



From the Small Business Commissioner

With additional funding announced in the May Budget the ACCC is allocating additional resources to its rural and regional and small business role. Part of this role will be the expansion of the ACCC Competing Fairly Forum satellite broadcast to rural and regional towns throughout Australia.

The next satellite Forum is scheduled for the early evening of Tuesday 2 October 2001. The Forum will once again be hosted by George Negus with ACCC Chairman Professor Allan Fels on the Panel. The subject to be addressed is "Advertising and Selling".

Other important developments which are reported in this *ACCC Briefing* include:

- Significant amendments to the Trade Practices Act which cover gaps in protections available to small business and consumers;
- Amendments to the mandatory Franchising Code of Conduct;
- A review of telecommunication price movements and the release of an ACCC guide on the Telecommunication sector;
- Strong ACCC action against "fine print" advertising involving a court declaration in relation to a Target (Coles Myer) television advertisement; and
- A review by the ACCC showing that business had generally complied with GST price guidelines.

Amendments to the TPA

Changes to the TPA, which passed through Parliament in June, will mean the ACCC is better placed to assist small business in protecting its rights in relation to anti-competitive conduct.

The changes cover a range of elements including:

- clarification that the unconscionable conduct provisions apply to State/Territory jurisdiction;
- extension of the ACCC's right to take representative action and seek damages under Part IV of the Act ie the restrictive trade practices provisions;
- court discretion to allow the ACCC to intervene in private proceedings where the issues are of public interest;
- court to allow ACCC to seek declarations from the Court on the operation of the Act;
- compensation to victims given priority over recovery of fines;
- time limit for damages claims extended from 3 to 6 years;
- extended range of non-monetary penalties eg probation, community service and corrective advertising; and
- consumer protection penalties increased to \$1mil for corporations; \$200,000 for individuals. **MR 12/7/01**

Unconscionable Conduct

Competing Fairly Forum Questions

Over 60 questions were submitted to the May Competing Fairly Forum. All have received responses where contact details were provided. Questions submitted in the lead up to the Forum dealt primarily with issues of broad ACCC policy, while those received on the night were more specific to unconscionable conduct. Areas covered included:

- retail tenancy;
- ACCC complaints handling procedure;
- dispute resolution;
- the sale of primary products;
- dealings with financial institutions and government; and
- consumer issues.

Complaints received on the night were referred to the appropriate ACCC regional offices. The most frequently asked questions have been posted on the Forum web-site <http://forums.accc.gov.au>.

National Australia Bank

After the ACCC had instituted proceedings the Federal Court found that the National Australia Bank acted unconscionably in June 1998 in its dealings with Mrs Kathryn Ashton by obtaining a guarantee as security for a business loan to a company of which her husband was a director. Her husband was seriously incapacitated at the time.

Mrs Ashton was not a director or shareholder of the company and NAB did not explain the nature or effect of the guarantee, or advise her that she should obtain independent legal advice. The ACCC had also alleged that NAB knew the company was in serious financial difficulty but did not inform Mrs Ashton.

Professor Fels said "The prohibitions on unconscionable conduct in the Trade Practices Act 1974 will continue to be an ACCC enforcement priority. NAB and other financial institutions should not take unfair advantage of a person in a vulnerable situation by obtaining a guarantee without ensuring the person has full knowledge of its terms and effect."

For more details and text of court orders please see MR 5/6/01

ACCC Infocentre - phone 1300 302 502

The new ACCC phone centre is now operating. Trained staff are ready to take complaints and inquiries relating to trade practices, business and consumer issues. Lines are open from 8:30am to 6pm.

Matters which require detailed follow up are referred to specialist staff in relevant regional offices.

Most items set out in *ACCC Briefing* refer to Media Releases and their dates eg **MR 12/7/01**. These can be found on the ACCC website www.accc.gov.au.

For e-mail copies of *Briefing* please send details to therese.dupe@acc.gov or phone 02 6243 1069.

For TPA information - *ACCC Infocentre* 1300 302 502

Amendments to Franchising Code of Conduct

Main changes which take effect on 1 October 2001 include:

- **The Short Form Disclosure document**

Reduces categories from 23 to 11.

- **Electronic transfer of documents**

Franchisors now have option of electronically transferring their documents.

- **Disclosure to in-coming franchisees**

The franchisor is the only one with authority to issue the Disclosure Document.

- **Termination and the agreed rights of a franchisee**

The right of a franchisor to terminate a franchise does not displace the agreed rights of a franchisee.

- **The role of mediation clarified**

Must be conducted in Australia and include a person authorised to settle the dispute. Can be terminated by a mediator's certificate if not successful.

- **'Usual wholesale price' defined**

To avoid building the franchise fee into the wholesale price of the product.

For details - website, SCALEplus at www.law.gov.au or for tracked changes- the ACCC website www.accc.gov.au. Copies on sale at AusInfo. **MR 29/6/01**

Unconscionable Conduct

Medibank Private

Medibank Private Ltd has given court-enforceable undertakings to the ACCC regarding unconscionable conduct in its dealings with Toowong Private Hospital, an independent specialist psychiatric hospital located in Brisbane. It was alleged that Medibank Private had attempted to impose a unilateral variation clause in its proposed agreement with Toowong allowing Medibank Private to vary the terms of the agreement without the consent of the hospital.

Medibank Private is Australia's largest health fund, while Toowong is a small, 54 bed, independent specialist hospital. The agreement with Medibank Private was extremely important to Toowong for commercial reasons as all its main competitors had agreements with Medibank Private. The clause was not discussed and Toowong had had the impression that the clause was standard. The ACCC has urged parties in the health sector to adopt the voluntary Code of Practice aimed at enhancing the process of contract negotiations as one means of helping to avoid unconscionable conduct. **MR 22/5/01**

Consumer and Small Business Protection

Call For Eviction of Cybersquatters

ACCC has called for a concerted global effort to ban 'cybersquatting.' Cybersquatters register a domain name anticipating that someone with a more legitimate claim to the name will pay to have it transferred for their use, or be stopped from having an online presence.

The ACCC considers that: people registering domain names should be required to show a legitimate interest in the names; there should be additional generic and second-level domains to better serve the needs of different types of users; and, courts or amended arbitration processes should be relied on to resolve these types of disputes. **MR 18/6/01**

Greenstar Pyramid Scheme

The ACCC has instituted proceedings against Greenstar Co-operative Ltd and a group of other related companies and directors alleging they were involved in an illegal pyramid and referral selling scheme.

The ACCC has also alleged that the companies misled consumers and made false representations about the attributes of a transaction card and an earthworm farming program which were part of the pyramid selling scheme.

The ACCC is seeking court orders, including urgent interim injunctions, against Greenstar, the other companies, and the directors.

MR 7/6/01

Door-to-Door Sellers

The ACCC has instituted proceedings in the Federal Court in Melbourne alleging that door-to-door sales agent company Axxess Australia Pty Ltd engaged in misleading and deceptive conduct and unconscionable conduct whilst selling and marketing residential telephone services. Agents illegally obtained signatures from consumers by various deceptive means.

Agents also signed up elderly and vision impaired people. Some agents also insisted that transfer documents be signed without giving the customer the opportunity to read or comprehend the document. **MR 28/5/01**

Ansett Frequent Flyers

The ACCC became aware during its inquiry into frequent flyer schemes, that some members travelling on Singapore Airlines since September 1998, may not have received their full entitlement of Global Rewards points. Ansett has agreed to rectify this by crediting the points plus 5,000 bonus points.

It is important that advertised rewards are honoured. Offering frequent flyer points without intending to supply those points as offered risks misleading consumers, and ACCC action under Sections 52 and 54 of the TPA.

The ACCC is currently investigating frequent flyer schemes and is discussing Ansett's broader trade practices compliance in the context of its inquiry.

Consumers who are unclear regarding this can contact the Ansett Global Rewards Service Centre on telephone 1300 13 22 66.

MR 15/5/01

Advertising and Selling Guide Update

Advertising and Selling is the ACCC's key consumer protection publication. It is currently being reviewed and updated in consultation with industry, government and consumer groups. It will be re-launched later this year.

Consumer and Small Business Protection

Crack Down on Fine Printing Advertising

ACCC has in the past few months successfully taken action against businesses that have used “fine print” advertising to qualify advertisements appearing in both hard print and television/radio. The latest case resulted in corrective advertisement on behalf of Target (Coles Myer) retail stores. The court declared a number of national Target newspaper and TV ads were false, misleading and deceptive. The ACCC is taking similar action against Medibank Private, Medical Benefits Fund of Australia, and Buttercup Bakery. Earlier action had resulted in orders against an automotive retailer (Goldy Motors) and administrative solutions with American Express and a lending group Pocket Money.

MR 15/7/01

New ACCC Publications

New ACCC publications include:

- a booklet on Internet Service Providers – *fair.com*;
- **new product safety guides:** balloon-blowing kits, bean bags, elastic luggage straps, exercise cycles, paper patterns for nightwear, pedal bicycles.

The *ACCC Journal* will soon be available on CD-ROM.

Publications can be obtained from ACCC website/Publications or phone (02) 6243 1143 or by email robert.booth@accc.gov.au

Unconscionable Conduct on video

Fair Game and Fair Go is a new video on unconscionable conduct in business using ‘real-life’ scenarios. Also available is a video of the May Competing Fairly Forum, featuring panel discussion from trade practices experts, including Professor Allan Fels, and questions from small business people across Australia. Copies can be purchased from ACCC Publications for \$10 each – ph 02 6243 1143

The latest *ACCC Journal* Issue 32 also has a feature on Unconscionable Conduct as well as information on the Australian electricity market and product safety.

Restrictive Trade Practices

Calls For Criminal Sanctions for Price-Fixing Offences

ACCC Chairman, Professor Allan Fels in an address to the Australian Law Reform Commission Conference - Penalties: Policy, Principles & Practice in Government Regulation, has called for criminal sanctions, including imprisonment as a penalty for hard-core cases of collusion, such as price fixing, bid-rigging and market-sharing. In the worst cases they impact on consumers and small business through over-charging.

Such a move would bring Australia into line with a number of its major trading partners.

For more details the speech is available on the media release for 8 June 2001 on ACCC website. **MR 8/6/01**

Company Admits Resale Price Maintenance

American Golf Supplies Pty Ltd, the sole Australian distributor of prestigious PING golf products has given court enforceable undertakings to the ACCC after admitting that a contract it circulated to retailers breached the resale price maintenance provisions of the Trade Practices Act.

Requiring a retail customer not to advertise goods at a price less than a price specified by the supplier constitutes resale price maintenance. The principle underlying this provision of the Act is that the ability to advertise discounts is essential to retailers who wish to engage in price competition.

American Golf Supplies has agreed to not engage in conduct that constitutes resale price maintenance, carry out corrective advertising and a corporate trade practices compliance program. **MR 23/5/01**

Mergers/Takeovers

Undertakings related to Franklins Sale

The ACCC did not oppose the proposal related to the sale of Franklins supermarkets after accepting legally-enforceable undertakings from Dairy Farm Management Services, Franklins and Woolworths. The undertakings relate to the process by which stores will be transferred from Franklins to independent operators.

Professor Fels noted that the undertakings would underpin a significant boost to the market share of independent grocery retailers.

Franklins and Dairy Farm undertakings

As a result of the undertakings, Franklins will not allow its 'No Frill's' and 'First Choice' product brands to be used by major supermarket chains other than a non-exclusive right to use the brands temporarily for three months in the event that a chain acquires a Franklins store with remaining stock.

Woolworths undertakings

In agreeing to Woolworths acquiring 67 Franklins stores, half the initial number sought, the ACCC has required Woolworths within three months of each acquisition to remove reference to the store having been a Franklins store and stop selling 'No Frills' and 'First Choice' brands.

To promote competition, Woolworths is required to divest its stores at North Strathfield, Newport, Leichhardt, Waterloo, Newtown and Forestville.

An edited undertaking, including stores which will be made available to Woolworths and JIDA is on the ACCC website. **MR 7/6/01**

Regulated Services

Warning on Airport Charges

In a submission to the Productivity Commission, the ACCC has warned that full deregulation could result in higher charges for the travelling public. The large airports are regional monopolies and currently CPI-X price caps apply. Increases in charges are not warranted and have the potential to damage the tourism industry.

The ACCC also proposed that:

- a price cap be put on major airports but not on some of the smaller airports currently regulated;;
- new investment provisions be introduced to make it simpler for airport operators to obtain appropriate returns;
- taxi charges continue to be included in the price cap; and
- services covered by the price cap be broadened to include aircraft refuelling services.

The ACCC's submission is available on its web site at www.accc.gov.au. **MR 15/6/01**

Melbourne Airport Taxi Fee Proposal

The ACCC Commissioner with responsibility for airports, Mr John Martin, announced that the ACCC has accepted \$0.66 of the proposed fee put forward by Melbourne Airport of \$1.40. The ACCC considered the new fee as necessary for new investment attributed to the taxi facility.

Melbourne Airport could have brought in the full fee but would need to lower other aeronautical charges and seek ACCC approval.

The regulatory arrangements covering price-capped airports allow airport operators to apply to the ACCC to recover the costs of 'necessary new infrastructure' expenditure by imposing increases outside the price cap. The provisions are designed to provide incentives for the timely development of necessary new aeronautical infrastructure. **MR 25/5/01**

Draft Decision on South West Queensland Gas Pipeline

ACCC has issued its draft decision for access arrangements for Epic Energy's SW Qld Pipeline. This is the second of four draft decisions due this year for pipelines covered by the National Access Code and subject to the national access regime. Under the Code, an operator of covered pipelines is required to submit an arrangement to the ACCC describing the terms, conditions and reference tariffs for access to the pipeline. The draft decision is available on the ACCC's website <http://www.accc.gov.au> or by contacting Ms Diana Egerton-Warburton on (02) 6243 1166. **MR 14/6/01**

Telecommunications Industry Booklet

ACCC's *Infrastructure Industries: Telecommunications* is a simple guide to the sector. It traces the development of the industry, from full government ownership in 1975 to today's competitive market where consumers have benefited from cheaper calls.

Infrastructure Industries: Telecommunications is the latest in a series of publications on infrastructure industries. The others are *Aviation* (May 2000) and *Gas and Electricity* (March 2000)

To order a copies please contact Robert Booth on (02) 6243 1143 or email robert.booth@accc.gov.au **MR 15/6/01**

Telecommunications Price Falls

An ACCC report shows that the majority of telecommunication services have fallen in price over the past several years and that a broad range of consumers have benefited from price reductions. Small businesses have experienced some of the largest annual price reductions.

The ACCC's report shows that between 1996-97 and 1999-2000 there was:

- a 53 per cent reduction in the price of **international calls**;
- a 23.5 per cent decrease in the price of **national long distance calls**;
- a decrease in the costs of **mobile telephony** by 18.9 per cent; and
- a decrease of 13 per cent in the price of **local calls**.

While there was an increase in the price of basic access, there was an overall reduction in the price of fixed line services by 17 per cent over the period.

For details of prices changes to telecommunications services between 1996-97 to 1999 visit the ACCC website or call the Infocentre on 1300 302 502. **MR 27/6/01**

Telecommunications Deregulation of Intercapital Transmission

The ACCC has announced its final decision to remove the current access regulation on the intercapital transmission capacity service, used for the transmission of voice, data and other communications between mainland capital cities.

Copies of the final report are available from ACCC offices and the ACCC's website <http://www.accc.gov.au>. **MR 30/5/01**

Authorisations

Sugar Agreements Authorised

The ACCC has granted authorisation to collective supply and expansion agreements between sugar cane growers in North Queensland and CSR. The authorisation enables sugar cane growers and CSR to give effect to collectively negotiated terms and conditions of cane supply to the CSR-owned mills in the Burdekin region. The ACCC was satisfied that the agreements would deliver public benefits in the form of output, new investment, efficiency gains, export growth and increased international competitiveness. **MR 16/1/01**

New Tax System

Smooth GST Prices Adjustment

After one year of the GST the Australian Competition and Consumer Commission has found that most businesses have complied fully with its pricing guidelines. ACCC Chairman, Professor Allan Fels said the latest price monitoring survey, covering the period May 2000 to February 2001 shows an average price movement of 4.4%, consistent with the underlying rate of inflation and the one off increases associated with the introduction of the NTS.

This is a good result for consumers and small businesses. An inflationary spiral would have been particularly bad for small business. At the same time the Commission has rejected claims that it created any form of "price freeze". **MR 3/07/01**

ACCC State Briefing

Reports from the State/Territory Managers for the Small Business, Rural and Regional Program in the ACCC regional offices.

Northern Territory

The Darwin Expo opened with a breakfast where Commissioner John Martin spoke about the role of the Commission and small business and the TPA. He also outlined the role of the new ACCC Rural and Regional Program highlighting the positive effect this would have in providing information to small business and consumers in these areas.

The Banking Ombudsman, Mr Colin Neave, then gave an overview of the role of the ABO and the upcoming amendments under the Financial Services Reform Bill. The exhibition opened on Friday 13 July with exhibits by businesses from the Northern Territory and parts of Asia. The Expo closed Sunday after having attracted large crowds on all days.

Fiona MacRae, Manager, Small Business, Northern Territory ph 08 8946 9603

Queensland

The ACCC rural and regional project in Queensland received an early kick start when one of the largest agricultural field days in the state, **Farm Fest**, was held 19 –21 June at Kingsthorpe, just west of Toowoomba. ACCC Staff made contact with over 150 small businesses and primary producers answering questions about the role of the ACCC and the TPA.

The authorisation process was of particular interest to the rural community especially to dairy farmers who were still feeling the effects of deregulation in their industry and were waiting on the outcome of an authorisation application to assist them in negotiations with their processors.

Overall feedback was very positive.

Paul Jones, Manager, Small Business, Queensland ph 07 3834 4666.

Western Australia

During a recent visit to **Fremantle, Rockingham and Mandurah**, I visited the local Business Enterprise Centres, Chambers of Commerce and spoke with a number of businesses in the local business incubators.

Business incubators assist new business by providing premises, advice, services and managerial support. The incubation period is normally from one to three years during which time the businesses become established.

ACCC publications on various aspects of the Trade Practices Act are provided to the Centres and Chambers of Commerce to be distributed to members and clients. *Small Business and the Trade Practices Act* is always a much requested publication.

Siobhán O’Gara Manager Small Business, Western Australia ph 08 9325 3622

Tasmania

Agfest 2001 is Tasmania’s premier event. The ACCC participated for the first time and staff met many small business owners and primary producers. The expo was attended by 70,000 people over 3 days.

Following the May Competing Fairly Forum the Tasmanian office has received complaints from small business operators regarding alleged unfair competitive practices by Government Business Enterprises (GBE). GBE’s may be operating in a commercial market but due to the Government resources behind them they may display practices which are in breach of the Trade Practices Act. Cases of alleged unfair competition will be investigated by the Commission and enforcement action may be taken.

John Bardenhagen Manager, Small Business, Tasmania ph 03 6215 9309

New South Wales

A large number of small business operators in NSW come from culturally diverse backgrounds. The Small Business Program in NSW has continued to work with these businesses and their associations. The ACCC has already this year participated in the Vietnamese New Year Festival and the Lantern Festival.

The ACCC and the NSW State Chamber of Commerce have also developed a practical alliance to educate small businesses in NSW. ACCC officers have addressed the State Chamber's Roundtable Discussion as well as a number of regional Chambers throughout NSW. The ACCC and NSW State Chamber of Commerce are currently developing an initiative that would see the ACCC and the Chamber jointly presenting information seminars to businesses in regional and metropolitan chambers throughout NSW.

Nick Heys is the Manager, Small Business, NSW phone 02 9230 9151