Australian Compliance Institute

"The Regulator's approach to compliance: Crackdown, Confrontation or Compliance Culture"

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David Smith, Commissioner

This week's news that new tougher penalties for anti-competitive conduct will for the first time fully expose company executives to massive fines and legal bills should focus the minds of everyone in Australian business on the need to comply with the Trade Practices Act.

No longer can the cost benefit analysis assume that even if caught, the benefits may outweigh the penalty, and in any case, the company will pick up the tab.

New tougher penalties and indemnity change mean the cost to companies involved will easily outweigh any benefit, and the individuals responsible will face the potential of financial ruin and, in the case of hard core cartels, possibly jail terms as well.

So now, more than ever, a culture of compliance with the Trade Practices Act will not be an optional extra, but an essential element of doing business.

In such a changing environment it is worth emphasising that the fundamental aim of the Australian Competition and Consumer Commission is that all businesses comply with the Trade Practices Act, and to this end, the overwhelming focus of our work is on education, advice and persuasion – although that work is now supported by a much bigger stick.

I also take the opportunity to recognise the vital role compliance professionals such as yourselves have in assisting the ACCC in achieving its aims. This, I suggest, will be particularly important during this period of significant change.

The ACCC much prefers compliance over confrontation or crackdown. But, having said that, the ACCC also sends a clear message – that message is that we will never hesitate to confront any business or crackdown on any behaviour which flouts the clear obligations all business has to comply with the Trade Practices Act.

We believe it is eminently more sensible to have business comply with the Act, instead of have them act in a way that does damage to both consumers and the business, and then have to try to undo that damage later.

As such, each year the ACCC distributes hundreds of thousands of copies of our publications, we focus our broad compliance efforts on key sectors or

areas of conduct, speak at around 150 events such as this and make extensive use of the media to highlight our concerns and advise the public of the work we do and the outcomes we seek.

We also have extensive consultations with a range of organisations through our consultative committees – the Consumer Consultative Committee, the Small Business Advisory Group and the Franchising Advisory Panel and the overarching Consultative Committee.

The ACCC's compliance, education and enforcement activities stand side by side - both are central to the overall goal of ensuring compliance with the Act.

Later, I will expand on the issue of compliance and in particular compliance culture, but first, I want to turn to the ACCC's enforcement priorities.

ACCC Priorities and Objectives

The ACCC's compliance objectives reflect a set of general principles which have remained largely unchanged for some time now, and which I am sure many of you are well aware of:

- We promote vigorous, lawful competition and informed markets
- We encourage fair trading and protect customers.

In meeting these objectives and setting priorities it is worth noting that in the 2003-2004 financial year the ACCC received 48,724 complaints and inquiries relating to the Trade Practices Act.

Just 634, or 1.3 percent of complaints, were escalated to investigation 220 then went to serious investigation and only 20 proceeded to litigation. These figures are not atypical of past years as well.

In the face of these numbers it's a fact of life that the ACCC does NOT have unlimited resources and therefore needs to be selective.

The ACCC has therefore had a consistent position of being selective in its choice of enforcement actions involving litigation and of giving priority to cases which are best likely to improve overall compliance with the Trade Practices Act.

The kinds of things that influence the Commission in our decision making when potentially unlawful conduct is detected and investigated include:

- whether the conduct involves a blatant disregard of the law
- whether the person, business or industry has a history of previous contraventions of competition or consumer laws
- the detriment caused by the conduct and avenues available to redress that detriment
- whether the conduct is of major public interest or concern
- whether the conduct is "industry wide" or is likely to become widespread if the Commission doesn't intervene
- the potential for action to educate and deter future conduct

Blended into these factors as an important consideration is the compliance culture of a firm.

As ACC Chairman Graeme Samuel has said publicly on a number of occasions “education and advice is of little value if there is no compliance culture within business”.

When a firm is on the ACCC’s radar and facing a serious investigation, then some consideration of its past and current compliance culture is an important consideration for us.

A pattern of non-compliance points to a company ignoring its obligation to comply with the Act or a company exhibiting a serious compliance system failure which may not be being recognised or addressed.

When the Commission does decide to act we have a range of approaches we can take, from a simple administrative arrangement to detailed litigation. In certain cases negotiating an outcome will be more appropriate than litigation.

Litigation remains the very sharp end of the ACCC’s enforcement action.

We issue court proceedings when we believe they will bring about an effective result. If a company finds it is at the sharp end of one of the Commission’s enforcement activities, it can expect quick, tough, unrelenting court proceedings designed to bring about that result.

As the South Australian Solicitor-General Chris Kourakis put it at a conference organised by the Commission in 2003:

> *“Negotiation and mediation alone cannot work. In the business world decisions as to whether to comply with the law are much more likely to proceed on a calculated cost benefit analysis than is the case for most other law breakers….Litigation has the effect of education, change of culture and specific and general deterrence.”*

Litigation is important and court proceedings are a likely outcome where there is widespread consumer detriment, where there has been a deliberate breach of the law as distinct from an inadvertent breach, where there is evidence of a culture of non-compliance.

Litigation is also necessary where we need to have a court declare certain conduct unlawful, so we can put an end to that conduct and, where possible, seek restitution for consumers.

I will now turn to some internal changes at the ACCC directed at making our enforcement work more effective.

New Internal Processes

Over the past 18 months we have implemented quite significant changes to our internal processes and the way we manage our legal budget.

These changes are aimed at making best use of our resources by imposing greater discipline on our enforcement and litigation activities in seeking meaningful and cost effective outcomes.

In short, our aim is to ensure our enforcement activity is better targeted more sophisticated, efficient and relevant.

These internal processes have concentrated on two key areas:

- Better data management and information systems to identify trends, prioritise investigations and promote efficient use of our resources
- Systems and processes to ensure greater control over our management of legal services and our relationship with law firms.

The most significant change at management level has been the introduction of a relatively sophisticated matters management system.

The matters management system relates not just to those matters that have developed into a serious investigation, but also the several hundred matters under initial investigation.

Given we are a national organisation with regional offices operating in every state and territory, the system enables our senior management throughout the country to have a very clear view as to the progress of every investigation, to control the progress of that investigation, to see where there might be bottlenecks or blockers occurring in the process so as to ensure that the enforcement process is operating as efficiently, smoothly and quickly as we can make it.

One advantage of this system is that it has enabled us to do what you might call a “continuous stocktake” of our existing investigations and cases, and clean out a number of matters which had either dragged on too long or which we see as marginal in terms of outcomes given the resources applied.

Another important development has been the creation of a Litigation Committee to work in tandem with the ACCC Enforcement Committee.

All of us are well aware of the capacity for litigation to stretch out, sometimes for many years. The time frames that are taken to deal with litigation can then diminish significantly the impact of the ultimate litigation result—that is, the court orders finally handed down.

The Litigation Committee assists the ACCC in ensuring that its litigation and tribunal work is conducted to the highest standards. This includes making sure that its claims are clearly articulated and able to be readily understood by the court. It also requires that the orders we seek are the most appropriate given the particular circumstances of a matter.

So our litigation is also under very stringent controls, as to budgetary expenditure, monitoring expenditure on litigation and controlling the actions themselves.

As I said earlier, we don't have unlimited resources for litigation – so, stating the obvious, money we spend on one case, is less money we have available for other cases. By more tightly controlling what we spend on litigation, we are ensuring we are better resourced to take on the more important and complex matters.

I'd now like to turn to our priority settings in some specific area of conduct.

Priorities in enforcement and compliance

In terms of areas of conduct, it is useful to reflect on three key areas - restrictive trade practices, consumer protection and unconscionable conduct.

- ***Part IV Restrictive Trade Practices***

The focus in Part IV matters remains, as always, on areas of high economic and consumer detriment. That conduct includes:

- cartels – price fixing, bid rigging, market sharing
- resale price maintenance
- clear or blatant misuse of market power involving large powerful corporations
- horizontal or vertical arrangements where there is significant impact on the competitive process
- secondary boycotts involving conduct with clear detriment

Part IV matters are in general more complex, and we are in the process of building up the skills base needed to deal more effectively with these matters.

In nearly all the above areas detailed investigations are occurring or have been undertaken and cases launched. The direction has been to focus on significant matters and the Compliance Division reports indicate that current investigations reflect this.

The last 12 months has in particular seen a deliberate move by the Commission to raise the profile of our cartel investigation activity backed up by work in the field - currently we are investigating around 27 cartels. That publicity has been very clearly calculated to raise the public's awareness of cartels — what they mean and the impact they have on the community at large, on the Australian economy, on consumers and, frankly, on businesses.

During that time we have developed a specific cartel unit to co-ordinate and focus our work in this area, and also to liaise with overseas agencies, given that a number of the cartels we deal with involve international conduct.

We have also developed a procurement campaign to educate those we feel are most at risk of being targeted by cartels, and who might also be able to best assist us fighting cartels - government and private sector procurement officers.

Late last year we also brought together in Sydney some of the world's leading regulators and experts on the topic at a major conference. This followed the

establishment of a major working group within the International Competition Network which also held its annual workshop in Sydney.

We have also endeavoured, in educating, publicity and working with business groups, to raise the corporate stigma associated with being involved in a cartel - to indicate that being involved with a cartel is not just another misdemeanour; it is a very serious offence.

Any doubt about this should have been firmly laid to rest with the $23 million in penalties handed out just last month to those caught fixing prices in the Ballarat petrol market.

In his Ballarat petrol judgment Justice Merkel said "The circumstances of the present case suggest that the substantially increased monetary penalties provided for by the legislature in respect of conduct contravening Pt IV of the Act, and the numerous occasions on which the Court has imposed substantial penalties on arrangements and understandings proscribed by Pt IV of the Act, have had little, if any, affect on the parties to the price-fixing understanding."

This was just one of a number of instances over recent years where the ACCC has noted courts are indicating that fines for serious breaches including cartel type conduct should be in the higher range. Clearly we will be taking this into account when seeking penalties, including in cases where we seek penalties by consent order with affected parties.

Which brings me to the issue of bigger fines and criminal sanctions.

- ***Higher Civil Penalties and New Criminal Sanctions***

International and Australian experience has shown that anti-competitive conduct will not be deterred if the potential penalties are perceived by firms and their executives to be outweighed by the potential rewards. Under Australia’s existing penalty regime, there was a real danger that the penalties were simply not a deterrent.

Until now, the maximum penalty, per offence, has been just $10 million for corporation and $500,000 for an individual – although as we are all aware, there was nothing to stop a company paying the individual fines as well.

Under the new tougher penalties arising out of the Dawson review, the maximum civil penalties for all anti-competitive conduct for corporations will be the greater of $10 million, three times the value of the gain from the illegal conduct, or (if the gain cannot easily be determined) 10 per cent of annual turnover of the entire corporate group. That last point needs to be stressed – that is 10% of the entire group, even including businesses not directly involved in the illegal activity.

Maximum penalties for individuals will remain at $500,000 – but this will now be a penalty they cannot pass on to shareholders. Directors and senior executives caught engaging in anti-competitive conduct will lose their legal protection and will be forced to pay the fines and their legal costs themselves.

In addition, judges will have the power to ban senior officers implicated in anti-competitive conduct from being a director or a manager of a company.

As the Financial Review noted this week, this puts anti-competitive behaviour like price fixing, misuse of market power and restrictive anti-competitive contracts into the league of serious Corporations Act offences, even before the expected introduction later this year of criminal penalties for hard core cartels.

Those criminal penalties will provide for jail terms for executives involved in hard core cartels of up to five years and fines of up to $220,000. The financial penalties for corporations under the criminal regime will be the same as the much tougher new civil penalties.

Now the ACCC accepts that criminal penalties are not appropriate in all cartel cases, and should be reserved for only the most serious cartel conduct.

That is why we acknowledge the need for the guidelines as signalled by the Treasurer which require the final decision on whether to launch a prosecution to be left up to the Director of Public Prosecutions, acting on advice from the Commission.

The DPP will make an independent determination as to whether to prosecute a particular matter, taking into account factors such as the impact of the cartel and the scale of detriment caused to consumers and the public, and previous admissions to or convictions for cartel conduct.

As you will be aware, the standard of proof needed to secure criminal conviction is stronger than that for a civil case, and the ACCC is therefore taking internal action to ensure our performance is able to meet this new high standard in those cases where we elect to seek a criminal prosecution.

To this end the ACCC is in the process of building its current cartel unit into a new criminal enforcement and cartel branch to develop our systems, security, evidence handling, our risk management practices; our relationships with the DPP and our relationship and dealings with defence lawyers.

We will also be reviewing our legal rights and responsibilities in regard to warrants, searches and interviews and giving a number of our staff, drawn from across the country, to receive specialised training on criminal matters.

A further weapon in our armoury against cartel conduct has been the introduction, nearly two years ago now, of our Leniency Policy.

- ***Leniency Policy***

The Leniency Policy contains an automatic offer of immunity for eligible companies and individuals but is available for *cartel conduct only*.

The decision to go down this route was an explicit acknowledgment that the secretive nature of cartels meant that they would often only be exposed by cartel participants persuaded to break the code of silence.

And to date, this approach shows some rewards. Of the more than two dozen cartel investigations currently being run by the Australian Competition and Consumer Commission, half are as a direct result of people taking advantage of our Leniency Policy.

The philosophy behind it is very simple – it makes cartel lawbreakers and their executives an offer to cease the unlawful conduct and report it to the Commission. In return they receive a clear and certain offer of leniency. Their evidence then exposes others involved who will be investigated and, if the evidence permits, brought before the courts.

But only if they were the first to expose the cartel, or the first to come forward once the ACCC began its investigations.

While those companies that are penalised may regard this as unfair, the courts are showing acceptance of the principle that those who are the first to expose a cartel deserve more lenient treatment.

In the December 2003 *Tyco* case[1], Justice Wilcox noted:

> *"It is sufficient to say that, because of the existence of the leniency agreement, there can be no valid argument for parity in outcome as between Tyco and FFE. If this approach leads to a perception amongst colluders that it may be wise to engage in a race to the ACCC's confessional, that may not be a bad thing."*

We at the ACCC think it should be a most compelling perception.

- ***Leniency Policy review***

However, we also accept that with any new program there are always improvements that can be made and given lessons from the 14 applications we have received for leniency since the policy was introduced nearly two years ago and a consultative process where we sought external comments on some specific areas we are now in the process of making some significant revisions which are likely to include:

  - the introduction of markers
  - a single level of immunity
  - an extended timeframe for when immunity is available
  - an enhanced protection of information

Without wishing to pre-empt the issue of the new draft policy I will highlight what are likely to be one or two changes.

Firstly, **Markers** are used in overseas jurisdictions and are to some extent used informally already by the ACCC. This change formalises the use of markers. It allows applicants to set their place in the queue while making further internal inquiries. It will be useful for applicants who have suspicion of

[1] *Australian Competition and Consumer Commission v FFE Building Services Limited* [2003] FCA 1542, at para 29-30

cartel activity within this company and want to come forward, but do not yet have the full facts.

The ACCC will discuss with the applicant whether they are first in.

The introduction of a **single level of immunity.** This would allow applicant to be granted immunity from penalty and prosecution even if ACCC is aware of conduct. Currently the policy has for full immunity the requirement that the ACCC is not aware of the specific conduct.

An **extended timeframe** which will enable full immunity to be available up until ACCC decides to institute proceedings. This creates more time, but there will still be a 'race to the door' amongst co-conspirators as it will still only apply to the first applicant. This change will, in our view, also enhance the policy as an investigative tool and create more certainty for applicants.

The **enhanced protection of information** involves introducing a paperless process. This will make it clear that information already provided can be done on a 'without prejudice' basis.

The practical implication of these changes is to encourage applicants coming to the ACCC at the earliest possible opportunity. With the marker system, it will be possible for applicants to come in and secure their place in the queue even before they have all the facts. Their information is protected and will be returned if it is subsequently revealed that there is no breach.

All it requires is one phone call, and a full application can be made later.

The leniency policy, together with the tougher penalties now makes any risk weighted cost benefit analysis tip massively against involvement in a cartel.

No matter how secretive the cartel, and how carefully it is disguised, there is now the ever present risk of a co-conspirator rushing to our confessional to claim the advantage from our leniency policy.

And when the cartel is exposed, the new fines mean the cost for any company will always outweigh the gain, and for individuals involved, there is the prospect of massive fines, massive legal bills, the end of a career in business and possibly even jail.

- ***Part V Consumer Protection***

When it comes to consumer protection the ACCC's priority remains to target misleading and deceptive conduct, where such conduct is blatant and there is widespread detriment to consumers.

We target conduct with a national or international focus and cases where enforcement action will have a broad national educative or deterrent effect.

A very good example of this is the real estate sector where in 2003 we flagged that allegations of misleading and deceptive behaviour in the property industry

– such as property investment seminars and “dummy bidding” - would be a priority for us.

As a result of extensive media interest in this announcement, and some well-honed court cases, we have seen a marked change in behaviour by the property industry.

Another area we have targeted in recent times has been disadvantaged and vulnerable consumers. We use this term widely, and it can incorporate everything from door to door salesmen exploiting people with intellectual disabilities to sell them products they don’t need or can’t afford to those preying on the sick and elderly with false promise of health cures.

Such campaigns are focussed on strategic litigation and the use of publicity to bring about behavioural change in a way that benefited consumers, and, we believe, business whose reputation can only be enhanced by fair and ethical behaviour.

- ***Some repositioning in consumer protection***

In addition to establishing improved databases and systems for our enforcement activities, we have, in the consumer protection area, also shifted our focus somewhat, in the sense that we have cleared the decks, and are continuing to do so, in respect of what I will call local consumer protection matters.

Through a process of consultation and collaboration with state consumer affairs bodies we are selecting and carefully moving a number of the local consumer affairs matters to the state consumer affairs bodies, where they are more appropriately dealt with. This enables the national regulator to focus its resources on matters of significant national importance and of significant, widespread consumer detriment.

The states are also working on processes to enable them to take collaborative action in relation to conduct which crosses one or more state borders.

The ACCC has always placed a high priority on consumer product safety, and our role in this area has recently been greatly enhanced with the transfer from Treasury to the ACCC late last year of direct responsibility for product safety.

As a result, the ACCC is now responsible for not only enforcing product safety regulations, but in advising government about what regulations are needed, and what form they should take.

- ***Consumer protection remedies***

Touching on remedies in the Part V area we are also looking at our mix of cases and the remedies we seek. In the area of consumer protection we have two courses of action available to us under Part V of the Trade Practices Act in respect of what I will broadly call misleading and deceptive conduct. The first is to proceed by way of civil proceedings, which has its advantages but also its limitations. It enables us to obtain orders to restrain by means of injunction the continuation of the issues that are the subject of potential

breaches of the Act—to obtain, for example, corrective orders for corrective advertising, so that consumers can cease being misled—and potentially put in place compliance strategies within the offending corporation or the offending business to ensure that compliance is enabled to take place into the future.

We have been giving more serious consideration in recent times to the alternative process available to us under the Act, which is criminal prosecutions for breaches of the consumer protection provisions.

Criminal prosecutions do raise challenges. They affect both the process of investigation that we undertake, obviously, in terms of the admissibility of evidence, and they involve collaboration with the Director of Public Prosecutions. I am pleased to say that, in close collaboration at the most senior levels of the DPP, we have established protocols for working well with the DPP to ensure the efficiency of taking matters through to the criminal prosecution stage if that becomes appropriate.

The advantage of criminal prosecutions, as far as we are concerned, is that they do have two significant impacts on offending businesses. Firstly, they create a criminal record, which has enormous implications for business, such as making it very difficult to get work from government or get insurance contracts. In the case of an individual it also, just to choose one example, makes it ineligible for you to ever travel to the USA on their visa waiver programme. Secondly, they do enable us to secure financial penalties, which is not available under the civil prosecution process.

We are contemplating future criminal prosecutions for breaches of the consumer protection provisions in cases where we can see deliberate fraud, where consumers have been deliberately defrauded, and where we believe that it is appropriate to elevate the level of prosecution to that of a criminal action.

The internet and the increasing popularity of e-commerce has also made Australia an increasing target for various consumer frauds operating from overseas.

The ACCC will continue its focus on enforcement in this area. In doing so it will utilise cooperation agreements with overseas regulators. Just this month, the Full bench of the Federal Court upheld a finding that a Gold Coast company was part of an international pyramid selling scheme based on the internet.

The scheme is fragmented, with a company in the British Virgin Islands having overall control, and service companies contributing to the scheme operating from Britain, Gibraltar, the Netherlands Antilles and Australia. Consumers recruited into the scheme came from a number of countries, including Canada, the United Kingdom and Norway.

Importantly, despite the fragmented international nature of the scheme, the Court found it had still breached the Trade Practices Act and that Australian companies taking part in pyramid selling schemes were acting illegally.

These types of cases are important in testing jurisdictional issues in Australian courts and enhancing our operational arrangements with overseas regulators, including through ICPEN (International Consumer Protection and Enforcement Network) in a common objective to stop such conduct.

Then to unconscionable conduct.

- ***Unconscionable Conduct, Small Business and Franchising***

The Commission has long recognised that small business doesn't have the same sort of resources as big business to address education and compliance and for some time now we have had a dedicated small business unit within the Commission to focus on the sector.

We hold over 1,000 meetings with small business every year and have launched a "Competing Fairly Forum" to help educate small business in rural areas about the rights and responsibilities.

Just as important is ensuring we manage small business expectations of what we can, and can't achieve – what we refer to in the ACCC as the small business expectations gap.

For the last 5 years the ACCC has put significant effort into tackling unconscionable conduct against both consumers and small business.
In particular, in recent months the ACCC has moved to prioritise investigations covering hard fraud cases in the franchising area.

The success of franchising has attracted a number of unscrupulous operators looking to capitalise on the spectacular growth in the sector by deceiving potential small business owners with offers of bogus or unworkable small business 'opportunities'.

As a consequence the ACCC is already examining a number of different scenarios which we believe are criminal and are taking steps to not only shut down the perpetrators but, where possible, to also impose criminal sanctions.

This is just one area we are targeting. But the diverse nature of small business, and rapid change, such as has occurred with the explosive growth in franchising in recent years, again makes this an area where we have to constantly reassess our compliance enforcement mix.

Finally I'd like to turn to the area of compliance programs.

Compliance

It's still a fact that most businesses implement trade practices compliance programs only after the event, as a result of a direct ACCC action against them or another business in their industry.

As I said at the outset, particularly in this new environment, it is eminently more sensible to have business comply with the Act in the first place, rather

than act in a way that does damage to both consumers and the business, and then to try to undo the damage later.

Given the massively increased financial penalties and possible criminal sanctions that corporations and their executives now face for ignoring this obligation, I suggest it will now be crucial that a corporation be able to demonstrate to its shareholders the existence of a corporate culture that is effective in the management of compliance.

To do this, a company needs a system of deep-rooted values, attitudes and beliefs that affect the way those within the company perceive the company itself and what it stands for and the way it perceives its relationship with suppliers, customers and regulators.

I suggest we all agree that a compliance culture has the following elements:

- it has a strategic vision. Compliance activities have to relate to some larger strategic goal
- it identifies the specific risks that could arise within each strategic arena
- it establishes control points for each of these risks
- it is well documented
- specific people are accountable for managing each specific element of the compliance system

In other words, a good compliance culture links specific people, to specific documents, control points and risks, and ultimately to a specific goal. In a good culture of compliance, this will be a seamless web.

A company with a good compliance culture is one in which a dominant value from top to bottom favours compliance with the law. As Graeme Samuel has said, a good compliance culture has to start at the most senior levels.

The ACCC recognises that the development of a compliance culture is a complex process as it can involve change in both behaviour and attitudes within the organisation. In its initial stages it is also a time and resources consuming process. However, that should not deter organisations from implementing an effective compliance program.

Indeed, there are many benefits from having a robust compliance culture:

- it helps the company avoid breaching any of its statutory obligations and thus damaging its reputation
- builds long term trust in consumers and minimises complaints
- indirect consequences of non-compliance could include work ‘down time’, reduction in staff morale and damage to reputation
- it will be taken into account in the event of a breach of the Trade Practices Act.

With compliance programmes in recent times the Federal Court has indicated its reluctance to make orders for trade practices compliance programs in terms of the existing standard for compliance programs. In response to those concerns the ACCC has developed four trade practices compliance templates which assist greater clarity and measurability.

Level 1 and Level 2 templates have been designed to assist micro and small businesses looking for some guidance in putting in place effective compliance systems. Level 3 and Level 4 templates have been formulated for the needs and circumstances of medium and large businesses. The templates and the accompanying *Compliance Review Guidelines* will be placed on the ACCC website in the near future.

The ACCC notes that there is no generic trade practices compliance program as each organisation's circumstances are different. Depending on the size and risk profile of the company, a Trade Practices Compliance Program can be as simple as implementing an effective complaints handling system and training relevant staff; or as comprehensive as setting up a team of dedicated compliance staff and conducting regular risk assessment checks.

Companies using the templates should not see them as a solution to all their problems. The requirements of the templates should still be tailored to the company's specific needs and circumstances, ideally by compliance professionals after conducting a thorough trade practices risk assessment.

The ACCC has also developed a *Compliance Review Requirements* publication to accompany the templates and provide clear instructions on what we are looking for in compliance program reports.

This publication was developed at the same time as the Australian Compliance Institute work on its *Protocols for Reviewing and Assessing the Adequacy, Effectiveness and Efficiency of Compliance Programs*. The ACCC provided input to the ACI Protocols and sought advice from some ACI members and some independent compliance professionals on the sort of information and detail that they would find useful in Review Guidelines. The close collaboration has resulted in complementary documents that refect the views of both the Commission, and the compliance professionals and their clients.

The templates do not seek to diminish the importance of the Australian Standard for Compliance Programs. The Commission's Compliance staff are actively involved in the revision of the Standard and it is hoped that this revision will continue to provide the overarching compliance principles and guidelines required by Australian business.

We are very happy with the positive and productive relationship we have with the compliance industry and will make every effort to maintain this productive relationship into the future.

Finally, I should mention another important initiative. In 2002, the ACCC, in conjunction with the Regulatory Institutions Network at the Australian National University (Regnet), commissioned a major study on the impact of the ACCC's enforcement and compliance activities.

It is a major benchmarking survey of almost 1000 medium to large Australian businesses about their views on the ACCC (not all complimentary I might add), the ACCC's enforcement and compliance activities and the compliance

philosophy and compliance activities of the businesses themselves. Respondents to the survey have included CEOs, company secretaries and their compliance officers.

The study will help us understand what the drivers are for businesses to comply, or not comply, with the TPA. Is it enforcement, is it publicity, is it education or a mixture of all of them? Is it good corporate governance practices?

The ANU's Regnet team are currently considering all the data from the survey, and we look forward to future discussion and publications about the results over the next year or so.

Conclusion

As I said at the outset, the ACCC would much prefer business did the right thing by complying with the Trade Practices Act in the first place, rather than us having to come in and try to undo the damage after the event.

That is why we appreciate the work of compliance professionals and welcome the close co-operation we have with your members.

But as I've also demonstrated here today, proposed tougher penalties including criminal sanctions, recent internal changes, and increased funding for litigation mean that where breaches occur, the ACCC is now much more focussed and better prepared to take on those who ignore our advice and flout the law.

It is a message everyone in business can no longer ignore.

Thank you for your invitation to speak here today, and I trust we will continue to work together to promote compliance with the Trade Practices Act for the benefit of all Australians.