

September 2002

Industry Codes

### From the Small Business Commissioner

Submissions to the Dawson Review of the Trade Practices Act and the ACCC continue to come in and now number almost 200. The key issues involved will be discussed at the next Competing Fairly Forum in October in which George Negus will conduct an extensive interview with ACCC Chairman Allan Fels and panel members.

My recent speaking engagements have included the Insurance Council of Australia at which I spoke about the ACCC monitoring reports on insurance rates and ACCC comments on proposals to cap claims under public liability and professional indemnity insurance all extremely important for small business. Another important small business related event was the Franchising Council annual conference at which I provided the ACCC report card on the industry and the ACCC's administration of the mandatory Franchising Code of Conduct.

The ACCC continues to release important published material to assist small business, with two important new releases. Details of which you will find in the "Hot Spots" throughout this issue.

### Franchising Council of Australia Annual Conference

Minister Joe Hockey announced the lapsing of the government's advisory body on franchising, the Franchising Policy Council. Proposals for Code amendments will now be handled by the relevant policy portfolio. The Minister has also announced there would be further amendments to the Code. The ACCC is looking to convene a 6 monthly round-table with the industry to continue lines of communications and discuss Code issues.

### ACCC Regulation Conference

Some of the world's leading experts on regulation in energy, transport and communications industries participated in the ACCC Regulation and Competition Conference in July. The Conference has become an essential item in the calendar of operators, investors and users of utility industries regulated by the ACCC. Papers from the Conference are available on the ACCC website [www.accc.gov.au](http://www.accc.gov.au).

MR 24/07/02

### Franchising Code Breach Allegation

The ACCC has instituted proceedings against the directors of Synergy in Business alleging contravention of the Franchising Code and misleading and deceptive conduct. The Newcastle-based company advertised nationally for consultants who were then licensed to promote Synergy's "Best Practice Program". At least 31 people have paid between \$11,000 and \$24,500 each for the licences. The ACCC alleges that Synergy has failed to provide proper disclosure documents to these licencees.

MR 30/07/02

### Smash Repair Industry

Following the July industry round table chaired by ACCC Commissioner, John Martin, proposals for a national code of conduct, or other industry measures to improve the relationship between insurers and repairers have been the subject of information exchange with the ACCC facilitating this process. The ACCC has asked for submissions, from each of the parties at the round table, which will be used to develop a paper to be discussed at a second round table meeting on 31 October 2002

The Motor Trades Association of Australia and its state chapters (including the Victorian Automobile Chamber of Commerce) had developed draft codes of conduct as an instrument for addressing various concerns. The ACCC had received a number of complaints from repairers about the relationship with insurance companies. Some of the issues of concern are:

- customer ownership
- guarantee requirements
- slow payments
- adequate repair times
- preferred repairer schemes
- price of repair jobs
- parts
- collective bargaining

### Retail Tenancy

In response to continued complaints regarding issues arising out of the commercial landlord/tenant relationship, the ACCC will convene a round table discussion on retail leasing issues at the end of September.

The ACCC had earlier commissioned an independent report on retail tenancy issues in Australia, including a survey of the interaction of the unconscionable conduct provisions under the TPA, and state retail tenancy regulation.

The September meeting aims to seek views from key industry stakeholders, and canvass any options available for promoting sustainable relationships between retail tenants and landlords. It will cover such issues as the legal actions already taken by the ACCC in this area, the 'draw down' of unconscionable conduct legislation into state and territory codes, and the potential for a nationally consistent approach to retail tenancy regulation and dispute resolution.

### ACCC Hot Spot - Key Publications for Small Business

As part of its ongoing commitment to helping small businesses the ACCC has recently issued 2 key publications. See the Hot Spots in this edition of ACCC Briefing.

Items in *ACCC Briefing* at times refer to Media Releases and their dates eg MR 12/8/02. These can be found on the ACCC website [www.accc.gov.au](http://www.accc.gov.au). For e-mail copies of *Briefing* please send details to your local ACCC contact. (See page 5)  
For TPA information - ACCC Infocentre 1300 302 502

**Country of Origin Labelling**

Westfil (Australia) will refund customers who have been misled by country of origin claims when purchasing automotive air filters. The Federal Court found that Westfil stuck labels bearing the claim 'Made in Australia' on the packaging of some air filters imported from Thailand.

**MR 20/08/02**

**Real Estate Refunds GST on Commission**

After ACCC intervention, Golden Way Realty, Adelaide, has agreed to offer a refund to customers who may have been misled over the agent's professional fee or commission. The sales agency agreements related to property sales, and to professional fees collected, from July 2000. The ACCC accepted court enforceable undertakings that included refunding the GST liability to affected customers and implementing a trade practices compliance training program for staff.

**MR 16/08/02**

**Misleading Advertising - Beef**

Federal Court orders handed down declarations that Woolworths had engaged in misleading and deceptive conduct. The Court also declared that Woolworths had made false or misleading representations in relation to the origin of cattle ultimately sold as beef and also in relation to the grain used to feed the cattle.

**MR 21/08/02**

**GST Refunds on Car Leases**

Ford Credit is to contact relevant lessees over the next few weeks after agreeing with the ACCC that 256 non-business consumers will receive approximately \$430,000 in GST refunds and reduced rental payments on their motor vehicle leases. The refunds are for GST paid on the monthly rental amounts under the leases entered into after 2 December 1998.

**MR 08/08/02**

**Insurance Consumer Charter Launched**

The ACCC has launched AAMI's "Compulsory Third Party Claimant Charter". The Charter initiative is to benefit those who are involved in a car accident with an AAMI customer. It sets out the manner in which AAMI will deal with the claims, includes a time frame and the risk to AAMI of an automatic, self-imposed penalty if these ideals are not met.

**MR 06/08/02**

**Misleading Advertising - Aboriginal Tours**

The ACCC has instituted Federal Court proceedings against Voyages Hotels and Resorts alleging misleading and deceptive advertising regarding tours to Aboriginal land near Uluru. Amongst the ACCC allegations is that Voyages represented that a tour to Yulara Pulka Aboriginal Homelands near Uluru would be offered when there was no agreement that would entitle Voyages to take tours to the Yulara Pulka.

**MR 19/07/02**

**Misleading Advertising – Health Insurance**

The Federal Court has made orders by consent against NRMA Health for misleading advertising that appeared in various newspapers in September 2001, and against NRMA Insurance for a misleading publication on its website. The advertising related to the benefits offered by NRMA to pregnant women. The ACCC alleged that the fine print disclaimers accompanying the advertising were inadequate and unlikely to come to the attention of consumers.

**MR 10/07/02**

**Scheme Stopped in Home Loan Industry**

The ACCC has successfully obtained final orders in the Federal Court restraining Guardian Finance and Insurance Consultants and its director Mr Peter Martin James, from promoting Guardian's Reducible Home Loans Introducers program and Rate Reward Program to consumers. The ACCC alleged the two programs constituted an illegal referral and pyramid selling scheme.

**MR 09/07/02**

**Dangerous Confectionery Banned**

An 18 month temporary ban has been placed on a mini-cup confectionery item. The jellies contain konjac which poses a serious choking hazard. ACCC staff are currently ensuring that the product does not remain on the Australian market during the period of the temporary ban.

**MR 23/08/02**

**Job Seekers Misled**

Crackerjack Productions is to send apology letters after the Federal Court found the television production company to have misled job seekers about the availability of work it offered in January and February 2001. Crackerjack advertised casual jobs in Dubbo, NSW and Melbourne with the purpose of luring job seekers to an 'interview' and then filming them in fictitious situations. The job seekers were not told their actions were being filmed for possible use in a candid camera style television show. The court also found Network Ten to have misled one of the job seekers in relation to a mock press conference he was required to take part in during the five days he believed he was working for Crackerjack as an assistant to a film crew. The ACCC has asked the Court to restrain Network Ten from engaging in similar conduct in the future. The company has opposed this application which shall be heard by the court on 21 October 2002.

**MR 30/08/02**

**ACCC Hot Spot**

*Rural Industry and the Trade Practices Act* is specifically targeted to small businesses in regional areas. It contains detailed discussions of the relevant law, with case studies to illustrate key provisions. This edition of *Rural Industry* replaces the 1997 version, and can be downloaded for free from the website, or is available in hardcopy for \$10.

The new publications build on the free small business compliance brochures launched earlier this year. There is a brochure setting out the basic elements of a compliance program, as well as three others targeted at retail, service and primary production industries. For details of any of these publications, contact the ACCC Infocentre on 1300 302 502.

## Restrictive Trade Practices

### Credit Card Reforms

The ACCC welcomed the Reserve Bank of Australia's credit card reforms. The reforms should lead to a more competitive and efficient credit card network in Australia and the increased competition will be to the benefit of both Australian business and consumers. The reforms follow extensive work involving the Reserve Bank of Australia, the ACCC, the finance sector and interested users. The ACCC had instituted against a leading bank over concerns about the setting of credit card interchange fees but dropped the action last year when the Reserve Bank decided to conduct a formal investigation.

**MR 27/08/02**

### Game Over for Sony Playstation

The Federal Court has established the right of Sony PlayStation owners to have their games consoles 'chipped'. 'Chipping' enables Australian consumers to enjoy games legitimately bought overseas, as well as authorised backup copies. The recently enacted Section 116A of the Copyright Act makes it illegal to make a device, or supply a measure, that is designed to overcome copyright protection measures, providing that those copyright protection measures have no commercially significant purpose other than to protect copyright. The Court upheld the ACCC's submission that the copyright protection measures go beyond having such a single purpose.

**MR 20/07/02**

### ACCC and Rural Press

In March 2001, the Federal Court found that Rural Press and Bridge Printing Office had misused their market power in their dealings with another publisher of regional newspapers in South Australia, Waikerie Printing House. In July 2002, the Full Federal Court upheld an appeal by Rural Press, finding that Rural Press and Bridge Printing did not breach sections 45 (exclusionary provision) and 46 of the Act. The ACCC has applied for special leave to appeal the High Court from the decision of the full Federal Court.

**MR 18/07/02 16/08/02**

### ACCC Leniency Policy

The ACCC has issued a draft leniency policy aimed at breaking up secret cartel arrangements. The draft policy provides clear, certain incentives for companies and individuals to 'blow the whistle' on the most serious and economically damaging contraventions of trade practices law such as price-fixing, bid-rigging and market sharing. The draft policy will assist in eliminating hard core cartels operating in Australia that harm consumers, damage businesses and the economy and, that have a detrimental effect on innovation and employment.

**MR 04/07/02**

### Price Fixing and Collusion – Air Compressors

Following ACCC action, the Federal Court has held that SIP Australia, a supplier of air compressors, breached the Trade Practices Act for price fixing and market sharing. Mr Ippaso, on behalf of SIP Australia, entered into an agreement with competitor Baker Brothers (Australia) to fix the prices of Italian made ABAC compressors and parts. The court also found that SIP attempted to reach a market sharing agreement with Baker Brothers. The draft agreement was never executed.

**MR 28/06/02**

## Mergers and Acquisitions

### Flour Milling Acquisition Decisions

The ACCC has opposed the acquisition by the Australian Wheat Board of Goodman Fielder's flour milling operation, Milling Australia. After conducting market inquiries, the ACCC found that the AWB's acquisition of Milling Australia would be likely to substantially lessen competition in the markets for flour milling and mixing across Australia.

However, the ACCC did not oppose the proposed acquisition of Milling Australia by a GrainCorp/Cargill joint venture. There had been concerns about the possibility of GrainCorp discriminating against particular users of its storage and handling system and raising the costs of rival millers. However, after extensive market research, the ACCC found that there were strong constraints on GrainCorp's ability to discriminate against particular users of its storage and handling facilities.

**MR 16/08/02**

### Egg Product Joint Venture Opposed

The ACCC opposed a proposed egg product joint venture between Farm Pride Foods and Pace Farms on the basis that it would be likely to result in a substantial lessening of competition in that market. The ACCC is concerned that neither imports nor existing competitors will provide a sufficient competitive constraint on the joint venture.

**MR 11/07/02**

### Meat Processing Merger Not Opposed

The ACCC did not oppose a merger between Consolidated Meat Group and Tey's Bros, both large meat processors. Market participants indicated that the merger was unlikely to lead to a reduction of competition in terms of prices that producers were likely to receive for their cattle, or in terms of the processing and supply of processed meat for domestic consumption.

**MR 27/08/02**

## Authorisations and Notifications

### Dairy Farmers Collectively Negotiate

The Australian Competition Tribunal has decided to authorise groups of dairy farmers to collectively negotiate terms of supply for raw milk with dairy processors. The determination, effective until 1 July 2005, will allow groups of dairy farmers that have "shared a community interest" to form collective bargaining groups. It will not impact (unless the parties so choose) on arrangements that are currently in place between dairy processing companies and their dairy farmer supplies.

**MR 20/08/02**

### National Grain Growers Register

South Australian graingrowers will be able to use the National Grower Register for the coming harvest when delivering to Ausbulk silos after a recent ACCC decision. The scheme offers a national database, recording growers details for use by traders when buying grain. Ausbulk requires growers who want to use its grain handling storage or marketing services from this harvest to do so on the condition that the grower also registers their details with the NGR. The register may have the effect of increasing competition among grain marketers and was designed to simplify the delivery and sale of grain in Australia.

**MR 22/08/02**

**Victorian Gas Revenue Increase Approved**

The ACCC has proposed approval of a real revenue increase for GasNet's Victorian natural gas transmission pipelines over the next five years which will allow GasNet to be able to earn a reasonable return on its assets. Whilst the ACCC has proposed to moderate GasNet's proposed revenue increase and capital expenditure program, it intends to accept a range of changes that lead to benefits for both GasNet and users of the pipeline system. The revised tariffs are due to commence on 1 January 2003.

**MR 20/08/02**

**Ring Fencing Guidelines for Electricity Transmission**

After wide consultation with the Transmission Network Service Providers (TNSPs) and other interested parties regarding all aspects of the guidelines, the ACCC has issued its final decision in respect of the Transmission Ring Fencing Guidelines. Under the National Electricity Code, the ACCC has developed the guidelines to limit the ability of the TNSPs to extend their monopoly powers from the network business to the contestable parts of the industry. The final decision is available on the ACCC website.

**MR 15/08/02**

**Approval on Pipeline Access Arrangement**

The ACCC has issued its Final Approval for Epic Energy's proposed access arrangement for the Moomba to Adelaide Pipeline System (MAPS) under the National Third Party Access Code for Natural Gas Pipeline Systems. Epic did not comply with the ACCC's Final Decision in relation to the MAPS. Therefore, the ACCC was required by the Gas Code to draft and approve the access arrangement.

**MR 01/08/02**

**Temporary Price Increase Air Services**

Temporary price increases for air traffic control, airport rescue and firefighting services provided by Airservices Australia have been agreed to by the ACCC. The Commission believes this represents a fair balance between the interests of Airservices Australia and the interests of travellers. Overall, the average price increase is 5.1%. The temporary price increase allows for the downturn in volumes faced by Airservices Australia and follows steady reduction in prices of around 20% over the last 4 years.

**MR 25/07/02**

**Local Phone Call Services**

The ACCC has announced it will remove access regulation of wholesale local calls (the local carriage service) in the CBDs of Sydney, Melbourne, Brisbane, Adelaide and Perth. The decision will take effect immediately for all service providers except Telstra, which is the predominant supplier of the local carriage service. Telstra will be subject to regulation for one more year and thereafter subject to notification requirements for two years. The decision demonstrates the ACCC is prepared to remove regulation where it is no longer deemed necessary.

**MR 22/07/02**

**ACCC Hot Spot**

*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).

**Consistent Pricing Principles for Mobile Services**

A draft report recommending pricing principles to cover GSM and CDMA services, the two principal mobile technologies used in Australia, has been issued by the ACCC. The Commission's draft pricing principles are to make sure the benefits of increased competition in the mobile market are passed onto fixed line users calling mobile subscribers. The pricing principles will cover only GSM and CDMA mobile services and are not applicable to other mobile technologies or services such as 2.5G and 3G.

**MR 01/07/02**

**Monitoring for Telstra's Wholesale Customers**

Following an ACCC investigation late last year of a number of complaints alleging discriminatory behaviour by Telstra towards its wholesale customers, the ACCC is to initiate a monitoring program. The program includes monitoring provisioning and faults management operations to ensure Telstra's wholesale customers are getting the expected levels of service.

**MR 13/08/02**

**Disclosure of Telecommunications Information**

The ACCC has issued a draft report expressing views and seeking comments on the public disclosure of information collected via the telecommunications record-keeping rules. These rules allow the ACCC to improve the integrity and transparency of the information provided to it by carriers. These rules have been used to develop a regulatory accounting framework under which carriers Telstra, Optus, Vodafone, AAPT and Primus report on a regular basis. The draft report provides some general guidance as to how the ACCC will likely exercise its powers to disclose information, and contains support for the release of 'market indicator' information. Comments on the draft were called for by 27 September 2002.

**MR 29/08/02**

**Line Sharing Decision**

The ACCC has announced its final decision to declare the telecommunications service known as 'line sharing' or 'spectrum sharing'. Line sharing allows one telecommunications carrier to provide broadband services while another provides voice services on the same telephone line at the same time. The decision means Telstra must allow other service providers access to the high-speed data capacity of its copper network on commercial terms.

The decision to declare the service was based on concerns about the viability of sustained competition in broadband telecommunications markets if the service was not declared. It is particularly important to recognise that so long as Telstra continues to recover the cost of its copper network through other avenues, the price of the line sharing service should not vary across different geographical regions. The ACCC therefore sees no reason why the price of this service should be any greater in rural and regional areas than in metropolitan areas.

**MR 30/08/02**



# ACCC State Briefing

## NSW

The ACCC, in conjunction with the NSW Department of Agriculture held the first in a series of seminars for growers and wholesalers in the Horticulture sector. The theme for the seminar was "Doing Business Better" and covered a range of topics including e-commerce in the horticulture industry, fresh produce trading and the law, alternative ways for growers to do business, the requirements for doing business with a supermarket retailer, and supply chain management. The ACCC will be running a similar pilot training program for growers in the horticultural industry in late October in Orange.

## Victoria

The ACCC will again be providing information to small business at the annual Franchising and Business Opportunities Expo. The Expo will be held on 25-27 October at the Melbourne Exhibition Centre. The Expo provides an opportunity for both intending and continuing franchisees to obtain information or attend a free session on the Franchising Code of Conduct. The Franchising Code is a mandatory code under the Trade Practices Act which contains many of the rights and responsibilities of franchisors and franchisees.

## Northern Territory

On the Small Business front, electronic offers for products or services are causing a deal of angst for people. The offers are to weight loss programs, modelling agencies and free registration in business directories. All that is required is for the offer to be completed and faxed back. The catch is that the cost per minute is generally over \$5.00 and the transmission can be excessively long. The ACCC E-Commerce Unit was able to have one agency number closed down but some of the others do not appear to be technically misleading or deceptive. The ACCC will continue to monitor these types of offers. Small Businesses in the Northern Territory have experienced a great deal of inconvenience with this type of promotion. Small Businesses should check thoroughly the print on promotional offers and documents that appear to be invoices. Scams hit small businesses hard.

## Queensland

Outreach work in Southern Queensland continued with visits to a number of locations, including interviews with regional papers and an address to a business group. The Toowoomba Ag Show from 3 to 5 September, was well attended with many more people in rural & regional Australia becoming aware of the ACCC and gaining a better knowledge of their rights & obligations under the TPA thanks to the ACCC stand. Queensland's Small Business Manager has participated in providing details of the role of the ACCC and the Trade Practices Act to new small businesses attending the ATO BizStart program. Seminars in August and September were held at Mt Gravatt, Chermside, the Gold Coast and the Sunshine Coast.

## Western Australia

Dowerin Field Days - 27,28 and 29 August 2002. The ACCC had an Information Stand at the 38th Annual Dowerin Field Days ( a community owned event) that attracted over 58,000 visitors this year to view demonstrations and displays of \$63 million of farm machinery. Rain on setting up day got exhibitors wet, the grounds turned muddy and across the wheat belt farmers hoped the rain would be wide spread and heavy. However the sun came out, the grounds dried, and the record crowd got the most for farm and family from the 750 exhibitors offering goods and services to growers.

## South Australia

A recent visit to the Virginia Horticultural Centre highlighted the plight of the region's inability to sustain the current level of water distribution to market gardeners, the majority of whom are Vietnamese. The visit to the region, as well as the ACCC's action in relation to the Avanti matter has highlighted the plight of the Vietnamese community. Contact with the South Australian Department of Water, Land, Biodiversity and Sustainability, has led to an in principal agreement being reached to engage in an educational campaign, to be fostered by industry bodies. The campaign aims to promote awareness of the responsibilities of both agencies as well as the rights and obligations of landowners and market gardeners to each other.

## Tasmania

The ACCC will be holding the first ACCC Regional Consultative Committee meeting in Tasmania in September and will be attended by Peter Clemes, Regional Director, Tasmania. This consultative committee will enable members of the Tasmanian Employment Advisory Council to provide information to the ACCC about issues affecting consumers and businesses in regional Tasmania. This committee is an invaluable tool for the ACCC to determine the needs of regional consumers and businesses. This Committee will help the ACCC develop programs to assist regional businesses. If successful this pilot committee will be duplicated throughout Australia.

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