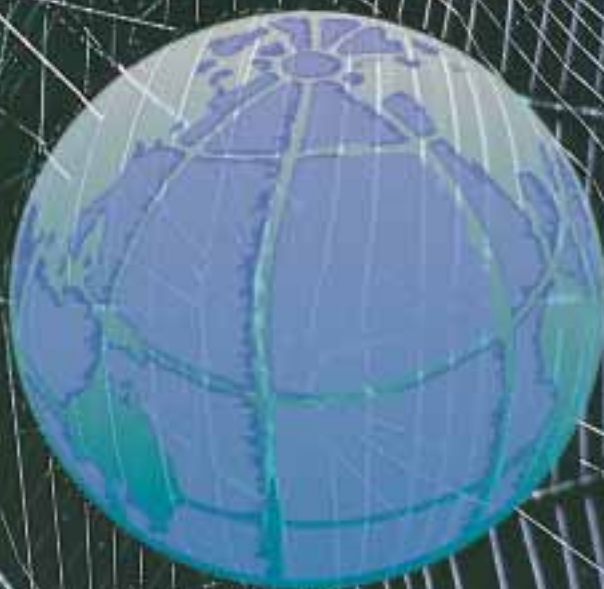




Australian
Competition &
Consumer
Commission

ACCC *update*

Issue 3, March 1999



Global markets *... spider webs* *and safety nets*

Safer products Small business GST – our role
and the ACCC

ACCC *update*

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The Australian Competition and Consumer Commission operates nationally at the forefront of administration and enforcement of competition and consumer protection law.

Legislative changes have given the Commission new regulatory roles in many sectors — such as the electricity, gas and telecommunications industries.

Changes affecting the huge small business sector took place in 1998 and this is now a particular focus for the Commission. Issues 1 and 2 carried articles about the changes. This issue introduces the ACCC small business officers and gives some background on the methods being used to target the sector.

A future change for which the Commission is already gearing up is the price monitoring and anti-exploitation role it is to be given for the transition to incorporation of a GST into the tax system. (See page 6)

The Trade Practices Act covers all businesses in Australia, including government enterprises and many thousands of previously exempt unincorporated firms such as professional practices.

The continuing growth in responsibilities imposes new and wider obligations on the Commission to inform the public about its activities. It is important that businesses, and their customers, be well informed about rights and obligations under the law.

ACCC update is published to give the wider community general information about the Commission's work and responsibilities.

The aim is to report regularly on new developments and issues of particular interest and to encourage 'feedback' from the community.

Much more detailed information is available in the wide range of ACCC publications (available from all the offices listed at the back) or from the Commission's regularly updated Internet site at <http://www.accc.gov.au>.

Global markets

... spider webs and safety nets

As part of its commitment to protecting consumers in the growing market of global transactions, the ACCC held the Sydney Global Commerce Conference at the Sydney Hilton on 9 to 11 November 1998.

Domestic and international experts from enforcement agencies, consumer organisations and industry spoke on the major consumer issues surrounding global commerce, the enforcement aspects associated with cross-border trade, and the role industry will play in the development of consumer confidence.

The conference was a resounding success, with over 150 Australian and international delegates and 22 speakers.

The ACCC is now putting together working groups to progress a number of key compliance and enforcement strategies.

These include compliance strategies like the development of a 'quality trader' consumer charter and a standard on Internet certification schemes, and enforcement strategies like the development of enforcement tips for the global marketplace, an education program for enforcement staff, cooperative arrangements with Internet service providers, and arrangements for international cooperation between enforcement agencies.

Contact Bill Dee on (02) 6243 1093 or by email at bill.dee@accc.gov.au for information on progress with this project.

The following pages briefly report on issues raised by some of the conference speakers. The full text of many of the speeches can be downloaded from the ACCC's Internet site (<http://www.accc.gov.au>).

Prof. Allan Fels, Chairman, Australian Competition and Consumer Commission

As Australia's national competition and consumer protection authority, the ACCC has a keen interest in how consumers can be protected in the new global marketplace.

Professor Fels said that regulatory agencies like the ACCC must react quickly and effectively in the formulation of new enforcement strategies while we are on the threshold of the reality of the global marketplace.

Addressing these issues now affords a better chance of developing effective cooperative arrangements between enforcement agencies, as well as more effective, market sensitive and industry-based ways of dealing with problems.

Otherwise, there is a very real possibility of lack of consumer confidence in global market mechanisms, and that substantial potential benefits for consumers and business alike will be lost.

Professor Fels said the aims of the conference included the development of corporate and industry-based compliance strategies, better enforcement methods, international cooperation between enforcement agencies, and the harmonisation of global consumer protection standards.

He pointed out that, while the focus of the conference was on developing new strategies for consumer protection, the work of competition agencies encouraging the development and adoption of harmonised competition policy and law and its enforcement through cooperation between competition agencies was equally important.

Allan Asher, Deputy Chairman, Australian Competition and Consumer Commission

With the expansion of the global marketplace the ACCC faces increasing cross-border enforcement difficulties. This has led it to investigate new and better ways of enforcing trade practices legislation and enhancing consumer confidence in global commerce.

Mr Asher focused specifically on the need for a new regulatory regime based on market-oriented approaches to consumer protection.

As an alternative to 'black letter law' enforcement, market-based approaches to consumer protection have greater potential to achieve consumer confidence by establishing and maintaining good consumer protection standards. At the corporate level, industry players can become 'quality traders' and use conformance with fair trading criteria as positive marketing points. At the industry level, self and co-regulation can help to achieve industry-wide fair trading standards, which are more easily policed.

However, the preference for market-based compliance strategies does not mean that enforcement agencies like the ACCC are sitting on their hands. On the contrary, the Commission is working with enforcement agencies internationally to maintain good enforcement techniques and international cooperation arrangements, so that cross-border fraud is addressed quickly and effectively.

Mr Asher emphasised the need for internationally cooperative compliance and enforcement action and internationally harmonised consumer protection standards, in preference to individual jurisdictions taking different approaches. Global problems require global solutions.

Senator Helen Coonan,
Member of the Joint Committee on
Public Accounts and Audit,
Australian Parliament

Senator Coonan is a member of the Parliamentary Joint Committee of Public Accounts and Audit, which recently examined the impact of Internet commerce on a number of areas.

Senator Coonan emphasised the need for a stable regulatory environment giving business and consumers confidence in areas such as security, privacy, intellectual property, copyright, and taxation.

She supported a broad policy approach that the private sector should lead, with minimal Government involvement but said that the regulatory framework needed to be responsive to consumer needs and emerging technologies.

Such a consumer protection framework would be defined by the nature of the medium, and therefore depend on developing mechanisms for international cooperation between Governments, enforcement agencies, industry groups and user bodies.

Daniel Petre, Chairman, PBL On-Line

Mr Petre discussed trends in consumer purchasing on the Internet, the considerable benefits for consumers who use the medium and also important consumer concerns — notably privacy, security and the viability of local businesses.

He identified the considerable difficulties facing Australian businesses in offering goods and services over the Internet — the global competition they face and the scale needed to compete against large American companies and invest in the necessary technologies. Australian capital markets still underestimate the

change occurring, making it difficult for entrepreneurs to fund businesses.

Mr Petre concluded by predicting that Internet commerce will lead to increased consumer power and a better range of goods and services but warned that increased Internet commerce may not necessarily result in increased revenue or jobs in Australia.

Prof. Tsuneo Matsumoto,
Professor of Law, Hitotsubashi
University, Japan

Professor Tsuneo Matsumoto focused on a Japanese perspective of the consumer issues in the global electronic market.

According to the Internet White Paper edited by the Internet Association of Japan, the number of Internet users in Japan was estimated at over ten million at February 1998 — double the figure recorded a year earlier. The number of 'virtual shops' in Japan has also ballooned, with over 11 500 trading as of September 1998.

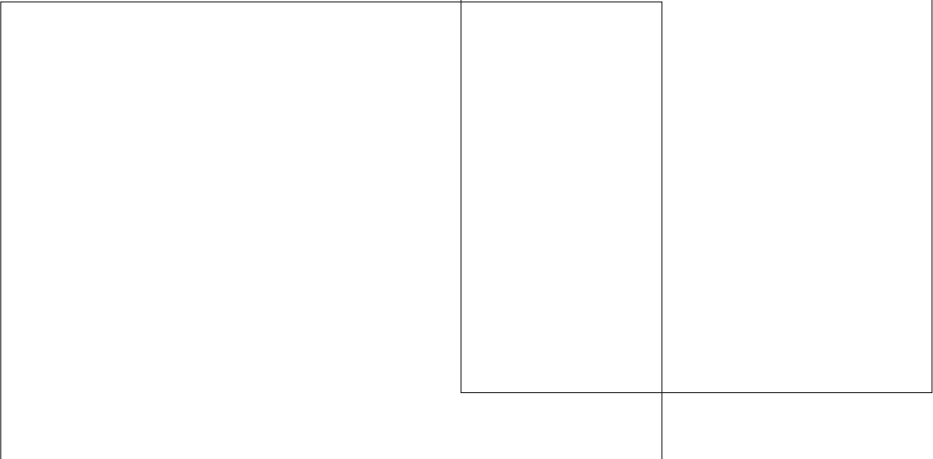
Given these figures, it is surprising to find that the electronic commerce market in 1996 amounted to only 28.5 billion yen, or slightly more than 1 per cent of the 2.2 trillion yen catalogue sales market. Japanese consumers it seems are afraid that they might be

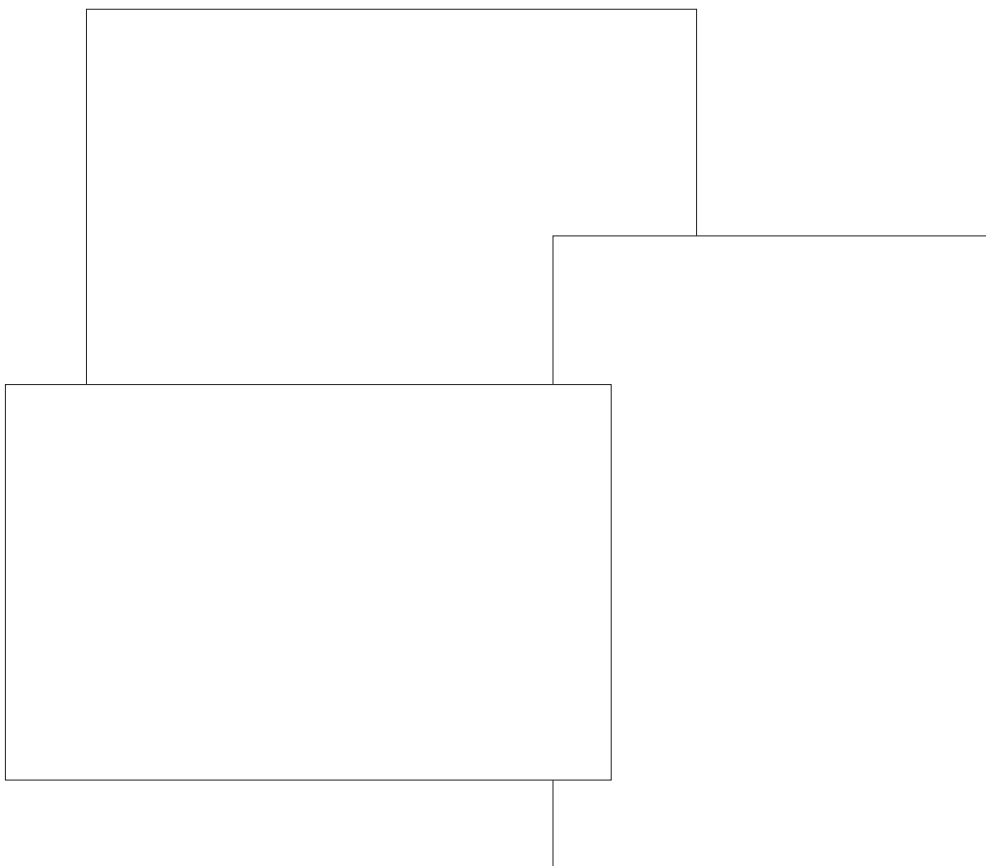
cheated by web merchants or that their personal data might be improperly used. This demonstrates the need to improve consumer confidence in electronic commerce. Japanese government and business tend to favour coping with those problems through industry self-regulation, although consumers often insist on direct government regulation.

Louise Sylvan, Executive Director,
Australian Consumers' Association
and Vice President, Consumers
International

Ms Sylvan identified five key issues to be addressed before consumers would feel comfortable in shopping via the Internet.

Privacy is not a commodity, and Internet vendors need to recognise that practices like tracking the movement of





Richard Thomas, Director, Public Policy, Clifford Chance (UK)

Richard Thomas emphasised that electronic commerce and global commerce will soon mean very much more than the Internet, and that it would be a mistake simply to attempt regulation of the Internet as we know it.

He gave his own perspective on the basic challenges for consumer policy — especially with the need to find the optimum way to achieve maximum benefits for consumers, with minimum legal and regulatory problems. This leads to the central controversy for cross-border trade — the battle between regulation by reference to ‘country of origin’ and regulation by reference to ‘country of residence’.

Mr Thomas outlined a ‘third way’, a compromise between these competing approaches involving three parallel avenues:

- the country of residence principle should apply to certain core protections;
- the country of origin will have to be accepted for numerous detailed requirements, especially information disclosure; and
- there will be a measure of international self regulation.

Risaburo Nezu, Director, Science, Technology and Industry, OECD

Mr Nezu outlined the benefits of the global electronic marketplace for business and consumers, but also commented that questions about accuracy of information, contract formation, the availability of redress and dispute resolution mechanisms, the potential for fraud and privacy issues have left consumers concerned about the practicalities and the safety of the electronic environment and reluctant to fully participate in the electronic marketplace.

shoppers through virtual malls is not acceptable. Etiquette associated with the use of ‘cookies’ needs to be codified, since there are obvious problems with self regulation. ‘Notify and Consent’ type solutions are not appropriate.

Contracts cause major jurisdictional problems and ‘shrink wrap’ and ‘click on’ style contracts raise issues. Consumer protection is reduced because consumers typically do not read such contracts. Consumers should be protected under the laws of their own country, which requires global harmonisation of consumer protection laws.

Global harmonisation of laws is also required to ensure consumers are able to gain redress. Bilateral and multilateral agreements are required to enforce laws governing complaint resolution and compensation.

Security and fraud continue to affect online commerce. Consumers demand high security, and it is inappropriate to shift the onus of risk onto them.

Ken Kay, Executive Director, Computer Systems Policy Project (US)

Ken Kay is the Executive Director of the Computer Systems Policy Project (CSPP), a leading US industry group working on trade and technology policy issues.

The CSPP has prepared a self-assessment tool entitled **The CSPP Guide to Global Electronic Commerce Readiness** — a self-evaluation tool for communities to use to determine their level of readiness for global electronic commerce. This is a series of indicators to help guide economic growth and developments, as well as technology and policy decisions.

Moira Scollay, Federal Privacy Commissioner

People's tolerance to intrusion varies enormously, driven by emotional and not analytical considerations. Privacy is a choice not to reveal rather than a statement of nothing to hide. Companies need to bear this in mind, as well as recognising that there are no social controls over the Internet. People want individual control over their personal details, but there is no constitutional right to privacy.

Commonwealth and State governments are developing 'anonymity principles', including a ban on digital trails of peoples' movements through cyberspace.

Individual web sites should prominently publish their policy on privacy. Policies should state whether 'cookies' are in use and whether visitors' movements will be tracked. Information should only be gathered on a 'need-to-know' rather than a 'nice-to-have' basis.

John Henry, Associate Director, Environment and Consumer, Standards Australia

Despite producing over 10 000 international standards over the last 50 years, the International Organisation for Standardization (ISO) performed something of an academic role, as there is no imperative to implement these international standards at the national level. The interface between national standards and legal obligations is therefore the area of most interest in standardisation.

Two factors which emerged in the 1990s have ensured that ISO will have a much larger role to play in the next century.

First, international Standards developed by ISO, and its counterpart organisations for electrotechnology and

telecommunications, have been recognised as benchmarks under the Technical Barriers to Trade Agreement that forms part of the General Agreement on Tariffs and Trade.

Second, Internet trading has accelerated the globalisation of marketing and emphasised the difficulty in imposing national controls on the supply of goods in a global marketplace. This has led the ISO Consumer Policy Committee to consider developing a range of future standards on handling of consumer complaints, industry-sponsored customer dispute resolution systems, and market-based codes of conduct.

Stephen Locke, Global Director of Research, Andersen Consulting (UK)

Stephen Locke noted that, while the idea of globalisation has been around for centuries, the notion of planned, global activity by companies is a much more recent phenomenon.

He described it in terms of a deep functional global integration organised primarily by transnational corporations (TNCs) affecting all the factors of production and being heavily dependent upon the TNC's strategies and networks. The old style multinationals are evolving into global corporations — with a shift in emphasis from functional organisations organised around product/service lines to a new multicentred approach or 'process orientation' where success is dependent on identifying the needs of discrete customer segments.

With the shift in emphasis, Mr Locke identified consumer data as the key for corporations keen to identify their most profitable customers. However, with increasing customer segmentation, those at the periphery will become increasingly marginalised because of

restricted access to goods and services in the global economy.

Johanna Plante, CEO, Australian Communications Industry Forum

Ms Plante summarised the changes to telecommunications regulation since July 1997, particularly in industry self regulation.

She discussed the structure of ACIF and its mission of prompt delivery of industry standards and codes and compliance with them. She stressed the need for codes to take into account the legitimate interests of industry participants and for consultation with the public and regulatory bodies as part of their development.

Jan Muysken, Chair, WebTrust Implementation Taskforce and Partner, PricewaterhouseCoopers

Jan Muysken discussed the Internet certification scheme known as 'WebTrust' which allows conforming Internet traders to publicly identify themselves as businesses which conform to stringent standards of ethical behaviour.

Despite the growth in popularity of the Internet, he identified the most significant barriers to the adoption of Internet commerce by end users as being concerns over security, traceability and warranty/refund rights.

The CPA WebTrust seal was developed as a response to these concerns and is designed to give consumers a credible, independent assurance about the security and integrity of online transactions. The WebTrust seal is issued to traders only after a rigorous examination of their business practices, transaction integrity and information protection procedures. Once issued with a seal, a trader may continue to display it provided an independent

ISCCO conference

assurance examination is successfully completed at certain defined intervals. Consumers may view the highly encrypted seal using their Internet browser software. Whilst not yet available in Australia, WebTrust is leading the way in independent quality assurance for Internet traders.

Richard Cousins, Chairman, Internet Industry Association

Mr Cousins discussed the benefits of self regulation but emphasised that a successful regulatory framework requires a mix of self regulation and legislative safety net. He pointed to the unique features of the Internet which mean that traditional regulation alone would be ineffective — the diffuse, international nature of the net, the rapidity of technological change and the difficulties involved in identifying offenders and effectively enforcing rules.

The primary focus of the talk was on the IIA's own Internet Industry Code of Practice. The code is voluntary and may apply to participants such as ISPs, web designers, content providers and vendors. It seeks to regulate illegal and unsuitable content, consumer remedies, privacy and confidentiality and provides for use by members of a 'Code Compliance' symbol.

Michael Kay, Executive Chairman, Corporate Affairs, AAMI

AAMI broke new ground in 1996 with its consumer service charter which has become a market sensitive means of managing consumer issues at AAMI.

Mr Kay explained that, while charters are aimed at delivering excellent customer service standards, they also act as mechanisms for compliance with relevant fair trading laws and codes, and allow companies to gain a competitive advantage by offering 'quality trader' guarantees which inspire confidence in risk averse consumers.

Following immediately on from the global conference was the inaugural annual general meeting and conference of the International Society of Consumer and Competition Officials (ISSCO).

ISSCO was established at the 1997 Consumer International World Congress in Chile. It aims to encourage cooperative international approaches to solving competition and consumer problems via a world-wide network of competition and consumer officials.

Members come from the USA, Europe, Asia, Australia, New Zealand and Africa.

The executive committee reflects ISSCO's Australian origins and its international profile. The President is Allan Asher, Deputy Chair of the ACCC. Vice-President is Antoine Van der Haegen who is in charge of international relations at the European Commission's consumer policy directorate (DG 24). The treasurer is Bill Dee, Director of compliance strategies at the ACCC.

Ordinary members include Michael Donohue, a staff attorney with the US Federal Trade Commission; Dr Changfa Lo, a Commissioner with the Fair Trade Commission of Taiwan; Dr Alistair Ruiters, Chief Director of business regulation and consumer services in the South African Government; and Hamish Gilmore, Commissioner of Consumer Affairs in South Australia.

The conference brought together a wide range of speakers from around the world, beginning with Tony Van der Haegen who spoke on how international cooperation in the area of consumer protection is helping consumer officials respond to the challenges created by borderless markets.

Allan Asher took up this theme in his paper on the need for greater

international harmonisation of consumer and competition standards to enhance global governance.

Michael Donohue spoke about US efforts to fight Internet fraud and discussed recent international cooperation through such activities as international Internet sweep days like the one recently coordinated by the ACCC.

ACCC Queensland Regional Director Alan Ducret talked about the ACCC's experience in training enforcement investigators.

John Bridgeman, Director-General of the Office of Fair Trading in the United Kingdom, Keith Manch, General Manager of the Ministry of Consumer Affairs in New Zealand and Janet Murphy, General Manager of the Consumer Affairs Division of the Commonwealth Treasury participated in a panel discussion on 'Getting industry to shoulder the burden of disputes; corporate and industry complaints handling'.

Another panel discussion with Caroline Banks from the UK Office of Fair Trading and Bill Dee focused on 'codes of conduct as a fair trading compliance mechanism: success or failure?'

The afternoon workshops were one of the most exciting aspects of the conference. Participants discussed the experiences of their own countries and exchanged information and ideas on how best to tackle particular problems. Workshops were held on hard core cartels, consumer education and integrated compliance strategies.

If you would like more information about ISSCO and how to become a member, contact Bill Dee on (02) 6243 1093.

The GST — and the ACCC's role

Everyone's talking about the GST, including the ACCC, which is already gearing up for its role. Set out below is an outline of the responsibilities it is to be given.

The ACCC is to get special transitional powers contained in A New Tax System (Trade Practices Amendment) Bill 1998 which inserts a new Part VB into the Trade Practices Act.

It will have the power to monitor prices to prevent the possibility of consumer exploitation and excessive profit taking in the transition to the new tax system — from 1 July 1999 or when the law commences (whichever is later), until two years after implementation of the GST.

In the period before the GST is introduced the prohibition on price exploitation will apply to prices for goods on which the rate of sales tax is to be reduced on 1 July 1999.

Price exploitation is defined in the Bill as occurring if the price for the supply of a good or service is unreasonably high, having regard to the effect of the tax changes under the next system. The Bill recognises that many factors may affect price. It will not be price exploitation if the higher price is attributable to the supplier's costs, supply and demand conditions, or any other relevant matter.

The existing Part IV penalties will apply: up to \$10 million for corporations and up to \$500 000 for individuals.

The ACCC will be able to seek injunctions or, as an alternative to court action, accept voluntary undertakings in line with its existing power under s. 87B of the Trade Practices Act.

New power to issue notices

The ACCC will have the power to issue notices in two price exploitation situations.

The first is if the ACCC considers a corporation has breached the prohibition. In any proceedings seeking penalties or injunctions this notice will constitute prima facie evidence that the corporation made a supply at a price that was unreasonably high, and that the price is not attributable to a supplier's costs, supply and demand conditions, or any other relevant matter. In this instance it will be up to the corporation to provide evidence to the contrary.

The second situation is if the ACCC considers issuing the notice will prevent price exploitation. In these notices the ACCC will specify a maximum price that, in its opinion, may be charged for supplies of a specified kind, made in specified circumstances, and during a specified period. These notices will carry no evidentiary effect but will give an indication of the price above which the ACCC will consider a future supply to constitute price exploitation. The ACCC will be able to publish these notices.

Information gathering

Under Part VB the ACCC will have extensive information gathering powers additional to those that already exist under s. 155 of the Trade Practices Act. The new powers will generally be used to collect background information on prices and price setting — and the ACCC will be able to do this before the transition period begins, which will enable it to compare before and after prices.

State and Territory cooperation

Because limitations on the Commonwealth's constitutional power mean these measures can't extend across the whole economy, States and Territories will be applying the Commonwealth legislation to their own jurisdictions.

Guidelines

As part of its responsibilities the ACCC will be required to publish guidelines and will have to take them into account before issuing notices. The court may also have regard to them in proceedings brought by the ACCC.

The ACCC will embark on a major compliance education program and seek the active cooperation of industry in the development of guidelines.

ACCC is listening to small business

The first issue of **ACCC update** heralded proposed changes to the Trade Practices Act specifically for small business. Those changes are now part of the law.

Issue 2 introduced Philip Eliason, manager of the ACCC's national small business program as well as answering the most frequently asked questions in relation to the new Franchising Code of Conduct.

This issue gives some background on how the ACCC is working to meet its objectives and introduces the rest of the small business team.

Small business is now a significant constituency for the ACCC which sees diversity of contact as the hallmark of its links with the sector.

Contact ranges from meetings with individual firms to discuss difficulties they face in the marketplace, regional business groups to acquaint them with the ACCC and its work in administering the Trade Practices Act, and ethnic community-based organisations that have significant business interests.

A major element is regular contact with peak, national business organisations through direct consultation and collective roundtable discussion.

This takes place through the Small Business Advisory Group (SBAG), which has 10 member bodies representing several hundred small business organisations and is chaired by ACCC Commissioner Sitesh Bhojani. Both the ACCC and the business organisations shape SBAG's agenda with the objectives of:

- bringing to the ACCC's attention trade practices issues affecting small business;

- assisting the ACCC to advise the small business community about its work; and
- assessing the compliance burden of trade practices legislation on small business and advising the ACCC on ways to minimise the impact.

Through SBAG the ACCC has firsthand access to the views of, for example, the professions, rural producers, retailers and motor traders on activity affecting their members. SBAG's discussions also take in future directions for administering the Act and law reform matters. The ACCC advises on new legal issues and general trade practices enforcement matters relating to small business operations and consumer and business protection issues.

Other Commonwealth departments and agencies are invited to SBAG half-yearly meetings for briefings and to discuss with industry representatives policy and new program development directed at small business.

At last December's meeting the Department of Industry, Science and Resources reviewed the status of the emerging Oilcode which is aimed at

improving commercial activity and relationships in the petroleum distribution sector.

Each of the ACCC's capital city offices now has small business staff. Peak consultations are held in Canberra.

Regional and local work with business chambers, professional advisers to business, and local government support networks underpin and reinforce the ACCC's ability to learn from business about cases of unconscionable conduct, franchising disputes, misleading conduct and other difficulties which regularly confront business.

SBAG membership

- Motor Trades Association of Australia
- Council of Small Business Organisations of Australia
- Australian Chamber of Commerce and Industry
- Law Council of Australia
- The Australian Council of Professions
- Australian Industry Group
- Real Estate Institute of Australia
- Australian Retailers Association
- National Farmers Federation
- Australian Federation of Business and Professional Women

First ACCC action under s. 51AC

In February the ACCC filed in the Federal Court its first action under the new s. 51AC of the Trade Practices Act, alleging that an Adelaide food plaza landlord engaged in unconscionable conduct towards one of its tenants.

The landlord, Leelee Pty Ltd, allegedly:

- increased the rent contrary to the terms of the lease;
- failed to act to protect the tenant's rights under his lease; and

- forced the tenant to charge not less than a particular amount for certain food dishes while allowing his competitors to charge less for theirs.

The ACCC also alleges that Leelee managing director, Pua Hor Ong, aided and abetted or was knowingly concerned.

The ACCC is seeking injunctions, declarations, and orders for payment of damages.

ACCC small business unit

ACT



Philip Eliason

Philip joined the Small Business Unit as Manager, National Small Business Program in June 1998. His task is to deliver to small business the benefits of a better knowledge of its rights and obligations under the Trade Practices Act.

He has, as have all SBU staff, direct experience of the private sector. He has also been a senior representative of business organisations in Canberra as Deputy Director of the National Farmers' Federation and CEO of the Real Estate Institute of Australia. Before joining the ACCC he was Senior Manager of ANZ's business and community relations, customer concerns and group sponsorships.



Ziv Gavrilovich

Ziv has been the Director, Small Business Advice in the ACCC, Canberra since September 1996.

From 1991-96 he managed AusIndustry for the ACT Government. For 10 years before he was MD of his own management consultancy assisting aid recipient countries in the South Pacific, Indian Ocean and South-East Africa.

Ziv has a BA and a Grad. Cert. in Management. He is a Fellow of the Australian Institute of Management and Executive Councillor of the ACT Division, Secretary of the Canberra Business Council and Chairman of its Export Education Task Force.

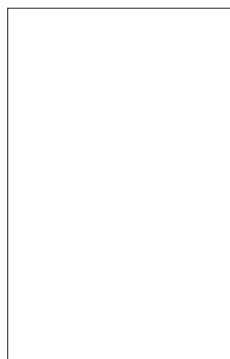


Nigel Ridgway

Nigel has been a project officer with the ACCC since February 1998. He has been actively involved in the Small Business Unit and issues associated with the administration of the Franchising Code of Conduct since May 1998.

He gained a practical understanding of law and commerce while an officer of the Commonwealth Bank and while running his own landscaping and property maintenance business from 1987 to 1989. He has an LLB and a B.Comm.

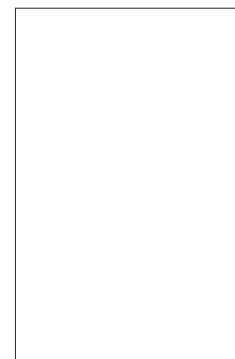
NSW



Heidee Consuegra

Heidee joined the Unit in June 1998 after three years as Business Banking Officer, ANZ Business Banking Unit, Canberra. Her experience in the small business sector has been enhanced by helping her parents with their family business.

She has a B.Comm. (Banking and Finance).



Konrad Chmielewski

Konrad has a background as a small business operator owning and operating three motorcycle businesses. Before moving to the ACCC he worked in the Australian Taxation Office on tax policy, litigation and superannuation. He has a BA, LLB and a Grad. Diploma in Legal Practice.

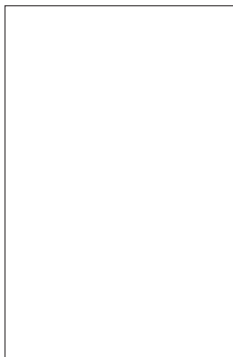
National seminar program

The ACCC's Small Business Unit coordinates a regular program of seminars to assist small businesses understand recent developments on trade practices issues.

For example, together with Small Business Victoria it will present a range of activities as part of the Victorian Government's Small Business May including:

- A breakfast seminar on 'Advertising and Marketing and the Trade Practices Act' at

Qld



Paul Jones

Paul has a background in marketing and small business management in the oil industry. He has worked as a franchise development manager and has operated both Ampol and Caltex service stations in South-east Queensland. Paul has also been a part time lecturer at Queensland University of Technology. He has a BA and Grad. Cert. in Education.

Victoria



Darren McClelland

Darren came to the ACCC from the Department of Workplace Relations and Small Business where he ran a number of small business seminars and workshops on new IR legislation throughout Victoria and Tasmania, and maintained small business liaison. He has worked with the former Trade Practices Commission and started his career with the National Australia Bank in 1984. He has a B.Comm and MA in Industrial and Employee Relations.

SA



Peter Hackworth

Peter has had a close relationship with business and various levels of government for many years. He came to the ACCC from the Upper Murray Development Board in north east Victoria. Before that he worked in regional economic development on the Fleurieu Peninsula in South Australia. He has also owned and operated a tourism and recreational hire business.

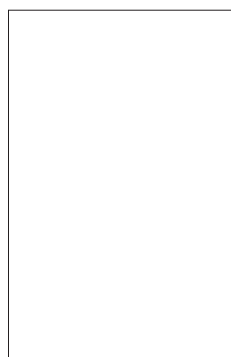
WA



Siobhán O'Gara

Siobhán joined the ACCC from the WA Small Business Development Corporation. Before this she owned and managed a business in Brisbane that included franchise development. She has lectured and tutored at Griffith University in economics and been involved in shopping centre management with Jones Lang Wootton. She has a B. Admin and a Grad. Dip. in Economics.

NT



James Brohier

James has been a project officer in the ACCC Darwin office since October 1998. He has worked as a lawyer in a Darwin firm and has been an Associate to Justice Sally Thomas in the Supreme Court of the NT. He has also worked in the NT Attorney General's Department and has sub-edited NT Law Reports on a casual basis for several years. He has an LLB and a BA in languages.

the Darebin Arts and Entertainment Centre in Preston on 24 May, held in conjunction with NORTH Link and the Darebin City Council. Professor Allan Fels, ACCC Chairman will be the guest presenter.

- Professor Fels will be a keynote speaker at the "Power in Numbers" Conference at the Hotel Sofitel, Melbourne, on 31 May.

- Darren McClelland, Small Business Officer will be presenting information sessions at regional business expos in Bendigo, Morwell and Mildura.

In NSW the ACCC is currently developing a series of regional seminars with chambers of commerce and the Department of State and Regional Development to address business issues

and the TPA including new country of origin labelling law.

To find out more about the national seminar program contact the Small Business Officer in ACCC regional offices.

Small business program structure

Sitesh Bhojani
Commissioner
Ph: (02) 6243 1132
Fax: (02) 6243 1122

Yasmin King
Associate Commissioner
Ph: (08) 8373 6620
Fax: (08) 8373 6621

ACCC Enforcement and Regional Coordination Division

Glen Barnwell
First Assistant Commissioner
Ph: (02) 6243 1044
Fax: (02) 6243 1047

Enforcement Unit
Michael Kiley

Small Business Unit Manager
Philip Eliason
Ph: (02) 6243 1223
Fax: (02) 6243 1078

Consumer Protection &
Compliance Strategies
Judy Hartcher

SB Advisory Group, Ethnic,
TAFE/business education, s. 51AC
Ziv Gavrilovich
Ph: (02) 6243 1063
Fax: (02) 6243 1078

Franchising, Internet
advice, seminars
Nigel Ridgway
Ph: (02) 6243 1070
Fax: (02) 6243 1078

Small Business Unit
Public email:
small.business@accc.gov.au

Statistics, unit marketing
Heidee Consuegra
Ph: (02) 6243 1069
Fax: (02) 6243 1078

Regional Small Business Officers

Small business liaison, TAFEs, State Government links, ethnic organisations, local/regional media

NSW — Konrad Chmielewski
Ph: (02) 9230 9137
Fax: (02) 9231 5652
Mobile: 0413 939 825

Qld — Paul Jones
Ph: (07) 3835 4645
Fax: (07) 3832 0372
Mobile: 0419 022 033

VIC — Darren McClelland
Ph: (03) 9290 1963
Fax: (03) 9296 1906

NT — James Brohier
Ph: (08) 8943 1497
Fax: (08) 8943 1455

WA — Siobhán O'Gara
Ph: (08) 9325 0613
Fax: (08) 9325 5976
Mobile: 018 387 899

SA — Peter Hackworth
Ph: (08) 8205 4350
Fax: (08) 8410 4155
Mobile: 015 544 859

There's more to the ACCC than the big picture

Much of the ACCC's work is on 'big picture' issues, e.g. assessing major company mergers and active participation in the sweeping reforms in telecommunications, transport and energy markets. All of this work ultimately has an effect on everyday lives — it's not just something for readers of the business pages.

The ACCC's central objective of preserving or fostering competition throughout the economy is not an end in itself. The real prize is what flows from fair and vigorous competition — lower costs for business leading to lower prices for consumers, improved quality and choice in goods and services.

Often these goals are necessarily long term. Industries like gas, electricity, telecommunications, which had for long been the unchallenged preserve of government monopolies or near monopolies, can't be reformed and opened up overnight.

The present challenge is in getting the groundwork right, in laying foundations for lasting competitive structures which will reliably deliver the benefits in future.

But this is only part of the ACCC's work and has not reduced the 'traditional' task of enforcing the provisions of the Trade Practices Act dealing with restrictive trade practices, consumer protection, unconscionable conduct and product safety.

In these areas the benefits often show up quickly and can be measured by the people and markets affected, and this is often what drives the ACCC's approach to enforcement work.

Where there appears to be a breach of the Act the ACCC's first aim is to stop the offending conduct and to prevent its recurrence. Wherever possible and appropriate it also seeks compensation or other remedies for the people who have suffered loss.

Take, for instance, these examples of matters the ACCC has finalised in the last few weeks.

Xmas toys

A combination toy abacus and clock face was recalled by its importer after the toy failed ACCC-initiated mandatory safety standard tests for children under three. The importer agreed to recall the abacus from retailers and provide for retailers to refund consumers the full cost of the toy or to provide a replacement to the same value.

Push bikes were another cause for concern with wrongly assembled brakes, missing chainguards, bells or other warning devices just some of the faults found in ACCC surveys.

The ACCC puts a high priority on its product safety and information standards responsibilities. (See page 12.)

Burns victim gets compensation

In December the Full Federal Court dismissed an appeal by a company selling caustic soda that it was not responsible for a man receiving burns while using its product. Glendale Chemical Products Pty Limited contended that it wasn't the manufacturer, merely the packager/supplier.

The philosophy of the product liability provisions of the Trade Practices Act is that a consumer who suffers injury can succeed against the supplier even if the actual manufacturer does not conduct business within Australia.

Kmart discounts

Kmart gave the ACCC court-enforceable undertakings in relation to its pricing policy after Commission allegations that it had breached the two-price advertising and misleading and deceptive conduct provisions of the Trade Practices Act in relation to a series of deductions on the shelf price of a Black & Decker 2-cup espresso machine.

Doctors' agreement

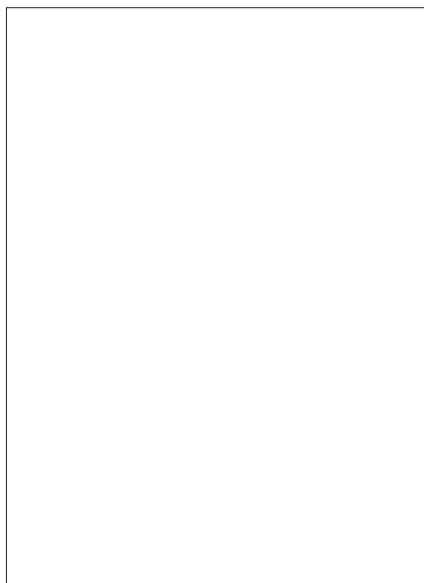
ACCC update issue 1 reported an ACCC court action against several NSW anaesthetists and the Australian Society of Anaesthetists (ASA) in relation to alleged unlawful agreements fixing the charges for 'on-call' services to hospitals.

That case has now been settled with the ASA giving undertakings not to engage in fixing, controlling or maintaining prices for the supply of on-call services and to implement a trade practices compliance program.

Berri fruit juice

Berri Limited had until 10 February 1999 to cease labelling its new Frusion fruit drinks as made from 100 per cent whole fruit when they are actually a blend of reconstituted juices (mainly grape) and purees. Berri also gave s. 87B court enforceable undertakings to publish corrective advertising and offer refunds.

Safer products — everyone wants them, so why don't we have them?



▲ Mr Robert Hershan, Managing Director, Pacific Brands, speaking at the product safety forum.

Design defects and product malfunctions cause an estimated 650 000 injuries in Australia each year. Product recalls average one a day.

In November 1998 the ACCC organised a forum to discuss ways to improve these disturbing figures. The day achieved the ACCC's purpose of bringing together the different sectors. Participants included leading figures in manufacturing, importing, and retail as well as government, consumer and community groups and the private and legal sectors.

Identified were the key strengths and weaknesses in Australia's system, as were the current impediments to, and opportunities for, change. All participants voiced their commitment to promoting product safety issues. The ACCC expects this forum to be the start of an ongoing process of collaboration and development to provide safer products.

The speakers

Speakers at the forum included Allan Asher, ACCC Deputy Chairman, who said that although Australia has a good legislative base that includes product liability provisions, mandatory standards, and systems for the removal of unsafe goods from the marketplace, he feels there is a complacency unsupported by facts. He believes a culture of ignorance exists, especially within small and medium sized enterprises, that needs to be overcome.

Dr Ellen Beerworth of Ellen Beerworth and Associates, drew on her legal experience with businesses that supply consumer goods, citing ignorance and lack of management commitment as two leading impediments.

She said government hasn't seen the issue as a priority and that, compared with occupational health and safety and the environment, there is limited incentive for company directors and officers to take positive steps.

Robert Hershan, MD of Pacific Brands, said that product safety is a significant issue for manufacturers and importers. He believes the moral, business and financial responsibilities should be the reasons for ensuring the safety of goods, irrespective of legislative requirements.

Injury prevention and research consultant Jerry Moller's concern was that too many companies manage the issue of safety post, not pre, event.

He said companies focus on the aesthetics and durability at the design stage; safety should also be a component so that hazards can be designed out.

Weaknesses of the present system include Australia not having the product safety resources of larger nations, although it carries a similar number of product lines; much of the production being done off-shore, leading to reduced availability of local expertise; and the fact that there is no central product safety organisation.

Strengths include Australia, as a well-educated nation with a sound system of government, having the capacity to give proper consideration to product safety; the increasing collaboration within the private sector and potential for greater cooperation with government; and the increasing availability of injury data which has begun to be used in risk management and design.

Impediments to change within the private sector include a general lack of business will, with good product safety and overall risk management perceived as costs; limited sources of advice and guidance; and small business being preoccupied with business issues.

Generally, impediments include no national research agency and no general safety directive prohibiting the sale of unsafe goods.

Opportunities for change include a greater use of risk management; a closure nexus between shareholder value and product performance; communication strategies, including the Internet; learning from occupational and environment safety management strategies; and putting product safety on the same side of the balance sheet as marketing.

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Commission contacts

General Manager — Hank Spier (02) 6243 1124

Mergers and Asset Sales, Senior Assistant Commissioner — David Smith (02) 6243 1234

Adjudication, Senior Assistant Commissioner — John O'Neill (02) 6243 1226

Enforcement and Regional Coordination, First Assistant Commissioner — Glen Barnwell (02) 6243 1044

Consumer Protection and Compliance Strategies, Judy Hartcher (02) 6243 1066

Small Business Program, Philip Eliason (02) 6243 1223

Enforcement Unit, Michael Kiley (02) 6243 1052

Corporate Management, Senior Assistant Commissioner — Helen Lu (02) 6243 1009

General Counsel — Luke Woodward (02) 6243 1273

Micro-economic Reform, First Assistant Commissioner — Joe Dimasi (03) 9290 1814

Electricity Group, Senior Assistant Commissioner — Michael Rawstron (02) 6243 1249

Gas Group, Senior Assistant Commissioner — Mark Pearson (02) 6243 1276

Transport and Prices Oversight, Senior Assistant Commissioner — Margaret Arblaster (03) 9290 1862

Telecommunications Group, Senior Assistant Commissioner — Michael Cosgrave (03) 9290 1914

Commission offices

ACT (national office)
General Manager, Hank Spier
PO Box 1199, DICKSON ACT 2602
Tel: (02) 6243 1111 Fax: (02) 6243 1199

New South Wales
Regional Director, Carl Buik
GPO Box 3648, SYDNEY NSW 2001
Tel: (02) 9230 9133 Fax: (02) 9223 1092

Tamworth
Assistant Director, Albert Julum
PO Box 2071, TAMWORTH NSW 2340
Tel: (02) 6761 2000 Fax: (02) 6761 2445

Victoria
Regional Director, Tom Fahy
GPO Box 520J, MELBOURNE VIC 3001
Tel: (03) 9290 1800 Fax: (03) 9663 3699

South Australia
Regional Director, Bob Weymouth
GPO Box 922, ADELAIDE SA 5001
Tel: (08) 8205 4242 Fax: (08) 8410 4155

Queensland
Regional Director, Alan Ducret
PO Box 10048, Adelaide Street Post Office
BRISBANE QLD 4000
Tel: (07) 3835 4666 Fax: (07) 3832 0372

Townsville
Assistant Director, Paul Arscott
PO Box 2016, TOWNSVILLE QLD 4810
Tel: (07) 4771 2712 Fax: (07) 4721 1538

Western Australia
Regional Director, Stuart Smith
PO Box 6381, EAST PERTH WA 6892
Tel: (08) 9325 3622 Fax: (08) 9325 5976

Tasmania
Regional Director, Peter Clemes
GPO Box 1210, HOBART TAS 7001
Tel: (03) 6234 5155 Fax: (03) 6234 7796

Northern Territory
Director, Derek Farrell
GPO Box 3056, DARWIN NT 0801
Tel: (08) 8943 1499 Fax: (08) 8943 1455

Media Liaison — Lin Enright
(02) 6243 1108

General publications queries —
Robert Booth, Canberra
(02) 6243 1143
Gavin Gillies, Melbourne
(03) 9290 1829

What's new on the bookshelf!

Recently released were two important guides on 1998 changes to trade practices legislation: **Unconscionable conduct in business transactions**, and **Country of origin claims**.

The unconscionable conduct guide is available from all ACCC offices for \$10.

Page 1 of ACCC update issue 2, dated October 1998, carried a story about the new law for 'Made in Australia' claims and referred to upcoming publications to explain the trade practices implications. A guide and news for business sheet are now available free from all ACCC offices.

Two news for business sheets in relation to false advertising are now also available: one for advertising agents and the other for the motor vehicle industry. They were written after an August 1998 court decision against Nissan Motor Company (Australia) Pty Ltd, which was found guilty of misrepresenting the model and price of its popular Patrol RX Turbo Diesel.

Also released was **Sunglasses and fashion spectacles: guide to safety standard**. It is available from all ACCC offices; the first copy is free and subsequent copies cost \$5 each. The standard itself, Australian Standard 1067.1-1990, is not available from the ACCC but can be purchased from Standards Australia offices.

