

November 2002

From the Small Business Commissioner

The Commission has continued to facilitate dialogue in two sectors, retail tenancy and smash repair in which the level of disputation connected with Trade Practices issues suggest that the development of a Code of Practice may lead to greater transparency and an agreed approach. In such challenging areas national codes may avoid piecemeal black letter law in State and Territory jurisdictions.

Progress in these dialogues has been somewhat disappointing. There are some parallels with an earlier experience the Commission had in dealing with life insurance when many in the industry were resistant to a cooperative industry based solution. These attitudes changed and the industry Code (admittedly business to consumer) that was developed has worked effectively to underpin fair practice and transparency.

I had the privilege recently to represent the ACCC at a major international forum on competition and fair trading held in Korea. There is considerable interest in the ACCC "model" in both developed and developing economics and particularly our program and provisions dealing with small business, unconscionable conduct and franchising.

Finally this briefing would not be complete without acknowledgment of the announcement by ACCC Chairman Allan Fels that he will step down from the role in 6 months time. Professor Fels has made an incredible contribution over the past 10 years to the stature and impact of fair trade practices and consumer protection in Australia and internationally. He has achieved this through astute direction of the ACCC's enforcement role, influencing the acquisition of great powers and his public profile. Professor Fels has at all times emphasised the critical role the TPA plays in providing benefits to small business seeking to compete fairly.

Professor Fels' views on a range of matters affected by the Trade Practices Review being conducted by the Dawson Committee have been well captured in a video production of the Competing Fairly Forum which is reported on in the following article.

John Martin
Small Business Commissioner

2002 Competing Fairly Forum Future directions

The fifth ACCC Competing Fairly Forum "Future directions" has been completed and is to be launched in December.

This forum, a video production, discusses issues arising from the Dawson Committee Review of the Trade Practices Act., particularly those that could affect small business and consumers.

Hosted by George Negus, the panel comprised:

- Professor Allan Fels, Chairman of the ACCC
- Louise Castle, Chair of the NSW Law Society
- Stan Moore, Policy Director of the Australian Retailers Association
- Peter Hendy, CEO of the Australian Chamber of Commerce and Industry

The video features a highly informative discussion between George Negus and Professor Fels followed by a diverse range of views from the panel covering:

- Collective bargaining
- Misuse of market power
- Price fixing
- The protection the Trade Practices Act gives consumers

Opinion pieces about possible changes to the Act and the operation of the ACCC were also provided in the forum video by the Mick Keogh (NSW Farmers Association), Michael Delaney (Motor Traders Association of Australia) and Chris Field (Consumer Law Centre Victoria).

The forum is available from the ACCC in both video and CD format. It will be distributed nationally to the ACCC supporter network in 450 locations in rural and regional Australia. The Commission's Small Business Managers and Regional Outreach Officers will be conducting seminars in the New Year with the supporter network. Organisations who wish to provide seminars for their members should contact their local ACCC regional office or the Infocentre on 1300 302 502.

ACCC Hot Spot - Guide to Real Estate Industry

The ACCC and the Real Estate Institute of Australia (REIA) have issued a guide for the real estate industry to help it understand the benefits and responsibilities associated with the Trade Practices Act. The guide is written for owners, managers and advisers to the real estate industry and provides examples relevant to the industry. It includes an easy to understand summary which outlines the "do's and don'ts" for the industry. Fair and Square (\$10) is available from the ACCC Infocentre on 1300 302 502 or the website www.accc.gov.au.

Some items in **ACCC Briefing** refer to Media Releases and their dates eg MR 12/8/02. These can be found on the ACCC website www.accc.gov.au. For e-mail copies of **Briefing** please send details to your local ACCC contact. (See page 6)
For TPA information - ACCC Infocentre 1300 302 502

Global Action on Health Products

18 companies are facing legal action following the worldwide Internet sweep for misleading and deceptive conduct claims about health products held earlier this year. During the one-day sweep, over 1,400 websites from around the world were identified as 'suspicious'. 200 investigations are still running in the 19 countries that participated.

MR 23/09/02

International Competition Network

A milestone has been reached for merger review and international competition advocacy after the inaugural International Competition Network (ICN) conference, attended by top officials of 61 competition and fair trading agencies worldwide. This conference has moved forward in determining how competition agencies can bring about substantial and procedural convergence worldwide. The ICN aims to improve competition law enforcement and administration to benefit business and consumers. It draws its expertise from antitrust agencies, the private sector, academia and other international organisations. The ICN has a steering committee of which Australia is a member.

MR 30/09/02

Industry Codes

Retail tenancy

The ACCC continues to receive complaints concerning the relationship between retail landlords and tenants, particularly in relation to unconscionable conduct, and has taken a number of cases dealing with commercial leases.

In September this year the ACCC convened a round table meeting of retail tenancy stakeholders, including landlords, industry associations and state and commonwealth regulators, as a means of exploring options of addressing these issues

Participants identified concerns relating to disclosure of information between landlords and tenants, particularly turnover figures, the issues facing sitting tenants when negotiating lease renewals, and market rental valuations. The meeting was also an opportunity to discuss the interaction of retail tenancy issues with the Trade Practices Act, current state regulations, and the potential for a nationally consistent approach to retail tenancy regulation.

A number of positive initiatives were identified, particularly the steps taken by the Australian Retailers Association (ARA) and the Shopping Centre Council in relation to the adoption of a uniform approach to casual mall leasing.

Smash Repair

On 31 October 2002, the ACCC hosted a second round table meeting of stakeholders in the smash repair industry. The meeting was attended by representatives from independent smash repairers, insurers, smash repair industry bodies, the Insurance Council of Australia, consumer organisations and State and Federal government.

Following the last round table meeting in July 2002, the ACCC had facilitated a process of information exchange between insurers and repairers.

Out of this process, the ACCC had compiled a paper that identified the major issues of concern, including preferred repairer schemes, guarantee requirements, repair terms, customer ownership, consumer choice and consumer information. Discussion at the meeting centred around these topics, with particular attention being paid to consumer choice and information.

There was also some discussion of industry measures, such as a national code of conduct, to improve the relationship between insurers and repairers. In order to progress the matter further, it was decided that the Motor Trades Association of Australia, the Insurance Council of Australia and a consumer representative would meet in December to discuss more specific issues of concern.

Consumer and Small Business Protection

Misleading Advertising – Role of Advertising Agencies

After findings in the Federal court against NRMA Health for misleading advertising, the ACCC had alleged that Saatchi & Saatchi Australia, as the agency that prepared the advertising, was a principal in the conduct. The Court found that the agency was not a principal in the misleading conduct. In his judgement, Justice said the agency "had prepared the 'bullet', but it was the NRMA companies that took the step of disseminating it. The ACCC will appeal the decision. **MR 04/10/02**

Customer Refunds – Mobile Phones

Vodafone will offer refunds to some pre-paid mobile telephone customers and provide full disclosure of contract conditions. This follows complaints from Vodafone customers alleging they were misled about a reduction in the expiry period for their FastFone pre-paid call credits. Vodafone acknowledged that it did not inform all customers of the reduction in the expiry period. Additionally, old advertising material at point-of-sale remained available after the change was introduced. Vodafone has subsequently re-introduced the 365-day call credit expiry period to the FastFone pre-paid service.

MR 27/09/02

Misleading Advertising – Home Loans

The ACCC has instituted Federal Court proceedings against the Commonwealth Bank of Australia alleging false, misleading or deceptive advertising in one of its home loan campaigns after receiving complaints from home loan customers. Prominently displayed during the advertisements in question was the caption "No establishment fee". The ACCC alleged that the clear impression conveyed by the advertisements was that customers applying for these home loans who met standard home loan requirements would not incur an establishment fee and that the fine print conditions were inadequate to dispel that impression.

MR25/09/02

Misleading Advertising – Internet Access

The ACCC has instituted proceedings in the Federal Court against Dodo Internet alleging misleading and deceptive conduct, false and misleading representations and unconscionable conduct in breach of the Trade Practices Act. The ACCC alleges that from approximately September 2001, Dodo made misleading representations in its television advertisements, in pamphlets, on its website and in telephone conversations between its sales representatives and consumers.

MR27/09/02**Internet Name Protection**

Following orders by consent against Melbourne-based Internet Name Protection (formerly Internet Name Group or 'ING') and its directors, the ACCC has warned suppliers of domain name renewal services not to mislead or deceive customers. ING had sent unsolicited invoices to small businesses throughout Australia seeking payment for domain name services including the registration and renewal of domain names.

MR 17/10/02**Internet Registrations**

Federal Court proceedings against domain name reseller Internet Registrations Australia (IR) have been instituted by the ACCC. The ACCC alleges that since approximately January 2001, IR has made false or misleading representations regarding registration and renewal of Internet domain names.

MR 17/09/02**U.S. Web-Based Pyramid Selling Scheme Banned**

Following ACCC action, the Federal court has declared a United States web-based company Skybiz.Com, breached the pyramid selling and other consumer protection provisions of the Trade Practices Act. When the ACCC instituted proceedings against SkyBiz.Com, it alleged that participants paid US\$100 for a website in order to take part in the scheme, which SkyBiz claimed participants could then earn monetary payments by introducing new consumers into the scheme. The orders restrain SkyBiz from repeating the conduct and require it to disclose to the ACCC, contact details of Australians who took part in the scheme.

27/09/02**Computer Betting Software**

The Federal Court has found that Robert James Price misled consumers and acted unconscionably in connection with the marketing and sale of horse race betting software in Australia and New Zealand. The ACCC alleged the software, marketing under names such as 'Autotab', 'Offtrack' and 'Solutions Software' falsely claimed to be able to predict horse-race place-getters with high accuracy. The ACCC had the program tested and based on those tests, believes punters would achieve a similar success rate for a place bet if they were to simply follow the TAB tip.

MR09/09/02**Unsafe Children's Cot**

An importer of children's cots that did not comply with the mandatory product safety standard has provided court-enforceable undertakings to the ACCC and ceased supplying the cot in question. The ACCC found that the cot failed to comply with the safety labelling and certain design requirements of the standard. The ACCC notes that Lane Wrigley PL had supplied the cots, known as the 8036 Baby Bed, to discount variety stores throughout Australia.

MR 14/10/02**Phone Cards**

Proceedings against Telstra Corporation have been instituted by the ACCC in relation to Telstra's pre-paid long distance calling card product called 'Say G'day'. It is alleged that Telstra has engaged in misleading and deceptive conduct, and false and misleading representations by making various representations to the following effect: That the 1800 access number was "free", "a free call from fixed phones" and/or would not be material or significant in the context of the overall charges of the call to be placed. However, the ACCC alleges that the 1800 access number is not free and instead costs 53 cents per minute in addition to the call rates.

MR 24/10/02**Health Products**

The ACCC has instituted proceedings in the Federal Court against Internet trader, Michael Desveaux. It is alleged that Mr Desveaux engaged in misleading and deceptive conduct in relation to the marketing and sale of a number of products via his Internet site www.transformation2012.com.au. Amongst the claims are that consumption of the products can assist in treating and/or curing a range of diseases and infections. The ACCC alleges that consumption of these products would not produce any of the beneficial effects claimed.

MR23/09/02**Labelling****Food and Beverage Labelling Guidelines**

After extensive research, consultation and a cooperation between members of the Government and the private sector, the ACCC has issued guidelines on country of origin claims made by the food and beverage industry. The guide is the third in a series of 6 ACCC publications to assist different industries in compliance with the Act's country of origin rules.

MR 10/09/02**False Labelling – Clothing**

The Federal Court has imposed a fine on Tasmanian knitwear company GIA, which traded as Tamar Knitting Mills. Tamar falsely represented that Chinese-made polo shirts supplied by Tamar over a 12-month period were made in Tasmania by Tamar. The court found that after purchasing Chinese-made polo shirts from an importer, Tamar removed the original collar label on each polo shirt, which stated the polo shirt was made in China. Tamar then substituted a 'Tamar' collar label and attached a swing tag to each polo shirt falsely representing that the polo shirt was 'Tasmanian' or was 'Made in Tasmania by Tamar Knitting Mills'.

MR25/10/02**ACCC Hot Spot – Online Guidance for Small Business**

Best & Fairest Online is an interactive web-based training program designed to assist businesses train their staff on trade practices issues. It is available free from the ACCC website, in hardcopy (\$100) or CD-ROM (\$20).

Labelling

Country of Origin

The ACCC has instituted proceedings against the producers and marketers of Viva brand olive oils, The South Australian Olive Corporation and Inglewood Olive Processors. The ACCC alleges that misleading representations have been made on product labels to the effect that Viva olive oils are Australian when, in fact, each bottle of Viva olive oil contains approximately 20 per cent imported oil.

MR 17/10/02

Safety Warning – Jacks

Legal proceedings have been instituted by the ACCC against BMW (Australia) in relation to the safety warning carried on vehicle jacks supplied with BMW vehicles and in the vehicle owner's manual in respect of safe usage instructions for a jack. The ACCC has alleged that BMW has supplied vehicles equipped with a vehicle jack and a vehicle owner manual, which did not comply with the prescribed consumer product safety standard relating to vehicle jacks.

MR 29/10/02

Restrictive Trade Practices

Predatory Pricing – Barges

The ACCC has filed proceedings in the Federal Court against Eurong Beach Resort; Mr Sidney Melksham; and others alleging predatory pricing and other conduct in contravention of the Trade Practices Act. In December 2000 a rival barge, the Manta Ray, began operating between Inskip Point, Rainbow Beach and Fraser Island. Prior to the Manta Ray's arrival, the cost of travelling to Fraser Island from Rainbow Beach on one of the Melksham companies' barges was \$70 per standard vehicle (return). Passengers cost an extra \$4pp and trailers between \$22 and \$64 extra. Since December 2000 the Melksham companies have dropped their price so that it is now \$20 or less, with passengers and trailers free. The ACCC alleges that this was done to damage or eliminate their competitor Manta Ray.

MR17/09/02

Report on Grocery Supply Prices

The ACCC has issued its report to the Senate on a survey of prices paid for wholesale groceries by major retail chains and independent wholesalers. The ACCC's study was largely confined to supermarket grocery items and excluded liquor, fresh fruit and vegetables. The report observes that suppliers in the Australian grocery industry do not favour any single buyer. Major retailers have buyer power and while they may obtain better wholesale prices more often than the independent wholesalers, based on the data received, the market does not appear to exhibit anti-competitive conduct. The report pointed out that comparisons of supplier pricing is not just leased on "like treatment for like quantities" but "like treatment for like performance"

MR 30/09/02

Selective Distribution Policy

The ACCC has instituted legal proceedings against Fila Sports Oceania, for the implementation of a selective distribution policy in relation to the supply of Fila's AFL licensed apparel to retailers. The ACCC alleged that this selective distribution policy contravened a number of provisions of the Trade Practices Act. The ACCC has also taken action against the current and former managing directors of Fila for their alleged involvement in the formulation and implementation of the policy.

MR05/09/02

Restrictive Trade Practices

Pro Competitive Undertakings by Government Lottery

In an important development in the application of the Act to Government-owned businesses and to exclusive distribution systems, the ACCC has accepted court-enforceable undertakings from Golden Casket Lottery Corporation. Following a complaint, the ACCC alleged that Golden Casket's decision to reject a newsagency's application for an on-line betting licence placed Golden Casket at risk of breaching the Act. Golden Casket has acknowledged that the rejection of the application in this instance is at risk of breaching the Act. Accordingly, Golden Casket has offered these undertakings to address the ACCC's concerns.

MR 14/10/02

Authorisations and Notifications

Compulsory Student Association Members

The ACCC has issued a draft decision proposing to revoke a notification which afforded James Cook University of North Qld's immunity from legal action under the TPA in relation to an element of its enrolment policy. JCU's enrolment policy currently requires that, as a condition of enrolment, students gain and maintain membership of the JCU Student Association. The ACCC considers there are detriments flowing from provisions of JCU's enrolment policy, which outweigh any benefits. The ACCC will make a final decision on this issue after considering any further submissions over the coming months.

MR 21/10/02

Bricklayers Scheme in NSW

The ACCC has granted authorisation to the Clay Brick and Paver Association of New South Wales, enabling it to continue to operate a scheme to assist young people in entering the bricklaying trade in NSW. The ACCC first authorised the scheme in 1999. At present, approximately 140 bricklayer apprentices have been recruited and are being trained in NSW under the scheme. The ACCC found that the scheme is successful in providing opportunities for young people to enter a trade that has a recognised skill shortage.

MR 24/10/02

Collective Public Liability Insurance

An application has been submitted to the ACCC from Allianz Australia, QBE Insurance and NRMA Insurance seeking authorisation of a potentially anti-competitive alliance. The alliance partners proposed to collectively offer public liability insurance for not-for-profit organisations. Although the application is being made on a national basis, the public liability product will initially only be made available to eligible not-for-profit organisations that operate predominantly in NSW. For authorisation to be granted, the applicants are required to demonstrate that there is a public benefit arising from the arrangement sufficient to outweigh any anti-competitive detriment. Copies of the Insurance Council's application and supporting submission are available on the ACCC website.

MR 24/10/02

Department Store Cooperative Promotions

Myer has been granted interim authorisation to invite concession businesses operating within Myer, Grace Bros and Megamart stores to participate in discount promotions or bonus offers run by Myer. The interim authorisation does not allow any agreement between Myer and the concession businesses to raise prizes, nor does it compel any party to participate in the proposed agreements.

MR10/10/02

Authorisations and Notifications

Chicken-Meat Farmers Collective Negotiations

A final decision dismissing an application for authorisation to allow collective negotiations between chicken-meat growers and processors in NSW has been issued by the ACCC. The ACCC found that due to recent changes to NSW legislation, the arrangements that were the subject of the authorisation application were unlikely to ever eventuate, and that accordingly, the claimed public benefits of the arrangements were unlikely to ever flow.

MR 08/10/02

Pharmaceutical Authorisation Denied

As there is insufficient public benefit to outweigh the harm to competition, the ACCC has decided to decline authorisation to API and Sigma for their proposed merger. The merger would create a company with 60% of the pharmaceutical wholesaling market in NSW, Victoria and Queensland and more than 50% in other states. With Mayne, the only other major wholesaler, it would account for almost 90% of the market. The ACCC considered that the deterioration in competitive pressures as a result of the merger would be a major public detriment.

MR12/09/02

Mergers and Acquisitions

Fertiliser Merger Not Opposed

The ACCC has not opposed the proposed merger between Incitec and Pivot, the two largest manufacturers and suppliers of fertiliser products in Australia. Despite the merger leading to the merged party having very high market shares in some product categories, the ACCC concluded that the importation of fertiliser products is likely to operate as an effective competitive constraint on the merged entity.

MR 16/10/02

Rental Car Merger Not Opposed

The ACCC has not opposed the acquisition of Budget Australia (Budget Rent a Car) by the Cendant Corporation, the parent company of Avis Australia. Careful consideration was given to the effect of the acquisition on different parts of the car rental market, and views were sought from both customers and competitors. Having regard to market conditions, the continuing presence of strong competitors and the opportunity for new entry, the ACCC does not believe the transaction will result in a substantial lessening of competition for car rental services.

MR 17/10/02

Regulated Services

Postal Prices

The ACCC has made final its preliminary decision not to object to Australia Post's request to increase the price of the basic postage stamp. From January 2003, the basic postage stamp will increase from 45 cents to 50 cents. The decision paves the way for the first rise in the price of the basic postage stamp since 1992. However, the decision blocked any change in the rates for bulk regulated mail. The final decision maintains the most appropriate balance between the interest of consumers and the sustainability of basic postal services throughout Australia.

MR 06/09/02 & 25/10/02

Regulated Services

Pipeline Access Arrangement Approved

The ACCC has issued its final approval on the terms and conditions of transportation services proposed by APT Petroleum Pipelines for the Wallumbilla to Brisbane Gas Pipeline. The ACCC had some concerns with the access arrangement as originally submitted by the company and required it to make revisions to the access arrangement before it could be approved. The company submitted a revised access arrangement that complied with the ACCC's requirements. Accordingly, the revised access arrangement has been approved.

MR 16/09/02

Telecoms Access

The ACCC has issued its guide on the resolution of telecommunications access disputes. The guide describes the ACCC's powers, and its approach to exercising those powers, in relation to resolving telecommunications access disputes. Release of the guide follows a period of public consultation on a draft of the guide. The guide and the proposed confidentiality undertaking will all be available from the ACCC website.

MR10/10/02

Network Services Models

As part of the Utility Regulators' Forum's continuing commitment to ensuring transparency in the regulatory process, it has issued a discussion paper, *Comparison of Building Blocks and Index-based Approaches*, analysing the merits of the various models for regulation of the electricity and gas transmission and distribution services. The paper suggests there is a range of choices available and each regulator will have to make their own decision in light of the specific circumstances they face.

MR 11/09/02

Operations Rules Victorian Gas Industry

The ACCC has released a Draft Determination proposing to grant authorisation for 10 years to the Victorian Energy Networks Corporation (VENCorp), Victoria's independent gas and electricity systems operator, for the Market and System Operations Rules (MSOR). While the Draft Determination expressed some concerns over issues such as the representation of end user interests in Victoria, and the current mechanisms in the MSOR for setting the price of gas, it found that overall, the MSOR, and market carriage generally, confer a net public benefit.

MR 18/10/02

Pricing Principles for Mobiles

The ACCC has issued its Final Report of the pricing principles to be used in arbitration of disputes over the terms and conditions of access to GSM (Global System for Mobile) and CDMA (code division multiple access) mobile termination services. Establishing the pricing principles will help to promote competitive outcomes in the sector. The report is available on the ACCC website www.accc.gov.au.

01/10/02

Regulated Services

Telecommunications Access Prices

The ACCC has issued a discussion paper exploring guidance to market participants on the prices for access to certain wholesale telecommunications services. The paper does not specify or set indicative prices for services. The ACCC is looking at developing indicative prices in early 2003, once issues about how such prices should be set are resolved. A copy of the ACCC Discussion Paper, Future Access Pricing Approaches for PSTN, ULLS and LCS, can be found at the ACCC Website www.accc.gov.au
MR18/09/02

Broadband Continues Solid Growth

The ACCC has issued a further update to its *Snapshot of Broadband Deployment*, a report providing statistics on broadband take-up across Australia. The report shows that during the past year take up of broadband services has increased by 131%. The ACCC will continue to monitor the broadband market, looking closely at any behaviour by those with market power to stifle competition. A copy of the report is available at www.accc.gov.au.
MR10/09/02

ACCC State Briefing

NSW

As part of the Rural and Regional program, the ACCC, in association with the NSW Department of Fair Trading attended Ag-Quip in Gunnedah. Ag-Quip is the largest agricultural field day in Australia, with well over 100 000 people attending the three day event. Businesses, farmers and consumers come from all over NSW, QLD and Victoria to learn about a variety of new technologies available for the rural sector. The issues raised by consumers and businesses included telecommunications, access to goods and services and disadvantages associated with living in a regional centre.

QLD

A businessman in a small rural community was advocating that everyone should boycott the businesses of another larger regional town. The aim of this proposal was to provide a much-needed boost to local businesses by keeping business in the local area. Whilst in theory this may have seemed like a good idea, unfortunately the reality is that if two or more persons who are in competition with each other come to an arrangement (such as not dealing with businesses from another geographic location) then that will potentially amount to a "Collective Boycott" and may breach the Act. One organisation is now a lot clearer on the provisions of the TPA.

VIC

The ACCC's Small Business, Rural and Regional program in Victoria has recently secured the assistance of three new community supporters; the Greater Shepparton Business Centre, the Victorian Business Centre at Mildura and the Swan Hill Economic Development and Tourism info centre. On 25-27 October the Small Business program also provided information to the public at the annual Franchising and Business Opportunities Expo held at the Melbourne Exhibition Centre. The ACCC is able to provide information on the Franchising Code of Conduct to intending and continuing franchisees. The Franchising Code is a mandatory code under the Trade Practices Act, which contains many of the rights and responsibilities of franchisors and franchisees.

South Australia

In recent months the ACCC has met with staff of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Office of Consumer and Business Affairs (OCBA) to establish an approach to Indigenous consumer protection in South Australia. Those meetings have been extremely positive, with a range of pragmatic suggestions for education and compliance initiatives being put forward, tailored to the communication needs of remote and regional communities.

In other news, a "Starting in Business" brochure for South Australia has been compiled and distributed by the collaborative efforts of Federal and State Government Agencies whose activities involve assisting small business operators. The brochure identifies significant issues that may affect small business operators as well as people starting in businesses. Brochures can be obtained by contacting your South Australian ACCC contact below.

WA

Farrington Fayre Shopping Centre - Alleged unconscionable conduct shopping centre leasing – an update.

The Commission instituted proceedings on 6 April 1998 against the owners and managers of Farrington Fayre alleging unconscionable conduct in dealings with certain tenants in contravention of section 51AA of the Trade Practices Act. The action alleged in 1996 and 1997 Farrington Fayre implemented a strategy whereby it refused to grant renewals, variations or extensions of leases to three tenants unless the tenants withdrew legal proceedings against it before the WA Commercial Tenancy Tribunal which alleged overcharging for rates, taxes and other matters.

On 20 September 2000 Justice French found Farrington Fayre's conduct toward its small business tenant, Mr and Mrs Roberts, "...was grossly unfair exploitation of the particular vulnerability of the Roberts in relation to the sale of their business". The allegations involving the two other tenants were dismissed. Subsequently the Full Court allowed the owners appeal and dismissed the Commission's cross-appeal.

The ACCC's appeal to the High Court was heard in Perth on 21 October 2002. The High Courts decision will help establish the law in respect of unconscionable conduct toward small business pursuant to s51AA of the Trade Practices Act, and may provide guidance in relation unconscionable conduct toward small business pursuant to s51AC, a law enacted after this case was instituted.

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