) Pty Ltd**

*Price fixing (s. 45A) (ACCC Journal 27)*

See chapter 2 for details of this case.

**Gasgo Pty Ltd**

*Anti-competitive arrangement in relation to gas supply (s. 45) (ACCC Journal 24)*

On 6.5.99 the Commission instituted proceedings in the Federal Court, Darwin against Gasgo Pty Ltd. Gasgo provided the Commission with a s. 87B undertaking on 14.10.99 in which it undertook not to exercise its pre-emptive right over gas supplied from the Mereenie field.

**George Weston Foods Limited**

*Price fixing (s. 45A) (ACCC Journal 27)*

The Commission instituted proceedings on 28.10.98 in the Federal Court, Melbourne. On 29.5.00 the court ordered George Weston to pay a penalty of \$900 000 for attempting to induce two retailers in Tasmania to enter into a price fixing arrangement in respect of a line of biscuits manufactured by George Weston. The court also issued injunctions restraining the company and two employees from engaging in similar conduct.

**Consumer protection****My Life Corporation Pty Ltd**

*Misleading or deceptive conduct (s. 52), referral selling (s. 57), pyramid selling (s. 61) (ACCC Journal 4)*

On 15.7.97 a costs order was made against Kenneth Stockley, a director of My Life Corporation, following proceedings brought by the ACCC against the company. On 22.12.99, following protracted efforts at recovery, \$68 598.36 was paid to the ACCC.

**Goldstar Corporation Pty Ltd**

*Demanding payment for unsolicited goods or services (s. 64) (ACCC Journal 22)*

The Commission instituted proceedings in November 1998 in the Federal Court, Brisbane. On 10.5.99 the court imprisoned

Grant Warren Hudson for six months after his company was found guilty of contempt of court. His appeal was rejected on 2.7.99.

**Australian Taxation Services**

*Misleading or deceptive conduct (s. 52) (ACCC Journal 22)*

See chapter 2 for details of this case.

**The Australasian Institute**

*Misleading or deceptive conduct (s. 52) (ACCC Journal 22)*

On 21.5.99 the Commission instituted proceedings in the Federal Court, Sydney against this Internet-based education facility, alleging that it was promoting Internet-delivered degrees that it was not authorised to deliver. In December 1999 the company directors signed a s. 87B undertaking which required payment of refunds to affected students, placement of corrective advertising on the website and payment of costs.

**Millenium Diagnostics (Victoria) Pty Ltd, Millenium Solutions (Australia) Pty Ltd, Millenium Solutions Group Australia Pty Ltd**

*Breach of mandatory code of conduct (s. 51AD), misleading or deceptive conduct (s. 52), false or misleading representations (ss 53 and 59), accepting payment without intending to supply (s. 58) (ACCC Journal 23)*

On 19.8.99 the Federal Court, Melbourne made final orders against the above companies. The companies were ordered to refund particular franchisees, publish corrective advertisements, implement a corporate compliance program and pay the Commission's costs.

#### **Australian Billboard Connections Pty Ltd**

*Misleading or deceptive conduct (s. 52), misleading representations about business earnings (s. 59(2)), representations as to future matters in relation to small business operators in the franchising market (s. 51A) (ACCC Journal 27)*

The matter was resolved by consent in the Federal Court, Adelaide on 7.4.00 with costs to the Commission and a related refund of \$210 000 to the franchisees.

#### **Chubb Australia Limited**

*Misleading or deceptive conduct (s. 52), false or misleading representations in relation to the maintenance of fire alarm systems (s. 53(aa)) (ACCC Journal 27)*

On 4.4.00 the Federal Court, Brisbane granted injunctions against Chubb Australia. Chubb agreed to refund customers, place corrective advertisements and upgrade its trade practices compliance program.

#### **Tyco Australia Pty Ltd trading as Wormald Fire Systems**

*Misleading or deceptive conduct (s. 52), false or misleading representations in relation to the maintenance of fire protection services (ss 53(aa), 58) (ACCC Journal 25)*

On 9.12.99 the Federal Court, Brisbane granted injunctions against Tyco. Tyco also provided court enforceable undertakings to compensate affected consumers and to prevent future occurrences of the conduct.

#### **A1 Mobile Radiator Repairs Pty Ltd**

*Misleading and deceptive conduct (s. 52), misleading representations about certain business activities (s. 59(2)) (ACCC Journal 23)*

See chapter 2 for details of this case.

#### **The Shell Company of Australia Limited**

*Misleading or deceptive conduct (s. 52), unconscionable conduct in commercial dealings in relation to two franchise agreements (s. 51AA) (ACCC Journal 23)*

On 7.7.99 Shell gave undertakings to the Federal Court to confirm in writing the tenure or extension of tenure of franchise agreements. Shell agreed to pay the two Gold Coast franchisees, contribute to the Commission's legal costs and update its trade practices compliance program.

#### **Country Snack Delights**

*False or misleading representations in relation to the fat content labelling on snacks (s. 53) (ACCC Journal 23)*

On 10.8.99 the Commission obtained consent orders in the Federal Court, Melbourne. Country Snack Delights gave court enforceable undertakings to implement a corporate compliance program. It was also ordered to pay the Commission's agreed costs.

#### **Austcomm Tele Service Pty Ltd**

*Unconscionable conduct (s. 51AB), misleading or deceptive conduct (ss 52, 53(d), 64(2A)) (ACCC Journal 23)*

Proceedings were instituted on 11.9.98 in the Federal Court, Perth. The Commission's action against Austcomm was discontinued on 24.9.99.

#### **HRJ Financial Services**

*Alleged misleading or deceptive conduct (s. 52), false or misleading representations (s. 53) and unconscionable conduct in relation to personal loan advertisements (s. 51AB) (ACCC Journal 24)*

Proceedings were instituted on 6.7.98 in the Federal Court, Brisbane. On 18.2.00 consent injunctions were obtained against HRJ Financial Services Pty Ltd (HRJ) (now in liquidation) and its two directors

Rowland William Thomas and Helen Elizabeth Lewis (both bankrupt). Consumers wanting to make a claim against HRJ have been invited to submit their details to the liquidator of HRJ.

**Raylight Pty Ltd and Mr Herbert Nathan**

*Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53 (c)) (ACCC Journal 25)*

On 4.11.99 Raylight Pty Ltd gave undertakings to the Federal Court not to make representations about the medical and health benefits associated with the Parasite Zapper and the Colloidal Silver Generator. Its director, Mr Herbert Nathan, gave an undertaking not to design, create, settle or procure the publication of advertisements or promotional material for the products.

**Colin Dixon**

*Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53) (ACCC Journal 23)*

Proceedings were instituted on 23.7.99 in the Federal Court, Sydney. On 7.9.99 Mr Colin Dixon, an Internet service provider, gave undertakings to the Federal Court not to make representations about health benefits associated with the Vital Silver 2000 or the Vital Silver 3000 sold by Vital Earth Company Pty Ltd.

**Vital Earth Company Pty Ltd and Darryl Jones**

*Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53) (ACCC Journal 23)*

On 1.5.00 Vital Earth Company Pty Ltd gave undertakings to the Federal Court, Sydney not to make representations about health benefits associated with Colloidal Silver produced by Vital Silver 2000 or the Vital Silver 3000 Zapper. Vital Earth

Company Pty Ltd director, Mr Darryl Jones, gave undertakings not to advertise or publish material concerning the Vital Silver 2000, the Vital Silver 3000 Zapper or the Vital Silver 2000 Automatic.

**Goldseal Australia Pty Ltd, Specialty Products International Pty Ltd**

*Misleading or deceptive conduct (s. 52), misrepresentation in relation to Townsville franchises (ss 53(c), 53(d)) (ACCC Journal 27)*

On 3.6.99 the Commission instituted proceedings in the Federal Court, Brisbane. In March 2000 the Commission settled court action with Goldseal Australia Pty Ltd and Mr Norm English.

**Instant Document Retrieval Pty Ltd**

*Alleged false representations (ss 52, 59(2)) (ACCC Journal 27)*

Proceedings were instituted on 13.4.99 in the Federal Court, Brisbane. In January 2000 the Commission settled court action against Instant Document Retrieval and its managing director, Mr Wooley. The Commission had alleged that IDR made false and misleading claims when they sold master distributorships to two small business people in Brisbane and Townsville.

**Leelee Pty Ltd**

*Alleged unconscionable conduct by a landlord towards a tenant (s. 51AC) (ACCC Journal 27)*

The Commission instituted proceedings on 2.2.99 at the Adelaide Registry. At a directions hearing on 13.6.00 the court made consent orders. The company and Mr Pua Hor Ong were ordered to contribute to the ACCC's costs of the proceedings.

**Black on White Pty Limited (trading as Australian Early Childhood College)**

*Alleged unconscionable conduct (s. 51AB), misleading or deceptive conduct in relation to the accreditation of courses and enforcement of enrolment contracts (s. 52) (ACCC Journal 27)*

Proceedings were instituted on 1.8.97 in the Federal Court, Brisbane. The matter was heard from 3.4.00 to 11.4.00 and judgment was reserved.

**Abel Rent-A-Car**

*Alleged misleading or deceptive conduct in relation to advertising of car rental services (s. 52), misrepresentation about grade, quality, standard, value (s. 53), bait advertising (s. 56) (ACCC Journal 27)*

Proceedings were instituted on 24.2.99 in the Federal Court, Brisbane. Contempt judgment handed down on 19.4.00. Consent orders regarding Steven Mark Conn, director, were obtained on 17.7.00. Declarations, injunctions and costs were also obtained. Proceedings against the company (in liquidation) were discontinued.

**Paul's Limited**

*False or misleading representations (s. 53) (ACCC Journal 27)*

Proceedings were instituted on 26.2.99 in the Federal Court, Darwin. The Commission obtained a temporary injunction against Paul's in March 1999 to stop Paul's 'local milk' advertising campaign. The final orders were made on 13.6.00. Paul's agreed to a permanent court order against the campaign. It will also pay \$40 000 towards the Commission's legal costs.

**Consumer Business Register/Australian Business Reports Pty Ltd and anor**

*Misleading or deceptive conduct (s. 52), unsolicited directory entry (s. 62(3)) (ACCC Journal 11)*

Proceedings were instituted on 11.12.96 in the Federal Court, Canberra in relation to the misleading promotion of a register in that it was associated with a government agency and required for regulatory purposes. Injunctions were granted and contempt proceedings against respondents were successful.

**Cedric Desmond Collinson (trading as CDRC's Financial Network, and/or The Financial Network and/or SE Financial Network)**

*Alleged unconscionable conduct (s. 51AB), misleading or deceptive conduct (s. 52), accepting payment without intending or being able to supply as ordered (s. 58) (ACCC Annual Report 1998–99)*

Proceedings were filed on 12.8.98 in the Federal Court, Melbourne. On 14.8.98 the Commission obtained interim orders to prevent the advertising of a personal loans facility aimed at financially disadvantaged customers. In October 1999 the Commission arranged to refund the complainants in the matter. On 22.11.99 the court ordered that the Telephone Information Service Standards Council (TISSC) hold the remaining money in trust.

**Product safety/product liability**

**Shercind Pty Ltd (trading as Eyetastique) (in liquidation)**

*Alleged non-compliance with mandatory consumer product safety standard for sunglasses and fashion spectacles (s. 65C) (ACCC Journal 27)*

Proceedings were instituted in the Federal Court, Brisbane against former company



directors, Wagih Victor Farid and Sheref Joshua Matta, on 15.10.98. The trial was held from 18–19.10.99. Proceedings were dismissed against Farid. Matta was found guilty of two offences and ordered to pay fines of \$500 per offence. A notice of appeal was filed by Matta on 8.12.99. After the hearing on 19.5.00 the appeal was dismissed with costs.

**Dimmeys Stores Pty Ltd and Starite Distributors Pty Ltd**

*Non-compliance with a mandatory consumer product safety standard (s. 65C) (ACCC Journal 24)*

See chapter 2 for details of this case.

**Theo Holdings and Barok Industries Pty Ltd**

*Non-compliance with a mandatory consumer product safety standard (s. 65C), compulsory product recall in relation to fire doors (s. 65F).*

Theo Holdings and Barok Industries instituted proceedings in the Federal Court, Brisbane in June 1999. A decision was handed down in May 2000 in favour of the companies.

## Matters continuing from 1998–99

**Anti-competitive practices**

**IMB Group Pty Ltd, Logan Lions Ltd & ors**

*Alleged third line forcing (s. 47(6)) and misleading or deceptive conduct in relation to financial planning and property development (s. 52) (ACCC Journal 27)*

Interlocutory proceedings were commenced on 6.9.93 in the Brisbane Federal Court. Proceedings were withdrawn 17.9.93 and recommenced 20.9.93. The Commission provided its closing submissions on 18.10.99. The respondents filed their written submissions on 14.1.00

and on 24.1.00 the Commission filed submissions in reply. Judgment is pending.

**Australian Safeway Stores Pty Ltd (trading as Safeway) and George Weston Foods Limited (trading as Tip Top Bakeries)**

*Alleged price fixing (ss 45, 45A), misuse of market power (s. 46), exclusive dealing (s. 47) and resale price maintenance in relation to the sale of bread in Victoria (s. 48) (ACCC Annual Report 1997–98)*

Proceedings were instituted on 23.12.96 in the Federal Court, Melbourne. The trial against Safeway began in February 1999 and finished on 20.10.99. The decision was reserved.

**Boral Limited and Boral Besser Masonry Ltd**

*Alleged predatory pricing and misuse of market power in relation to the Queensland concrete industry (s. 46) (ACCC Journal 27)*

Proceedings were instituted on 6.3.98 in the Federal Court, Melbourne. A Full Bench appeal was heard on 7–10.2.00. Judgment is pending.

**Visy Paper Pty Ltd**

*Market sharing in relation to recyclable waste paper (s. 45) (ACCC Annual Report 1998–99)*

The Commission instituted proceedings in November 1998 in the Federal Court, Sydney. It is seeking orders against Visy Paper including declarations, injunctions, orders to institute a trade practices compliance program, costs and penalties against two senior employees. The matter will be heard on 16–18.8.00 and 9–27.10.00.

**SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd**

*Alleged primary boycott (s. 45(2)) and price fixing in relation to the supply of ABAC compressors (s. 45A) (ACCC Journal 27)*

On 23.4.99 proceedings were instituted by the Commission in the Federal Court, Melbourne. The matter is listed for hearing on 16.10.00.

**Queensland fire protection industry — various parties**

*Price fixing (s. 45A), market sharing (s. 45) (ACCC Journal 26)*

See chapter 2 for details of this case.

**Consumer protection**

**The Swiss Slimming and Health Institute Pty Ltd, trading as 'Swisslim'**

*False or misleading representation in relation to the promotion of weight loss and slimming services (s. 53(c)) (ACCC Journal 16)*

The Commission instituted proceedings on 26.6.97 in the Federal Court, Sydney. The Swisslim business ceased trading on 18.11.97. On 19.6.98 the court ordered Swisslim and its director, Gerhard Hassler, to pay over \$1 million in compensation to the ACCC. The payment was intended to make partial refunds to affected consumers.

**Electricity Supply Association of Australia (ESAA)**

*Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(g)) (ACCC Journal 20)*

The ESAA instituted proceedings against the Commission on 8.2.99 in the Federal Court, Canberra seeking declarations that electricity supply companies are not liable to consumers under s. 71 of the Trade Practices Act for defective electricity supplies after power surges and brown-outs.

The ESAA is seeking an Administrative Judicial Review and injunctions under s. 23 of the Federal Court Act.

**Golden Sphere International Inc**

*Alleged pyramid selling scheme (s. 61), multi-level marketing (s. 61(2A)) (ACCC Journal 27)*

Proceedings were instituted in 1996 in the Federal Court, Brisbane. On 11.12.98 the company was ordered to pay \$550 000 into a trust fund to provide refunds to consumers. The fund is being managed by the Insolvency and Trustee Service of Australia (ITSA).

**Farrington Fayre Shopping Centre**

*Alleged unconscionable conduct in relation to leasing arrangements (s. 51AA) (ACCC Annual Report 1998–99)*

Proceedings were instituted in the Federal Court, Perth on 3.4.98. The trial was adjourned on 18.10.99 because of concerns about the constitutional validity of s. 51AA. Section 51AA was found to be constitutional on 14.1.00. The trial was held on 31.1.00 to 4.2.00 and the decision was reserved.

**Samton Holdings Pty Limited**

*Alleged unconscionable conduct by a company towards a tenant (s. 51AA) (ACCC Journal 27)*

Proceedings were instituted in the Federal Court, Perth on 26.2.99. On 24.12.99 proceedings were deferred pending the decision in the Farrington Fayre matter as to the constitutional validity of s. 51AA, which was validated on 14.1.00. The matter is now listed for hearing on 13.11.00.

**Simply No Knead Franchising Pty Ltd**

*Alleged unconscionable conduct by the company towards its franchisees (s. 51AC) and breach of the Franchising Code of Conduct (s. 51AD)*  
(ACCC Journals 22 and 27)

On 16.6.99 the Commission instituted proceedings in the Federal Court, Melbourne. The hearing is set for 13.9.00. The Commission is awaiting advice from most of the franchisees as to whether they are prepared to discontinue their counter claims against SNK if the liquidator agrees to discontinue the State Court proceedings brought against them by SNK.

**Stephen Gregory Wyer, Optell Pty Ltd, Geoffrey Allan Beckett, Clinton Wade Andela**

*Alleged misleading and deceptive conduct in relation to business registers and consultancies (ss 52, 53(aa), (bb), (c), (d), (f), 64)* (ACCC Journal 27)

Proceedings were instituted on 9.8.96. Awaiting final court orders.

**Billbusters Pty Ltd**

*Alleged misrepresentations in relation to the supply of telephone bill-paying services (s. 53)* (ACCC Journal 27)

Proceedings were instituted on 13.11.98 in the Federal Court, Melbourne.

**Giraffe World Australia**

*Misleading and deceptive conduct (s. 52), referral selling (s. 57) and pyramid selling (s. 61)* (ACCC Annual Report 1998–99)

The Commission instituted proceedings on 6.5.98 in the Federal Court, Sydney. On 26.6.99 the court found that Giraffe World had engaged in misleading and deceptive conduct, pyramid selling and referral selling in breach of the Trade Practices Act. In November 1999 the Commission began a representative action which was adjourned

in February 2000 pending the outcome of the liquidator's recovery action against the directors.

**Top Snack Foods Pty Ltd**

*Misleading or deceptive conduct (s. 52)*  
(ACCC Journal 22)

On 4.6.99 the Federal Court, Sydney awarded damages of over \$400 000 to four couples and an individual who were franchisees of Top Snack Foods Pty Ltd. As the amount of damages, together with the Commission's costs, have remained unpaid since the date of the court orders the Commission has had the defendant companies placed into liquidation.

**Venture Industries Pty Limited**

*Alleged unconscionable conduct (s. 51AB) and misleading or deceptive conduct in relation to building homes (s. 52)*  
(ACCC Annual Report 1997–98 and ACCC Journal 27)

Proceedings were instituted on 3.9.93 in the Federal Court, Sydney. Penny and Harry Kioussis reached a bankruptcy settlement for \$2.1 million on 23.3.00. Payment of the dividend to consumers was made in April and June 2000.

**Product safety/product liability****Ansell**

*Goods causing injuries (s. 75AC(2))*

The Commission instituted proceedings on 21.1.00 in the Federal Court, Melbourne. It is alleged that prolonged use of Ansell latex gloves by a consumer, Sandra Robinson, has caused her to develop a life threatening allergic reaction. At a directions hearing on 3.4.00 the court ordered that the matter proceed by way of mediation. A date for mediation is yet to be fixed.

**MHG Plastic Industries Pty Ltd**

*Alleged non-compliance with mandatory product safety standards relating to protective helmets for vehicle users (s. 65C) (ACCC Journal 27)*

Proceedings were instituted on 13.5.99 in the Federal Court, Sydney. On 13.7.99 the court ordered a recall of all helmets and that consumers be given a full cash refund. MHG appealed and the Full Federal Court heard this matter on 25.11.99 and reserved its decision. The NSW Supreme Court will examine the issues once the Full Court decision is handed down.

# Inquiries and complaints statistics

Number of inquiries and complaints received during 1999–2000

		Total
Pursued <sup>1</sup>	Consumer protection	3 286
	Restrictive trade practices	547
	Unconscionable conduct/industry codes	118
	Prices <sup>2</sup>	82
	Other <sup>3</sup>	104
	<b>Sub total</b>	4 137
Not pursued	Inquiries <sup>4</sup>	2 937
	Complaints <sup>5</sup>	13 057
	<b>Sub total</b>	15 994
GST <sup>6</sup>	Inquiries	43 453
	Complaints	16 115
	<b>Sub total</b>	59 568
	<b>Totals</b>	79 699

- 1 Pursued complaints include all matters where additional information was sought to establish whether a possible contravention was involved and whether Commission action was appropriate. Of these, some were concluded after initial inquiries and others were investigated in depth.
- 2 Prices Surveillance Act matters.
- 3 Other includes access regime and general Trade Practices Act inquiries.
- 4 This figure includes substantial matters, complaints and inquiries. It does not include general administrative inquiries and matters falling outside the scope of the Act.
- 5 Complaints not pursued include matters where detailed advice was given to the inquirers about rights, obligations and remedies and also include matters more appropriate for private action.
- 6 The GST database structure does not provide a distinction between pursued and not pursued.

**Note:** The above figures do not include complaints generated as a result of major investigations. These would add several thousand to the 'pursued' category.

# Amendments and regulations

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## Amendments to the Trade Practices Act in 1999–2000

During the 1999–2000 financial year, the *Trade Practices Act 1974* (No. 51 of 1974) was amended by:

*Telecommunications Legislation Amendment Act 1999* (No. 52 of 1999)

*A New Tax System (Trade Practices Amendment) Act 1999* (No. 61 of 1999)

*Public Employment (Consequential and Transitional) Amendment Act 1999* (No. 146 of 1999)

*A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* (No. 176 of 1999)

*Federal Magistrates (Consequential Amendments) Act 1999* (No. 194 of 1999)

*Jurisdiction of Courts Legislation Amendment Act 2000* (No. 69 of 2000)

## Amendments before July 1999

Before July 1999 the *Trade Practices Act 1974* (No. 51 of 1974) was amended by:

*Postal and Telecommunications Commissions (Transitional Provisions) Act 1975* (No. 56 of 1975)

*Trade Practices Act 1975* (No. 63 of 1975)

*Trade Practices Amendment Act 1976* (No. 88 of 1976)

*Federal Court of Australia (Consequential Provisions) Act 1976* (No. 157 of 1976)

*Trade Practices Amendment Act 1977* (No. 81 of 1977)

*Remuneration and Allowances Amendment Act 1977* (No. 111 of 1977)

*Trade Practices Amendment Act (No. 2) 1977* (No. 151 of 1977)

*Trade Practices Amendment Act 1978* (No. 206 of 1978)

*Trade Practices Amendment Act (No. 2) 1978* (No. 207 of 1978)

<i>Trade Practices (Boycotts) Amendment Act 1980</i> (No. 73 of 1980)	<i>Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988</i> (No. 8 of 1988)
<i>Statute Law Revision Act 1981</i> (No. 61 of 1981)	<i>Trade Practices Amendment Act 1988</i> (No. 20 of 1988)
<i>Statute Law (Miscellaneous Amendments) Act 1981</i> (No. 176 of 1981)	<i>Industrial Relations (Consequential Provisions) Act 1988</i> (No. 87 of 1988)
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i> (No. 80 of 1982)	<i>ACT Self-Government (Consequential Provisions) Act 1988</i> (No. 109 of 1988) effected by the ACT Self-Government (Consequential Provisions) Regulations (Amendment) (SR 397 of 1989)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i> (No. 39 of 1983)	<i>Circuit Layouts Act 1989</i> (No. 28 of 1989)
<i>Public Service Reform Act 1984</i> (No. 63 of 1984)	<i>Trade Practices (International Liner Cargo Shipping) Amendment Act 1989</i> (No. 34 of 1989)
<i>Remuneration and Allowances Amendment Act 1984</i> (No. 73 of 1984)	<i>Law and Justice Legislation Amendment Act 1990</i> (No. 11 of 1990)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i> (No. 165 of 1984)	<i>Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990</i> (No. 70 of 1990)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i> (No. 65 of 1985)	<i>Trade Practices Amendment Act 1991</i> (No. 49 of 1991)
<i>Trade Practices (Transfer of Market Dominance) Act 1986</i> (No. 8 of 1986)	<i>Industrial Relations Legislation Amendment Act 1991</i> (No. 122 of 1991)
<i>Trade Practices Revision Act 1986</i> (No. 17 of 1986)	<i>Law and Justice Legislation Amendment Act 1991</i> (No. 136 of 1991)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1986</i> (No. 168 of 1986)	<i>Transport and Communications Legislation Amendment Act 1991</i> (No. 173 of 1991)
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i> (No. 23 of 1987)	<i>Special Broadcasting Service Amendment Act 1991</i> (No. 180 of 1991)
<i>Statute Law (Miscellaneous Provisions) Act 1987</i> (No. 141 of 1987)	<i>Law and Justice Legislation Amendment Act 1992</i> (No. 22 of 1992)
<i>Jurisdiction of Courts (Cross-Vesting) Act 1987</i> (No. 24 of 1987)	

*Territories Law Reform Act 1992* (No. 104 of 1992)

*Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (No. 105 of 1992)

*Trade Practices Amendment Act 1992* (No. 106 of 1992)

*Trade Practices Legislation Amendment Act 1992* (No. 222 of 1992)

*Industrial Relations Reform Act 1993* (No. 98 of 1993)

*Insurance Laws Amendments Act (No. 2) 1994* (No. 49 of 1994)

*Law and Justice Legislation Amendment Act (No. 2) 1994* (No. 141 of 1994)

*Competition Policy Reform Act 1995* (No. 88 of 1995)

*Statute Law Revision Act 1996* (No. 43 of 1996)

*Workplace Relations and Other Legislation Amendment Act 1996* (No. 60 of 1996)

*Trade Practices Amendment (Industry Access Codes) Act 1997* (No. 28 of 1997)

*Trade Practices Amendment (Telecommunications) Act 1997* (No. 58 of 1997)

*Audit (Transitional & Miscellaneous) Amendment Act 1997* (No. 152 of 1997)

*Telecommunications Legislation Amendment Act 1997* (No. 200 of 1997)

*Trade Practices Amendment (Fair Trading) Act 1998* (No. 36 of 1998)

*Financial Sector Reform (Consequential Amendments) Act 1998* (No. 48 of 1998)

*Television Broadcasting Services (Digital Conversion Act) 1998* (No. 99 of 1998)

*Gas Pipelines Access (Commonwealth) Act 1998* (No. 101 of 1998)

*Trade Practices Amendment (Country of Origin Representations) Act 1998* (No. 106 of 1998)

*A New Tax System (Trade Practices Amendment) Act 1999* (No. 61 of 1999)

## **Regulations introduced under the Act in 1999–2000**

*Trade Practices Amendment Regulation 1999* (No. 1) (No. 251 of 1999)

*Trade Practices (Consumer Product Safety Standards) (Bicycle Helmets) Regulations 1999* (No. 230 of 1999)

*Trade Practices (Consumer Product Safety Standards) Amendment Regulations 1999* (No. 1) (No. 238 of 1999)

*Trade Practices (Industry Codes — Franchising) Amendment Regulations 1999* (No. 1) (No. 188 of 1999)

*Trade Practices Amendment Regulations 2000* (No. 1) (No. 163 of 2000)

*Trade Practices Amendment Regulations 2000* (No. 2) (No. 164 of 2000)

*Trade Practices Amendment Regulations 2000* (No. 3) (No. 186 of 2000)



## Regulations operating at 30 June 2000

Trade Practices Regulations concern the operation of the Commission, Tribunal etc.

SR No. 170 of 1974 as amended by SR Nos 175 and 247 of 1974; SR No. 13 of 1975; SR No. 212 of 1978; SR Nos 1 and 87 of 1979; SR No. 39 of 1980; SR No. 68 of 1981; SR No. 199 of 1989; SR Nos 71 and 92 of 1992; SR No. 21 of 1993; SR No. 248 of 1995; SR No. 330 of 1995; and SR No. 20 of 1996; SR No. 53 of 1997; SR No. 86 of 1997; SR No. 322 of 1997; SR No. 365 of 1998.

**Trade Practices (Primary Products Exemptions) Regulations** — exempt certain conduct of primary producer bodies from specified provisions of the Act.

SR No. 75 of 1975 as amended by SR Nos 102 and 154 of 1975; SR No. 21 of 1977; SR No. 20 of 1978; SR Nos 81 and 88 of 1979; SR No. 325 of 1984; SR Nos 225 and 310 of 1986 and SR Nos 216 and 245 of 1987.

**Trade Practices (Removal of Exceptions) Regulations** — State legislation that allows a building society, cooperative society or credit union to require insurance with a nominated insurer does not exempt such conduct from the operation of part IV of the Act.

SR No. 191 of 1975 as amended by SR No. 230 of 1984.

**Trade Practices (Consumer Product Safety Standards) Regulations** — prescribe safety standards.

SR No. 134 of 1979 as amended by SR No. 20 of 1997.

**Australian Competition and Consumer Commission (Allowances) Regulations** — provide the same allowances to members of the Commission as those given to officers of the Australian Public Service.

SR No. 241 of 1983 as amended by SR No. 333 of 1995.

**Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations** — provide consumers with information about the ingredients in cosmetics.

SR No. 327 of 1991 as amended by SR No. 364 of 1998.

**Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations** — establish package labelling standards for certain tobacco products.

SR No. 83 of 1994 as amended by SR No. 408 of 1994.

**Trade Practices (Consumer Product Safety Standards) (Disposable Cigarette Lighters) Regulations** — establish safety and labelling requirements for certain disposable cigarette lighters.

SR No. 21 of 1997 as amended by SR No. 245 of 1997.

**Trade Practices (Industry Codes — Franchising) Regulations** — the Franchising Code of Conduct regulates the conduct of participants in franchising.

SR No. 162 of 1998. Commenced operation on 1 July 1998.

## **Amendments to the Prices Surveillance Act made before July 1999**

Before July 1999 the *Prices Surveillance Act 1983* (No. 145 of 1983) was amended by:

*Public Service and Statutory Authorities Act 1985* (No. 166 of 1985)

*Industrial Relations Legislation Amendment Act 1991* (No. 122 of 1985)

*Territories Law Reform Act 1992* (No. 104 of 1992)

*Qantas Sale Act 1992* (No. 196 of 1992) as amended by the *Qantas Sale Amendment Act 1994* (No. 60 of 1994) and the *Qantas Sale Amendment Act 1995* (No. 88 of 1995).

*Competition Policy Reform Act 1995* (No. 88 of 1995)

*Crimes and Other Legislation Amendment Act 1997* (No. 20 of 1997)

*Financial Sector Reform (Consequential Amendments) Act 1998* (No. 48 of 1998)

## Statement required under s. 8 of the Freedom of Information Act 1982

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This statement was correct at 30 June 2000. Since this date some areas of the Commission have been renamed. These changes are reflected in the organisation chart at p. 16.

### Statutory base

The Trade Practices Commission was established under the *Trade Practices Act 1974* which came into operation on 1 October 1974. The Commission was abolished and reconstituted by the *Trade Practices Amendment Act 1977*.

On 6 November 1995 by the operation of amendments, commencing on that day, made to the Trade Practices and the Prices Surveillance Acts by the *Competition Policy Reform Act 1995* the Trade Practices Commission (TPC) and the Prices Surveillance Authority (PSA) ceased to exist. At the same time the Australian Competition and Consumer Commission was created to exercise the powers and functions of the two former agencies. All staff were transferred to the new agency. In effect the TPC and the PSA were merged to form the new body. The Commission on 1 July 1997 became responsible for overseeing competition in the telecommunications industry. On 1 July 1999 the Commission assumed

responsibilities for ensuring price exploitation does not occur as a consequence of the introduction of the New Tax System and the related abolition of certain other indirect taxes.

### Organisation

The Commission as at 30 June 2000 consists of a Chairperson, a Deputy Chairperson, five full-time Commissioners and a number of part-time Commissioners who are appointed from time to time in accordance with the Act. Full-time members of the Commission are appointed by the Governor-General for up to seven years and associate members may be appointed by the Minister for up to five years. Staff assisting the Commission are appointed under the *Public Service Act 1999*.

The organisational structure reflects the core activities of the Commission. The national character of the Commission's work necessitates locating a large proportion of the Commission's operational staff in regional offices. The organisation structure retains the flexibility needed to cope with changes in the economic and commercial environment and any relevant changes in government policies.

The Commission is organised into a number of divisions, branches and program units. National office staff are located in Canberra, Melbourne and Sydney. There is one regional office in each State or Territory capital city and in Townsville, and a rural office in Tamworth. These report to the Commission through a Chief Executive Officer.

Each division, branch and program unit carries out the corporate plan by performing a range of activities.

The **Mergers and Assets Sales Branch** is responsible for examining mergers which would have the effect, or likely effect, of substantially lessening competition in a substantial market, and also applications for authorisation of mergers. It is also responsible for litigating, or accepting appropriate undertakings for, mergers that proceed without authorisation and that the Commission considers to be in breach of s. 50 of the Act. In addition, the branch carries out review of government asset sales to assess whether any issues arise under s. 50.

The **Adjudication Branch** is responsible for examining (non-merger) applications for authorisation of conduct that may substantially lessen competition and for examining notification of exclusive dealing conduct. It also reviews and, when warranted, proposes the revocation of past authorisations. It organises review conferences for products that have been recalled or banned. The branch also assesses rules and variations to rules for the use of Certification Trade Marks, and assignment of interests in Certification Trade Marks.

The **Corporate Management Branch** provides advice on the management and strategic use of the Commission's resources. It is responsible for corporate management

development, financial planning, people development, management reporting systems, information technology services, remuneration, records management, public registers, library services, equal employment opportunity strategies, occupational health and safety advice, workplace relations, workplace consultations, program evaluation coordination, and publishing.

The **Legal Group** is the Commission's core in-house legal team and it is responsible for the coordination of Commission legal resources and the provision of advice on the use of external legal services. It consists of three units. Apart from an element of the Regulatory Affairs team, which is based in Melbourne, the Legal Group is based in Canberra.

- ❑ The **enforcement** team conducts enforcement litigation, particularly involving new or complex issues. It also advises on and settles notices and other legal instruments. The team is comprised of ACCC lawyers and lawyers on retainer from the Australian Government Solicitor's Office.
- ❑ The **regulatory affairs** team provides advice on legal issues arising under parts IIIA, XIB and XIC of the Trade Practices Act, the Prices Surveillance Act and a number of other enactments (State and Federal) in relation to the Commission's regulatory functions. The team also conducts tribunal and litigation matters arising out of the ACCC's regulatory functions.
- ❑ The office of the General Manager, Legal is responsible for coordinating the use of legal resources across the ACCC, including the use of private firms. The office also has responsibility for administrative law

issues and the coordinating of legal policy.

- ❑ Attached to the Legal Group is the Special Counsel, who provides specialist legal advice on complex legal issues and has oversight of major litigation involving the ACCC.

### ***Appointment of a legal panel***

During the year the Commission established a panel of legal firms to conduct litigation on its behalf. Following a tender process the following firms were appointed to the ACCC Legal Panel — Corrs Chambers Westgarth, Phillips Fox, Dunhill Madden Butler (now Deacons), Slater & Gordon, and the Australian Government Solicitor's office. The firms are operating under deeds of standing offer for two years from 20 September 1999.

### **Compliance Division**

The division ensures compliance with the Trade Practices Act through educational and liaison activities or more direct enforcement action. In support of this it provides expert advice to the Commission through strategic planning and general management of the Commission, particularly in relation to nationally coordinated enforcement of both part IV (non-merger) and part V of the Act, national consumer protection strategies, compliance education and information, product safety and small business liaison. The division consists of all the regional offices and three Canberra-based program units (restrictive trade practices, consumer protection, and small business).

**Regional offices** are the point of first contact with the Commission for most business people and consumers. In conjunction with national office branches they carry out a wide range of activities including enforcement work relating to breaches of the Trade Practices Act, merger

investigation, product safety investigation, compliance education, pricing, and developing liaison arrangements and communication channels with State and Territory Governments, regulatory bodies and other relevant parties on current economic reform issues. The Melbourne regional office is co-located with the Melbourne national office.

### **Regulatory Affairs Division**

The division provides expert advice to the Commission in relation to micro-economic reform activities. It administers a number of regulatory functions under the Trade Practices Act, particularly in relation to access and pricing, in gas, electricity, telecommunications, and transport. The division consists of one branch and three units.

**The Transport and Prices Oversight Branch**, based in Melbourne, administers access arrangements and other regulatory arrangements for the major privatised airports and for the Federal Airports Corporation airports (now the Sydney Airport Corporation). In the aviation industry the branch is also responsible for prices oversight of Airservices Australia.

The branch advises on and undertakes research related to rail access issues. In the waterfront area the branch administers part X of the Trade Practices Act and undertakes prices oversight of harbour towage services in major ports.

The branch is responsible for prices oversight of Australia Post, the petroleum industry, ACI and other industries as directed by the Treasurer. The branch also provides advice on pricing issues associated with micro-economic reform.

The **Telecommunications Group**, based in Melbourne, Sydney and Canberra, investigates complaints of anti-competitive conduct under the telecommunications specific provisions of the Trade Practices Act. The group makes rules for the keeping of records and monitors consumer prices for telephone services. In addition, the group administers an industry-specific access regime deciding what services will be subject to standard access obligations via the declaration process, approving industry access codes, individual access undertakings, monitoring standard obligations and being a final arbiter for the terms and conditions of declared telephone services.

The **Electricity Group**, based in Canberra, is involved in the competition aspects of the developing national wholesale electricity market, enforces the anti-competitive conduct rules in part IV of the Trade Practices Act including the authorisation of proposed market arrangements, and administers part IIIA which, in the context of the national electricity market, deals with access to the services of essential facilities through the implementation of an access code and the setting of transmission and distribution revenues.

The **Gas Group**, based in Canberra and Sydney, contributes to the process of developing a national uniform framework for access to transmission and distribution infrastructure in the gas industry. The group has a significant regulatory role, as under the National Third Party Access Code for Natural Gas Pipeline Systems service providers need to submit access arrangements to the Commission for consideration and approval. This process is focused on setting reference tariffs — which requires determination on a range of measures including asset valuation, a fair allocation of justified costs, a reasonable

rate of return and an acceptable depreciation methodology. The group assists the Commission to arbitrate disputes related to capacity and haulage. It also participates in adjudication, mergers and enforcement matters as they arise in the gas industry.

### **GST Division**

Based in Canberra and Melbourne, the division is responsible for administering the prohibition on price exploitation relating to the New Tax System. Key responsibilities are the formulation and publication of guidelines about when price exploitation occurs, to monitor prices to promote compliance and, where necessary, to take enforcement action, and report to the Minister.

## **Functions and powers under the Trade Practices Act**

The main functions of the Commission are:

- ❑ to provide information about the Trade Practices Act to business and consumers and to explain its specific application to them;
- ❑ to ensure compliance with the provisions of the Act by:
  - ❑ investigating complaints and market behaviour for breaches of both restrictive trade practices and consumer protection provisions;
  - ❑ assessing the detriment to business and consumers of anti-competitive conduct;
  - ❑ monitoring prices to prevent consumer exploitation and excessive profit taking in the transition to the New Tax System; and

- ❑ taking appropriate administrative or court action;
- ❑ to adjudicate by:
  - ❑ dealing with applications by business for exemption, through the authorisation and notification processes, from certain restrictive trade practices provisions of the Act; and
  - ❑ holding conferences, at the request of suppliers, on proposed (and emergency) consumer product bans and proposed mandatory recalls;
- ❑ to prohibit profiteering from the introduction of the New Tax System.

The Commission can delegate to a member of the Commission any of its powers under the Act, other than the power to delegate and its powers to grant, revoke or vary an authorisation (s. 25).

### Education and information

The Commission devotes considerable resources to programs and activities designed to improve community awareness of the Act's requirements. In general terms, the objective of these programs is to improve compliance with the law and thereby to reduce the need for enforcement. The Commission meets its information obligations under s. 28 of the Act by:

- ❑ responding to individual inquiries about the application of the Act;
- ❑ informing the community at large about the Act and its specific implications for business and consumers;
- ❑ developing information programs specifically for identified groups of consumers or specific areas of industry;

- ❑ reporting to the Minister on consumer protection matters; and
- ❑ conducting research into matters that affect consumers.

To achieve the widest possible dissemination of information the Commission uses a variety of means including the mass media, seminars, publications, the Internet, trade and industry association journals, and contact with business, professional, and consumer organisations. Increasingly it cooperates with other organisations in the development of programs designed to increase awareness of the provisions of the Act.

### Compliance

The Commission secures compliance with the Act by responding to complaints, inquiries and information about possible breaches, and by taking action if investigations show this to be necessary.

The Commission has powers under s. 155 to demand information, documents and evidence to help in investigations of possible breaches of the Act or in making its decisions whether or not to revoke an exclusive dealing notification.

Sections 155A and 155B grant the Commission powers similar to those of s. 155 to demand information and documents in New Zealand relating to a contravention or possible contravention of s. 46A and provide that the Commission may receive information and documents on behalf of the New Zealand Commerce Commission when it exercises a corresponding provision of the Commerce Act.

Most complaints are resolved by administrative action. However, the Commission will take offenders to court where the conduct complained of is blatant and successful action would act as a

deterrent or would have a beneficial educational effect.

As part of its overall enforcement strategy the Commission seeks undertakings from businesses that they will cease particular conduct or undertake specific action to redress conduct that may have breached the Act.

Section 87B gives legislative backing to this practice, making such undertakings legally enforceable.

The Commission has the power to commence civil proceedings for contraventions of the Act. Criminal proceedings may be brought on the Commission's behalf by the Director of Public Prosecutions.

### Adjudication

The authorisation and notification processes within the Act grant immunity from court action for some restrictive trade practices that could otherwise breach the Act.

### Authorisation

Immunity operates only once authorisation has been granted. The Commission applies one of two tests when considering an application for authorisation.

For arrangements other than mergers that may substantially lessen competition, the applicant must satisfy the Commission that the provisions of the arrangement result in a benefit to the public that outweighs any anti-competitive effect.

For primary and secondary boycotts, third line forcing, mergers and acquisitions the applicant must satisfy the Commission that the conduct results in a benefit to the public such that it should be allowed to occur.

The onus is on the applicant to satisfy the appropriate test. The Commission will look not only at the effect on competition in the

market overall but also at the effect on individual competitors.

The Commission issues a draft determination which can be discussed at the request of an interested party at a pre-determination conference. A final determination is then made. No pre-determination conferences are available for mergers. Interested parties may apply to the Australian Competition Tribunal for a review of any Commission decision.

### Notification

The immunity given by notification of exclusive dealing operates from the date of lodgment with the Commission and remains unless revoked by the Commission. That protection cannot be revoked unless the Commission is satisfied that the conduct substantially lessens competition and that there is insufficient public benefit flowing from the conduct to outweigh the lessening of competition.

### Product safety

The Commission has responsibility for the enforcement of mandatory safety standards, information standards and permanent bans of unsafe goods declared under part V division 1A of the Trade Practices Act.

Suppliers or possible suppliers of goods that the Minister proposes to ban or has banned (s. 65C), or proposes to order suppliers to recall (s. 65F), may request a conference with the Commission (s. 65J). Following a conference the Commission will recommend to the Minister that the ban or recall either proceed, be modified or not proceed. If the Minister declines to follow the Commission's recommendations, reasons for that decision must be published in the *Commonwealth of Australia Gazette*.

The Minister or his/her nominee, suppliers who request a conference and any other



person considered appropriate by the Commission can attend a conference where they can put forward their case and inspect any document not granted confidentiality that the Commission will consider when making its recommendation.

The Commission keeps a public register of applications for authorisation, notifications of exclusive dealing, related submissions, division 1A conference records, Commission decisions and reasons for those decisions. Commercially sensitive material for which confidentiality has been granted is not available for public inspection. Material refused exclusion can be withdrawn (ss 89(5B) and 95(4)). The decision whether to grant or refuse confidentiality is usually taken by a member of the Commission under a delegation from the full Commission.

### Limitation on powers

The Commission has responsibility for administering all provisions of the Trade Practices Act, except for the following.

Divisions 2 and 2A of part V, implied conditions and warranties. Resolving implied warranty disputes is a matter for the party affected.

Part X — the overseas cargo shipping provisions — is currently the shared responsibility of the Department of Employment, Workplace Relations and Small Business, the Australian Competition Tribunal and the Commission.

In accordance with the *Trade Practices (International Liner Cargo Shipping) Amendment Act 1989*, which commenced on 1 August 1989, the responsibilities of the Department of Employment, Workplace Relations and Small Business are the registration procedures under part X; designation of shipper bodies and representation of the Minister where delegated or as provided under part X.

The Australian Competition Tribunal has responsibility for inquiring into unfair pricing and whether a non-conference carrier has a substantial degree of market power on a trade route.

The Commission's responsibilities include a review function and reporting to the relevant Minister; maintaining a public register of part X investigations and reporting these investigations to the Minister; enforcement, adjudication and guidance.

The Commission is administratively independent. However, the Minister may, under s. 29 of the Act, direct it on the performance of certain functions.

## Functions and powers under the Prices Surveillance Act

The main functions of the Commission are:

- ❑ to vet the proposed price rises of any business organisations placed under prices surveillance;
- ❑ to hold inquiries into pricing practices and related matters, and to report the findings to the responsible Commonwealth Minister; and
- ❑ to monitor prices, costs and profits of an industry or business and to report the results to the Minister.

The Prices Surveillance Act enables the Commission to examine the prices of selected goods and services in the Australian economy. The Commission's task is to promote competitive pricing wherever possible and to restrain price rises in markets where competition is less than effective.

The Act relates to goods or services that are supplied in Australia for a price. Supply is

defined broadly but explicitly covers situations where goods are sold, leased or exchanged, and where services are provided, granted or conferred. The law does not deal with contracts of service, i.e. employment contracts where a task is performed in exchange for a wage or salary.

The Act can be applied to the business activities of Commonwealth, State and Territory authorities; trading, financial and foreign corporations; and people or firms supplying goods or services within the ACT or across State or Territory boundaries.

### **Prices surveillance**

The Minister determines what organisations, goods or services should be subjected to prices surveillance and these are formally 'declared'. A declared organisation cannot raise the price of a declared product beyond its peak price of the previous 12 months unless it fulfils the requirements of the Act. It is liable to a \$10 000 penalty if it does not comply.

### **Inquiries**

The Minister determines the particulars of the subject of a Commission inquiry. During the period of the inquiry an organisation that has been served with a notice cannot raise its price beyond its peak price of the previous 12 months. It is liable to a \$10 000 penalty if it does. However, the Commission has the discretion to approve interim price increases.

### **Information powers**

In carrying out its prices surveillance, inquiry or monitoring functions, the Commission can require organisations or individuals to provide relevant information or documents (s. 32(1)). It also can summons people to appear as witnesses at an inquiry (s. 34(2)).

The Commission determines whether the information demanded should be treated as confidential or where there is a greater public interest to be served in disclosing it (s. 33).

Failure to comply with an information order or summons can result in a \$1000 penalty, unless a reasonable excuse is provided (ss 32(2) and 35). Individuals can choose not to answer questions or provide documents on the grounds that they may incriminate themselves (ss 32(2A) and 36). Such a decision does not provide the Commission with grounds for exercising the information powers in s. 155 of the Trade Practices Act.

It is an offence for Commission members or staff to divulge confidential information obtained by the Commission. They are liable to a penalty of \$1000. Nor can they be forced by a court or tribunal to divulge that information (s. 43).

## **Arrangements for outside participation**

The Commission's functions bring it into frequent contact with private individuals, companies, industry and consumer groups, and other State and Commonwealth Government agencies. This contact allows interested bodies outside the Commission to express their opinions and to have them taken into account by the Commission when it establishes its policies and priorities.

The Trade Practices Act sets out formal procedures for the submission of views and information to the Commission on adjudication matters and division 1A conferences. Less formal arrangements have been established by the Commission through contact with industry associations and consumer groups. A general consultative committee made up of

representatives of business, consumer, industry and union groups gives the Commission the views of a wide range of interested organisations. The Commission also establishes ad hoc consultative committees from time to time.

Under s. 31(1) of the Prices Surveillance Act the Commission is required to conduct its pricing inquiries in public unless the Minister directs otherwise.

## Public registers

The Trade Practices Act and the Prices Surveillance Act require the Commission to maintain a number of public registers.

### Trade practices registers

The Commission maintains a public register containing the details of authorisation applications, related submissions, the Commission's decision, reasons for its decision and any conferences held on bans or mandatory recall of defective goods.

With respect to its functions under part IIIA the Commission is required to maintain public registers of:

- ❑ each decision by a Commonwealth Minister that a regime established by a State or Territory for access to a service is an effective access regime for the service and each declaration of a service, including a declaration that is no longer in force (s. 44Q);
- ❑ certain details of registered contracts for access to declared services including the date the contract was made, the parties and the nature of the service (s. 44ZW);
- ❑ all access undertakings accepted by the Commission, including those no longer in force and all variations to access undertakings (s. 44ZZC); and

- ❑ the details of each determination, the names of the parties, the service to which the determination relates and the date the determination was made (s. 44ZZL).

In addition, although it is not obliged to by statute, the Commission maintains public registers on mergers and s. 87B undertakings. The purpose of the mergers register is to make available to the public brief details of mergers and acquisitions considered by the Commission. The details include the names of the target/acquirer/possible acquirer, product description, outline of the matter and the Commission's decision, including the reasons for that decision.

The undertakings register contains copies of s. 87B undertakings. Under s. 87B enforceable undertakings may be given to the Commission in connection with a matter in relation to which the Commission has a power or function other than under part X. Such undertakings provide for the Commission to negotiate administrative settlements.

### Prices surveillance register

Although it is not obliged to do so by the statute, on prices surveillance matters the Commission maintains a public register showing price notifications, the Commission's deliberations, the outcome and the reasons for the outcome.

### Guidance

The Commission consults with outside groups in the development of its guidance publications. The Minister can request the Commission to examine and report on any aspect of laws relating to the protection of consumers, and it must publicly invite submissions from interested parties. It may not submit its report until interested people

have had a reasonable opportunity to express their views.

## Categories of documents

The Commission maintains the following categories of documents:

- ❑ particulars of agreements furnished to the Commissioner of Trade Practices under previous Acts;
- ❑ court, adjudication and legal material;
- ❑ financial matters;
- ❑ library material;
- ❑ organisation matters;
- ❑ publications, speeches and media releases;
- ❑ personnel records;
- ❑ working documents including staff investigations, reports, analyses, recommendations, correspondence, and complaints;
- ❑ public registers and confidential material excluded from public registers; and
- ❑ commission papers.

## Facilities for access

Commission publications may be inspected at any of the Commission's offices at the addresses shown at the end of this report. Most publications are available from any of the Commission's offices. Some are available on the Commission's Internet websites <<http://www.accc.gov.au>> and <<http://gst.accc.gov.au>>.

Documents on the public register may be examined and photocopies bought at any of the Commission's offices during business hours. Prior notice is advisable as not all documents are held in each office.

Information about facilities available to help people with a disability gain access to documents may also be obtained from Commission offices. If necessary, special arrangements can be made to overcome any difficulties with physical access.

## Freedom of Information procedures and contact officers

The Freedom of Information (FOI) contact officer in each State is the Regional Director, and in national office, Canberra, the FOI Officer, Legal Group.

The FOI contact officer will help applicants to identify the particular documents they seek. Access to documents may not always be available because of disclosure restrictions imposed by the *Trade Practices Act 1974* and the *Privacy Act 1988* as well as exemptions set out under the FOI Act; for example, confidentiality of some public register material (ss 89(3) and 95(2) of the *Trade Practices Act*), disclosure in certain adjudication or compliance work (s. 157(1) of the TPA) and the secrecy of documents provided to the Commissioner of Trade Practices before the commencement of the current Act.

If a request is refused on the grounds set out in s. 15(2) or s. 24(1) of the *Freedom of Information Act 1982* (insufficient information or unreasonable diversion of resources), applicants will be notified and given the opportunity for consultation. The officer authorised to deny access to documents is the Chairperson of the Commission, who has delegated that power to certain specified officers, including the General Manager, Corporate Management, and the General Manager, Legal Group and the Assistant General Counsel (Policy and Advisings).

Requests for access under the Freedom of Information Act should be submitted in writing to any of the Commission's offices. All requests will be dealt with in national office, Canberra. Access will be provided through the office that received the request and in the manner requested by the applicant (unless this is not practicable). If an applicant lives some distance from the place where access is normally provided, alternative arrangements will be considered.

Inquiries about access to documents or other matters on freedom of information should be directed to the contact officers between 9.00 a.m. and 4.30 p.m.

# Staffing overview

Part-time staff as at 30 June 2000											
	ACT	NSW	VIC	QLD	WA	SA	TAS	TAM	TVL	NT	Total
Male	38										38
Female	44	6	5	1							56
<b>Total</b>	82	6	5	1							94

Temporary staff as at 30 June 2000											
	ACT	NSW	VIC	QLD	WA	SA	TAS	TAM	TVL	NT	Total
Male	53	2		2	1			1	1		60
Female	57	5	9		2	1		1	1		76
<b>Total</b>	110	7	9	2	3	1		2	2		136

Non-Public Service Act staff — total by gender, classification and location as at 30 June 2000						
		Chairperson	Deputy Chairperson	Commissioner	Total M/F	Total by region
ACT	Male	1	1	5	7	7
	Female					
<b>Total all</b>		1	1	5	7	7

## Public Service Act staff

Total by gender, classification and location as at 30 June 2000										
		GAPS	APS1	APS2	APS3	APS4	APS5	APS6	SAPS1	SAPS2
ACT	Male	6	2	1	40	7	6	15	16	28
	Female	7	3	5	51	18	16	18	14	6
NSW	Male	2		1	3	1	2	3	9	5
	Female	2		4	1	3	4	5	2	3
VIC	Male	2		1		2	5	14	19	11
	Female	3	1	3	4	3	8	12	7	4
QLD	Male				1	1	1	3	3	1
	Female	2			1	2	5	3	2	
WA	Male	2				1	1	4	2	1
	Female			1	1	2	3	3		
SA	Male					4	1	2	1	1
	Female			1	1	4	1	1	2	
TAS	Male					2		2		1
	Female						1			
TVL	Male	1				1	2		1	
	Female				1	1				
TAM	Male						1		1	
	Female		1							
NT	Male						1			1
	Female	1			1			2		
Total M/F	Male	13	2	3	44	19	20	43	52	49
	Female	15	5	14	61	33	38	44	27	13
Total all		28	7	17	105	52	58	87	79	62

Cont.

Total by gender, classification and location as at 30 June 2000						
		SES Band 3	SES Band 2	SES Band 1	Total M/F by region	Total Staff by region
ACT	Male	2	2	4	129	269
	Female			2	140	
NSW	Male				26	52
	Female		1	1	26	
VIC	Male		1	2	57	103
	Female			1	46	
QLD	Male				10	25
	Female				15	
WA	Male				11	21
	Female				10	
SA	Male				9	19
	Female				10	
TAS	Male				5	6
	Female				1	
TVL	Male				5	7
	Female				2	
TAM	Male				2	3
	Female				1	
NT	Male				2	6
	Female				4	
Total M/F	Male	2	3	6	256	
	Female		1	4	255	
Total all		2	4	10	511	



## Commissioners' biographies

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### Chairperson



#### **Professor Allan Fels**

Professor Allan Fels has been Chairman of the Australian Competition and Consumer Commission since November 1995. Professor Fels was Chairman of the former Trade Practices Commission from July 1991 until November 1995. He was also Chairman of the Prices Surveillance Authority from March 1989 until October 1992. Professor Fels was formerly the Director of the Graduate School of Management, Monash University from 1985 until 1990 and is now an Honorary Professor in the Faculty of Business and Economics at Monash University.

Professor Fels is the Co-Chairman of the Joint Group on Trade and Competition at the OECD.

Professor Fels' appointment is until 5 November 2000.

### Deputy Chairperson



#### **Mr Allan Asher**

Mr Allan Asher was a Commissioner of the Trade Practices Commission from 1988 until his appointment with the ACCC in 1995.

Previously a senior manager in an international telecommunications company he is also a former Council Member and Public Affairs Manager of the Australian Consumers' Association. Mr Asher, a barrister and solicitor, is active in consumer protection and competition issues. Mr Asher was the Australian Councillor on the board of the International Organisation of Consumers Unions from 1979 to 1986. He was a member of the Consumer Standards Advisory Board of the Standards Association of Australia and is currently a

member of the Business Competitiveness Committee of the Prime Minister's Supermarket to Asia Council.

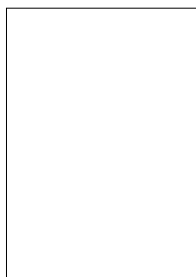
Mr Asher chairs the Energy Committee of the Commission which is responsible for competition issues in the deregulating electricity and gas markets in Australia. He also chairs the Commission's Enforcement Committee which oversees all litigation and the compliance work of the ACCC.

Mr Asher has extensive experience in the promotion of consumers' economic interests and welfare issues in developing countries and has worked as an expert on United Nations and Australian development assistance projects.

Mr Asher chaired the OECD Consumer Policy Committee from 1993 to 1996 and is the foundation chair of the International Society of Consumer and Competition Officials.

Mr Asher's appointment is until 5 November 2000.

## Commissioners



### **Mr Sitesh Bhojani**

Mr Sitesh Bhojani has been a full-time member of the ACCC since November 1995. Before then he was a barrister with a general commercial and civil litigation practice at the independent bar in Western Australia. In 1994 he was appointed an Associate Commissioner of the Trade Practices Commission. He was Deputy Chairman of the Law Council of Australia, Business Law Section's Trade Practices Committee.

From 1986 to 1992 he was a barrister and solicitor with the Commonwealth Attorney-General's Department Perth office, and also the Trade Practices Unit of the Australian Government Solicitor/Federal Court and Tribunals Registry.

In June 1991 and subsequently in June 1994 Mr Bhojani completed the Negotiation workshop and the Advanced Negotiation workshop respectively at the program of Instruction for Lawyers at Harvard Law School, Harvard University.

He holds a Bachelor of Science (Monash) and Bachelor of Laws (Monash). In 1986 he was admitted as a barrister and solicitor in Victoria and Western Australia. He has also tutored in trade practices law at the University of Western Australia.

Mr Bhojani's Commission responsibilities include its enforcement activities (as a member of the ACCC's Enforcement Committee), the professions and health sector. He regularly represents the Commission in negotiations and mediation of ACCC litigation.

Mr Bhojani's appointment is until 10 November 2003.

#### **Mr Ross Jones**

Mr Ross Jones was appointed as a Commissioner of the ACCC in June 1999. He is an economist and before his appointment was Senior Lecturer in Economics at the University of Technology, Sydney. He has lectured in industrial organisation and micro-economic policy at universities in Australia and overseas.

Mr Jones has degrees in economics, accounting and psychology and has worked as an economic consultant to the private and public sector. He has undertaken extensive consultancy work for the Trade Practices Commission, the Prices Surveillance Authority, and the ACCC.

Mr Jones' appointment is until 14 June 2004.

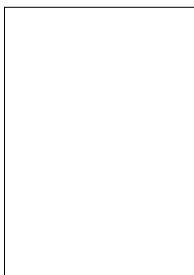
#### **Mr John Martin**

Mr John Martin was Executive Director of the Australian Chamber of Commerce and Industry from 1989 until his appointment to the ACCC in June 1999. In his position at ACCI he represented business interests to the Commonwealth Government and was responsible for developing business policies and programs, particularly as they affected small and medium enterprises. Mr Martin was a member of the Board of Standards Australia for over five years.

Earlier in his career Mr Martin was a policy adviser and program manager with the Commonwealth Treasury and the Department of Industry and a regional industrial consultant with the United Nations in Bangkok.

Mr Martin holds an economics degree from the Australian National University.

Mr Martin's appointment is until 6 June 2004.



**Mr Rodney Shogren**

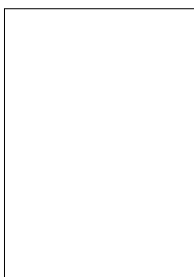
Mr Rodney Shogren was appointed as a Commissioner of the ACCC in May 1997. Before that he was head of the Fiscal Policy Division in the Commonwealth Treasury for four years, responsible for the budget and inter-governmental financial relations.

In the early 1990s he headed the Structural Policy Division in Treasury with responsibility for micro-economic reform, industry policy, trade and the environment.

Before that Mr Shogren served in a number of agencies of the Australian Public Service including the Department of Primary Industries and Energy, the Industry Commission and the Department of Finance. In 1985 and 1986 he was a Sydney-based management consultant.

Mr Shogren graduated from the University of Queensland in 1971 as a Bachelor of Science with first class honours in mathematics. In 1984 he was awarded a Public Service Postgraduate Management Award and completed an MBA at Stanford University, California as an Arjay Miller Scholar.

Mr Shogren's appointment is until 29 April 2002.



**Dr David Cousins**

Dr David Cousins was appointed Commissioner with special responsibility for GST in July 1999. Before his appointment he was a Director with KPMG Management Consulting where he headed a national competition policy practice and conducted major reviews of legislation restricting competition.

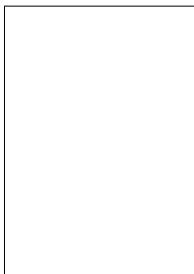
Dr Cousins was a member of the Prices Surveillance Authority from 1989 to 1992 and its Chairman from 1992 to 1995. He has also held a range of appointments in the Victorian public sector including Senior Economist with the State Electricity Commission and Director of Research with the Economic and Budget Review Committee of the Victorian Parliament. He has taught competition and regulation courses at universities in Australia and overseas.

Dr Cousins graduated with Honours and Masters degrees in economics from Monash University. His PhD was completed at the University of Manchester in the UK after undertaking a major study of business self-regulation for the Office of Fair Trading.

Dr Cousins' appointment is until 13 July 2002.

## Part-time Commissioners

### **Ms Teresa Handicott**

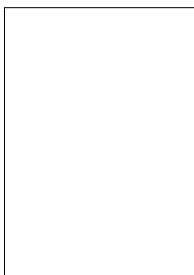


Ms Teresa Handicott is a partner with Corrs Chambers Westgarth. She was appointed an Associate Commissioner of the Trade Practices Commission in 1994 and Associate Commissioner of the ACCC in November 1995. She is a director of CS Energy Limited, and Member, Company Committee, Queensland Law Society and Law Council of Australia.

Ms Handicott was awarded a Bachelor of Laws (Hons) (QIT) in 1985 and was admitted as a solicitor in Queensland in 1987. She practices exclusively in areas of commercial and corporate law, particularly mergers and acquisitions, capital raisings and securities industry law.

Ms Handicott's appointment is until 3 June 2002.

### **Ms Yasmin King**



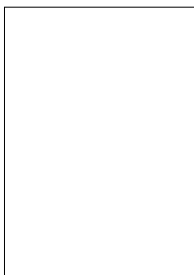
Ms Yasmin King is a Director of Flexible Resource, a consultancy practice which focuses on outsourcing and industry development advisory services particularly in information technology. She was appointed as an Associate Commissioner of the ACCC in 1998.

Ms King was previously an economic adviser for the State Government of South Australia during the establishment and implementation of National Competition Policy. Before that she held a number of senior positions in the finance industry. She is a Director of Le Cordon Bleu Australia; a Director of the Playford Centre, an information technology incubator and seed capital provider; and is on the Information Economy Advisory Council for the South Australian Government.

Ms King has an Honours Degree in Economics, a Masters Degree in Business Administration and is a Fellow of the Australian Society of Certified Practising Accountants.

Ms King's appointment is until 25 October 2001.

### **Ms Rhonda Smith**



Ms Rhonda Smith was appointed as a Commissioner of the ACCC in November 1995 to November 1998. She was appointed an Associate Commissioner for three years from 4 June 1999. She is an economist and from 1981 was Senior Lecturer in Economics, University of Melbourne. From 1988 she was also a consultant economist and was appointed a Member of the Copyright Law Review Committee from 1995 to 1998.

Ms Smith has been an expert witness and adviser in major trade practices litigation and acted as a consultant for the Trade Practices Commission, Prices Surveillance Authority and the private sector.

Ms Smith resigned as an Associate Commissioner on 18 January 2000.

#### **Mr Don Watt**

Mr Don Watt is a lawyer and company director. He is currently a Director of Atkins Carlyle Ltd, Burswood Ltd and various non-listed companies. He is also Chairman of the Legal Practice Board of Western Australia.

Mr Watt was awarded a Bachelor of Laws (WA) in 1962 and was admitted as a barrister and solicitor in 1964. In 1974 he established and taught the first trade practices course at the University of WA. From 1974 to 1987 he was a commercial partner at Mallesons Stephen Jacques, solicitors in Perth and London. In recent years his major area of legal practice has been advising the State of Western Australia in relation to various commercial matters.

Mr Watt's appointment is until 3 June 2002.

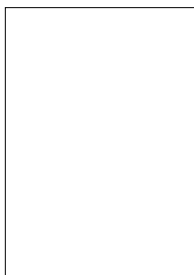
#### **Mr Warwick Wilkinson, AM**

Mr Warwick Wilkinson is a retired pharmaceutical company director. He was Chairman (part-time) of the Ambulance Service Board of NSW from 1990 to 1995. Since 1989 he has been a lay member of the Disciplinary Committee of the Australian Society of Certified Practising Accountants. In 1996 he was appointed an Honorary Trustee and Member NSW Advisory Committee of the Committee for Economic Development of Australia. From 1992 to 1993 he was a Member of the Economic Planning and Advisory Council. He was a Member of the National Small Business Forum from 1993 to 1995.

In 1952 he qualified at the Pharmacy School (University of Sydney) and was awarded a Master of Pharmacy (*Honoris Causa*) in 1991. From 1974 to 1993 he was Senior Executive and Director, Merck Sharp & Dohme Pty Ltd. From 1991 to 1993 he was President of the Australian Council of Professions and from 1975 to 1980 Chairman Pharmacy Board of NSW. In 1995 he was appointed Chairperson Professional Standards Council NSW and in 1998 was appointed Chairman Professional Standards Council of Western Australia. From June 1999 to February 2000 he was Chairman of National Competition Policy Review of Pharmacy appointed by the Council of Australian Governments.

Mr Wilkinson served in the Royal Australian Army Medical Corp from 1955 to 1990, part-time/full-time retired with the rank of Colonel.

Mr Wilkinson's appointment is until 3 June 2002.



**Professor Douglas Williamson, QC**

Professor Douglas Williamson RFD QC FAIM is the Director of the Centre for Energy and Resources Law at the Law Faculty, the University of Melbourne. He was appointed Associate Member of the ACCC in June 1999 for three years. He is also Deputy Chairman of the National Electricity Tribunal, a Member (part-time) of the National Native Title Tribunal, and a mediator accredited to the Supreme Court of Victoria.

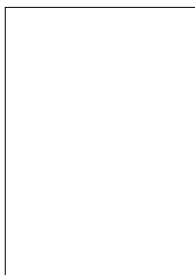
Professor Williamson graduated LL.B (Hons) in 1955 from the University of Melbourne, and practised as a barrister from 1957 to 1996. He was appointed Queen's Counsel in Victoria in 1975, and subsequently in other States and Territories. From the mid-1970s he practised mainly in commercial law, with emphasis upon trade practices law, resources law and corporate governance. He was a Royal Commissioner in the Tricontinental Inquiry from 1990 to 1992.

From 1970 to 1974 Professor Williamson took leave from the Bar, and as Corporate Manager for Special Projects with Comalco Limited worked world-wide to help establish international joint venture consortia in the aluminium industry. For 13 years he was a non-executive director of Kobe Aluminium (Australia) Pty Ltd (a subsidiary of Kobe Steel Ltd), which participates in the Gladstone aluminium smelter joint venture.

Other past positions include National President of the Australian Mining and Petroleum Law Association, Chairman of the Victorian Branch of the Commercial Law Association of Australia, National Chairman of the Trade Practices Committee of the Law Council of Australia, National Chairman of the Resources Law Committee of the LCA, and Honorary Consultant to the Australian Law Reform Commission reference on competition policy issues.

Professor Williamson's appointment is until 3 June 2002.

## Ex officio members



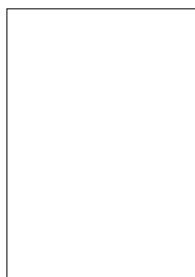
### **Mr Paul Baxter**

Mr Paul Baxter is the Senior Commissioner, ACT Independent Competition and Regulatory Commission in a part-time capacity and partner, PricewaterhouseCoopers, Economic Studies and Strategies Unit.

Mr Baxter has had a lengthy career as a corporate and strategic policy adviser, and before joining PricewaterhouseCoopers held various senior industry policy roles in the Federal public service and as a UN consultant on development planning and economic statistics.

Mr Baxter is also a member of the two-person independent advisory panel to the Murray–Darling Basin Ministerial Council on the capping on the water usage in the Murray–Darling river system.

Mr Baxter's appointment is until 30 June 2004.



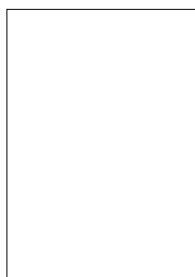
### **Professor David Edward Flint, AM**

Professor David Flint is the Chairman of the Australian Broadcasting Authority. He is a Visiting Professor, Faculty of Law, University of Western Sydney Macarthur; National President (Australia) of the World Jurists Association; Chairman of the Executive Council of World Association of Press Council; and Consulting Editor of the Australian International Law Journal.

Past positions include Chairman, Australian Press Council; Dean of Law School University of Technology, Sydney; Convenor/Chairman, Committee Australian Law Deans; Director of Studies, International Law Association (Australian and New Zealand branch); and Editor, Australian International Law News. He holds the following qualifications: LL.B, LL.M (Sydney); BSc (Ecs) (London); DSU (Paris 2).

Professor Flint is a Member of the Order of Australia. In 1991 he won the World Jurists Association's World Outstanding Legal Scholar Prize.

Professor Flint's appointment is until 4 October 2000.



### **Mr Edward John Hall**

Mr John Hall has substantial experience at chief executive level in both the public and private sectors, particularly in the areas of management, finance and public policy development and implementation.

From 1970 to 1990 Mr Hall held a variety of senior positions in the Queensland Treasury, including that of Under Treasurer (Chief



Executive) from 1988 to 1990. Subsequent to this, and until his appointment to the QCA, he was firstly Executive Director of major Queensland law firm, Feez Ruthning, and upon its merger with national law firm, Allen Allen and Hemsley, was Queensland Practice Director of the merged firm.

Mr Hall is a Member of the Board of Consolidated Rutile Ltd and has held board positions with a variety of Queensland statutory bodies, including Suncorp Insurance and Finance, the Queensland Industry Development Corporation (Deputy Chairman), the Queensland Tourist and Travel Corporation, Queensland Events Corporation (Deputy Chairman), the North Queensland Enterprise Zone and the Workers Compensation Board.

Mr Hall's appointment is until 30 September 2002.

#### **Dr Thomas Parry**

Dr Thomas Parry is Executive Chairman of the Independent Pricing and Regulatory Tribunal of NSW. He has previously been Dean, Faculty of Economics, University of Wollongong and Principal Economic Adviser, Economic Studies Group, Price Waterhouse. He is also Chairman of First State Super Trustee Corporation.

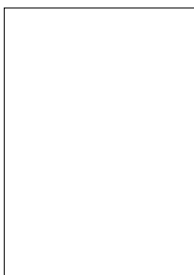
Dr Parry's appointment was to 6 June 2000.

#### **Mr Andrew Reeves**

Mr Andrew Reeves is the Commissioner, Government Prices Oversight Commission, Tasmania, and in that role has headed reviews on electricity prices, structure of the Tasmanian electricity supply industry, public transport, motor accident insurance and the water industry. He is also the Tasmanian Electricity Regulator with the responsibility of determining the maximum price for each of the monopoly electricity business activities and administering the Electricity Supply Industry Act and the Tasmanian Electricity Code.

Mr Reeves holds a Bachelor of Engineering (Mining) Hons, University of Queensland and postgraduate qualifications in business administration and resource economics.

Mr Reeves' appointment is until 31 December 2001.



**Mr Graham Scott**

Mr Graham Scott was appointed as the South Australian Independent Pricing and Access Regulator on 2 April 1998 for three years on a part-time basis. Mr Scott is currently the Head of the School for Economics at Flinders University, and his background is as a senior lecturer in economics in the Faculty of Social Sciences.

He is Chairman of the SA Local Government Superannuation Scheme, Unisure Ltd (the workers compensation insurer for the three SA universities) and of Adelaide Airport Ltd. He is a board member of Superannuation Scheme for Australian Universities and Flinders Technologies Pty Ltd (the intellectual property arm of Flinders University).

He was the Deputy Director of the SA Centre for Economics Study from its establishment in 1984 until 1998 and in that position wrote extensively on the SA economy. Mr Scott's other professional interests are in the area of macro-economics, financial markets and macro-economic policy.

Mr Scott's appointment is until 1 April 2001.



**Mr Tony Shaw, PSM**

Mr Tony Shaw has been Chairman of the Australian Communications Authority since 1 July 1997. Mr Shaw has extensive experience in public policy research, development, implementation and administration. Since 1987 he has played a leading role in the formation of Australian telecommunications and broadcasting policies, including the preparation of advice to Government on post-1997 telecommunications policy and regulation and management of implementation of the Government's decisions.

Mr Shaw's appointment is until 30 June 2002.



**Dr John Tamblyn**

Dr John Tamblyn was appointed as Victoria's Regulator-General on 14 July 1997. In that capacity he is responsible for regulation of access and service performance of the electricity, gas, water and transport utility industries.

Before appointment as Regulator-General Dr Tamblyn was adviser to the ACCC on micro-economic reform and public utility regulation matters. He also worked as an adviser to the International Monetary Fund and as a policy adviser on industry policy and regulatory matters in the Commonwealth Treasury and Department of Finance.

Dr Tamblyn's appointment is until 13 July 2002.

# Commission publications published in 1999–2000

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The following publications were published in the past year and are available free from Commission offices unless otherwise indicated. Those available on the Commission's website are indicated by an asterisk.

A full list of ACCC publications is available on the website <<http://www.accc.gov.au>> or in the *ACCC Journal*.

## Regular publications

ACCC Journal: bi-monthly journal (\$75 annual fee, second and following subscriptions to same address \$37.50, \$25 student subscription). Six issues per year plus Index. Journal back issues \$10 each.

ACCC update: quarterly newsletter.  
Issue No. 6 — E-commerce  
Issue No. 7 — GST

## Annual reports

The 1998–1999 Annual Report is out of print. Past years' are available from AusInfo.

## Other corporate publications

Making markets work: directions and priorities. October 1999\*

The ACCC: role and functions.  
November 1999\*

Service charter. May 2000

## Guides to the legislation, ACCC procedures and industry

### Legislation

Summary of the Trade Practices Act 1974.  
May 2000 (\$10)

Access undertakings: a guide to part IIIA of the Trade Practices Act. September 1999 (\$10)

### Procedural

Section 87B of the Trade Practices Act: a guideline on the ACCC's use of enforceable undertakings. August 1999 (\$10)

### Industry

Travel and tourism — and the Trade Practices Act. November 1999 (\$10)

Complementary health care industry.  
December 1999\*

## Business and consumer information sheets and leaflets

News for business: Y2K, Business and the Trade Practices Act. August 1999\*

Are you being harassed about debts?  
July 1999

Warranties and refunds.  
November 1999\*

### **Small business**

Retail Flash [produced jointly with the Australian Retailers Association].  
June 2000\*

The Trade Practices Act and the ACCC: a small business overview. August 1999\*

Fair game or fair go? Avoiding and dealing with a hard bargain. A small business operator's guide to the unconscionable conduct provisions of the Trade Practices Act. June 1999\*

Small business and the Trade Practices Act: a practical guide for small business.  
July 1999\*

The franchisee's guide: A guide to the Franchising Code of Conduct.  
July 1999\*

### **Product safety guides**

The following product safety guides are free for the first copy, and \$5 for subsequent copies:

- ☐ Labelling of tobacco products.  
October 1999
- ☐ Care labelling — clothing & textile products. May 2000

### **Reports and discussion papers**

#### **Competition issues**

Conference papers: 6th Asian and Oceanic Antimonopoly Conference. November 1999 (\$15.00)

### **Health**

Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance. April 2000\*

### **Petroleum**

Review of LPG prices in Western Australia — Draft report. September 1999

Increase in the average retail petrol prices in Australia compared with the rise in international prices. October 1999\* (website only)

### **Telecommunications**

Telecommunications: competition notice guideline. August 1999\*

Declaration of an analogue subscription television broadcast carriage service.  
October 1999 (\$10)

Declaration of a technology-neutral subscription television carriage service.  
October 1999 (\$10)

A code of access to telecommunications transmission towers, sites of towers and underground facilities. October 1999 (\$10)

Anti-competitive conduct in telecommunications markets. August 1999\*

Telecommunications services: declaration provisions: a guide to the declaration provisions of part XIC of the Trade Practices Act. July 1999 (\$10)

Local telecommunications services.  
July 1999 (\$10)

Competitive safeguards 1998–99.  
April 2000\*

Telecommunications charges in Australia.  
April 2000\*

### Pricing inquiry reports

Increase in the average retail petrol prices in Australia compared with the rise in international prices. October 1999 (website only)

### Pricing monitoring reports

Container stevedoring. October 1999 (\$10)

## GST publications

All GST publications are available on the Commission's GST website  
<<http://gst.accc.gov.au>>.

### GST guides

Price exploitation and the new tax system. March 2000

Public Compliance Commitments. January 2000

Application of the price exploitation guidelines to regulated industries: the process. March 2000 (website only)

Re-pricing & the New Tax System. A joint publication with the GST Start-Up Assistance Office. May 2000 (website only)

### GST leaflets (website only)

How to make a complaint. July 2000

Australia's everyday shopping guide with the GST. May 2000

Everyday shopping guide with the GST — ready reckoner. May 2000

Price exploitation — What every business must know. September 1999

### GST news for business

1: Pricing claims and the New Tax System. March 2000

2: Pricing during the New Tax System transition. March 2000

3: Lay-by sales. May 2000

4: Taxis. June 2000

5: Jewellers and the New Tax System. June 2000

6: Adjusting prices. June 2000

7: Pricing issues for the trucking industry. June 2000

8: Coin-operated machines and the New Tax System. June 2000

9: Where the savings come from — televisions. June 2000

10: Where the savings come from — woollen jumpers. June 2000

11: Where the savings come from — legal services. June 2000

12: Where the savings come from — rubber tyres. June 2000

13: Small business guide to cost savings under the New Tax System. June 2000

14: Franchise fees and the New Tax System. July 2000

15: Handy hints on pricing for operators of cafes, takeaways and restaurants. July 2000

### **GST talk**

1: Electronic goods: the price will go down.  
July 1999

2: The New Tax System: What changes?  
When? July 1999

3: Protecting consumers in the New Tax  
System. March 2000

4: Residential rents. April 2000

5: Lay-bys. May 2000

6: Weddings. May 2000

7: Holidays and the GST. May 2000

8: How do I know what I have to pay? May  
2000

9: Commercial residential premises —  
accommodation charges. July 2000

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Compliance costs. June 2000

Pricing claims. June 2000

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Avoiding and handling complaints.  
June 2000

Handy hints. June 2000

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1: 11 April 2000

2: 26 April 2000

3: 26 May 2000

4: 9 June 2000

### **GST bulletin — business information sheets (website only)**

1: 4 July 2000

2: 6 July 2000

3: 10 July 2000

4: 18 July 2000

5: 19 July 2000

6: 20 July 2000

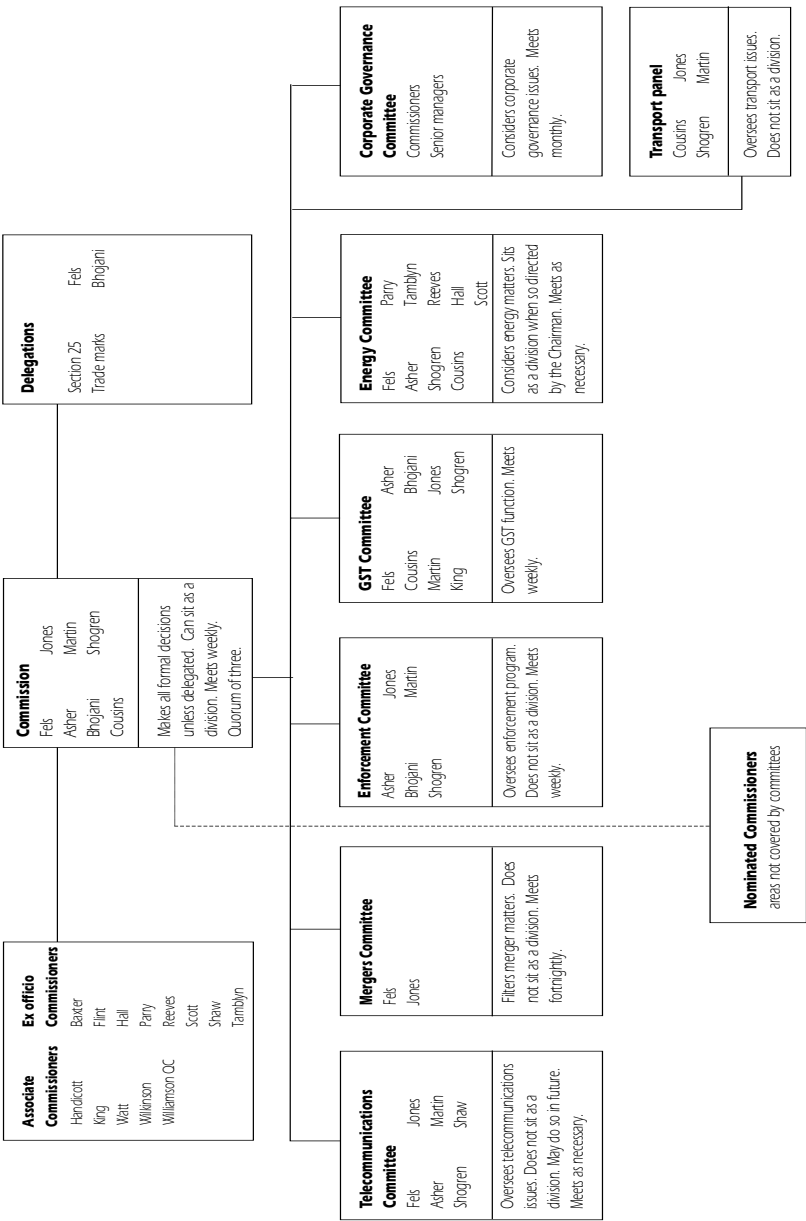
7: 20 July 2000

8: 3 August 2000

### **Media releases and speeches**

Media releases and speeches can be found  
on the Commission's website at  
<<http://www.accc.gov.au>>.

ACCC decision making structure



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