

Small Business Coalition

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THE ACCC AND SMALL BUSINESS



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INTRODUCTION

Thank you for inviting me to address all of you this evening. My aim in doing so is to give you an insight into the Commission's efforts in assisting small business cope with the demands placed on it by today's economic environment.

The ACCC has always had an important role in relation to small business. Many of its decisions bring benefits to small business, for example, very often the customer most damaged by a price fixing agreement or abusive market power or anticompetitive merger is a small business.

As most of you are probably aware, the Government has recently strengthened the provisions of the *Trade Practices Act* regarding the interrelationship between big business and small business. It has strengthened the unconscionable conduct provisions. It has also legislated to enable codes of conduct to be enforceable under the *TPA*. Indeed it will be possible for the government to mandate that an industry has a code of conduct. With voluntary codes of conduct it will also be possible to make them enforceable under the *TPA*.

I intend to focus on outlining the ACCC's perspective on the Government's small business reforms. I will discuss the ACCC's views on unconscionable conduct, industry codes of conduct and alternative dispute resolution mechanisms. I will also briefly outline the ACCC's role in respect of price monitoring and the GST, as well as some discussion of the waterfront dispute settlement. I will conclude tonight with an overview on ACCC initiatives which have been designed to cope with the increased responsibilities in this ever expanding area.

ENFORCEMENT ACTION

The stated aim of the Trade Practices Act is to enhance the welfare of Australians through the promotion of competition and fair trading and consumer protection.

In particular it focuses on:

- unfair prices
- the abuse of market power; and
- the violation of consumer rights

for the whole of Australia.

The role of the ACCC is to apply the Trade Practices Act properly, without fear or favour to anyone, no matter how powerful economically or politically, for the benefit of consumers of all kinds everywhere in Australia, including household consumers; small, medium and big business; farmers; local, state and federal governments; and all people everywhere, in capital cities, country towns and farms. All have an interest in being supplied competitively and efficiently at low prices with good service; and where they sell, to sell to buyers who have to compete for their output. The Commission's approach in enforcing the *Trade Practices Act* is to educate the market and promote dispute avoidance and resolution schemes where there is essentially a business versus business dispute. However, where there is blatant disregard or systematic breaches of the *Act*, then the Commission is willing to use its enforcement powers.

The Commission is always keen to ensure that it chooses the right enforcement tool to achieve the Commission's goals and objectives. In making this decision, the Commission will take into account a series of factors, including the following:

- blatant disregard of the law;
- significant public detriment;
- educative or deterrent effect;
- new market issues; &

- the need to test the reach of the *Act*.

In choosing the appropriate method for enforcing a particular section of the *Act*, the Commission will also need to take into account the aims of any enforcement action. The sorts of aims that the Commission would normally be concerned about include the following:

- stopping the unlawful conduct;
- obtaining compensation/restitution for the victim;
- undoing the effects of the contravention;
- deterring/preventing unlawful conduct occurring/being repeated in future; &
- punishing the wrongdoer.

UNCONSCIONABLE CONDUCT

In 1993 the Government introduced amendments to the *Trade Practices Act* covering the small business sector. Section 51AA prohibits unconscionable conduct by a corporation engaged in trade or commerce.

The key elements to proving unconscionability under s.51AA are whether:

- the parties meet on unequal terms which are reasonably apparent, (because of the weaker party's special disadvantage or disability, eg. illness, infirmity or dire economic need);
- the stronger party takes advantage of the special disadvantage or disability (by unfair or unduly onerous terms, non-disclosure of unusual conditions or unusual facts or failure to afford the weaker party an opportunity of obtaining independent advice); &

- the stronger party thereby obtains a bargain upon terms so beneficial that it is oppressive to the weaker party. (An inadequacy of consideration is not an essential ingredient.)

Shopping Centre Tenancy Case (Farrington Fayre)

Relevantly, the Commission recently instituted proceedings against the owners of a shopping centre, alleging that the landlord dealt with certain tenants in an unconscionable manner in contravention of section 51AA of the Trade Practices Act. The Commission believes that the term “unconscionable conduct” covers cases where:

- a party to a transaction suffered from a special disability, or was placed in some special situation of disadvantage, in dealing with the other party; and
- the other party was in a superior bargaining position; and
- the weaker party’s disability was sufficiently evident that the stronger party knew, or ought to have known, about it; and
- the stronger party took unfair advantage of its superior position or bargaining power.

The ACCC alleges that in 1996 and early 1997 the owners implemented a strategy whereby they refused to grant renewals, variations or extensions of leases to three tenants unless those tenants withdrew from legal proceedings before the WAS Commercial Tenancy Tribunal against the owners and/or agree not to pursue legal rights against the owners.

The ACCC believes that these tenants were at a special disadvantage when bargaining with the owners because of their financial dependence upon renewal, variation or extension of their leases. The ACCC alleges that it was unconscionable for the owners to take advantage of their superior bargaining position to have legal proceedings withdrawn and/or rights to future proceedings waived.

Despite this current action, the problem with section 51AA is the relatively high threshold of proving “special disability”.

In September 1997 the Government released its *New Deal, Fair Deal* report, setting out proposals to provide small business with much improved legal protection against unfair trading and access to effective enforcement mechanisms. As a result of this report, legislation amending the *Trade Practices Act* was passed in April this year. The *Trade Practices Amendment (Fair Trading) Act 1998* inserted into the *TPA* a new section 51AC, which is designed to fill the gaps in the existing section 51AA and to protect small business from unconscionable commercial conduct. In addition, a new Part IVB has been inserted, which provides for industry codes to be enforced under the *Act*.

The new unconscionability provision now has a “shopping list” of matters that the Court can take into account but, unlike s.51AA, it is restricted to transactions for the supply or acquisition of goods and services to a value of less than \$1 million.

The new unconscionable conduct provision (s. 51AC) aims to provide protection for small business against exploitative business conduct. It will prohibit the stronger party exploiting its bargaining advantage to impose contractual terms, or engage in conduct, that would be unconscionable in the context of the particular commercial relationship between the parties.

Under the new s. 51AC, the court may take into account a range of circumstances in determining whether a business has been subjected to unconscionable conduct.

One of the interesting things that Courts can now take into account in determining unconscionability is whether the requirements of industry codes (both applicable codes and otherwise) are observed. This means that compliance with mandatory codes such as the Franchising Code and Oilcode, and voluntary industry codes such as that being developed for the film industry, may be taken into account in determining whether conduct by a larger party is unconscionable.

The series of factors which may be taken into account in determining unconscionable conduct include:

- s.51AC(3)(b) - “whether as a result of conduct engaged in by the supplier, the business consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier”.

When a contract is grossly one-sided a court may infer that a position of disadvantage existed and/or that it was unfairly exploited . Generally, the application of the doctrine of unconscionable conduct will be concerned with process rather than outcomes. However, in applying equitable principles, the courts have always been prepared to draw inferences about abuse of process from apparently one sided bargains. The bargain made must therefore be considered as an element in determining whether there has been unconscionable conduct.

If complex or onerous terms are not explained to a consumer, it may be that those terms were more than necessary to protect the legitimate interests of the stronger party and that the conduct was unconscionable.

- s.51AC(3)(c) - “whether the business consumer was able to understand any documents relating to the supply or possible supply of the goods or services”.

Such situations may arise where the supplier realises that the weaker party is under a serious misapprehension about the terms or the subject matter of the transaction. The weaker party may have difficulty with the language, or suffers from some mental or physical disability, is incapacitated by drugs or alcohol, or has had no independent assistance or advice.

- s.51AC(3)(e) - “the amount for which, and the circumstances under which, the business consumer could have acquired identical or equivalent goods or services from a person other than the supplier”.

The Commission can be expected to take a pragmatic approach to this clause. It should be noted that this clause does not outlaw standard form contracts or even hard bargaining. Rather, the clause is aimed more at economic duress type situations and things that are “beyond the pale” where there is disproportionate bargaining strength.

- s.51AC(3)(i) - “the extent to which the supplier unreasonably failed to disclose to the business consumer:
 - (1) any intended conduct of the supplier that might affect the interests of the business consumer; and
 - (2) any risks to the business consumer arising from the supplier’s intended conduct (being risks that the supplier should have foreseen would not be apparent to the business consumer); and

- s.51AC(3)(k) - “the extent to which the supplier and the business consumer Acted in good faith”. This clause is a more general application of all of the factors in 51AC.

The new provisions provide guidance not only to the courts but also to business as to the factors that need to be taken into account in dealing with small business. Business will need to consider how to ensure it does not engage in unconscionable conduct - full disclosure of the terms of any transaction will be a good start.

The First S51AC Case (Leelee Pty Ltd)

The ACCC has filed its first case of unconscionable conduct under section 51AC in the Federal Court just 3 weeks ago. The ACCC alleges that the landlord of a food plaza in Adelaide, acted unconscionably towards a tenant by:

- increasing the rent contrary to the agreed terms of the lease;
- failing to protect the rights of the tenant under his lease;
- forcing the tenant to charge higher prices for food dishes while allowing the tenants competitors to charge less.

The Commission is seeking injunctions, declarations that the tenant has suffered loss or damage, findings of fact, and orders for payment of damages. A successful outcome in this case will show how the new law protects small business and that landlords must treat their tenants fairly.

This case is the first of its kind and the ACCC hopes to induce behavioural change on the part of big business towards smaller businesses in line with the *New Deal: Fair Deal* package.

To assist businesses in understanding their rights and obligations under the new unconscionable conduct provisions, the Commission has released a plain English guide to section 51AC. This Guide explains in simple language the law relating to unconscionable conduct; the terms used in assessing unconscionable conduct; the remedies available; offers some case studies; discusses risky market practices and effective compliance systems (including dispute avoidance and resolution); and provides checklists to assess risks of possible breaches.

CODES OF CONDUCT

The Government, in its inquiry into small business in Australia, accepted that several aspects of small business are particularly vulnerable to unfair treatment in commercial dealings, including retail tenancy, franchising and petroleum retailing.

Franchisees and petroleum retailers have been regulated by voluntary industry codes of conduct which went some way to providing small business rights in the marketplace. However, the Government noted that, overall, voluntary industry codes were ineffective in shielding small business from unfair conduct because they were not enforceable or because they carried ineffective sanctions, and it accepted that these codes should be underpinned by legislation to give them real force and effect.

The new section 51AD of the TPA provides for codes of conduct to be enforceable under the *Act*. The Franchising Code of Conduct is the first to be prescribed under the terms of this new provision.

Franchising Code of Conduct

The Franchising Code of Conduct was launched on 19 June last year. The first stage of the Franchising Code came into effect on 1 July 1998, and is mandatory for franchising industry participants. It includes a provision ensuring that franchisees have the right to associate, and requires franchisors to provide a copy of any lease to franchisees and to prepare financial statements for marketing and cooperative funds.

The second stage, including disclosure and dispute resolution provisions, came into effect on 1 October.

The Code regulates the conduct of industry participants towards each other and aims to bring about cultural change in the sector. It aims to raise the standard of conduct in the franchising sector without endangering the vitality and growth of franchising and reduce the cost of resolving disputes in the sector. The Code also addresses the imbalance of power between franchisors and franchisees.

A key element of the Code is disclosure. Franchisors are now required to disclose, to franchisees and prospective franchisees, information relevant to the operation of the franchise business. Franchisors are also required to provide relevant information, such as details of a change of ownership or changes to certain financial circumstances, to franchisees during the course of the agreement.

The Code imposes an obligation on a franchisee transferring or selling a franchised business to provide a disclosure statement to the person purchasing the business.

Other requirements of the Code include obligations on franchisors to provide a cooling off period for prospective franchisees. Franchisors may not prevent franchisees from associating with each other for a lawful purpose and may not seek a general release from liability on entering the franchise agreement. The Code also deals with termination of a franchise agreement and sets guidelines for mandatory

mediation where a dispute arises that cannot be resolved within the franchise system.

The operation of the Code will be monitored closely by the Franchising Policy Council.

Raising the level of awareness of the rights and obligations of participants in the franchising sector is essential for significant behavioural improvement to be achieved in the sector. To that end, the Commission has launched an extensive information dissemination and education campaign, including widely advertising the availability of the Code via national and regional newspapers, brochures and seminars. The Commission has also published *The Franchisee's Guide*, which is a plain English guide to the Code. In addition, to assist franchisors in complying with the Code the Commission, together with the Department of Workplace Relations and Small Business, has produced a compliance manual which is available from all ACCC offices.

The role of the Commission in enforcing codes of conduct is to send a clear signal to the market place that those who do not comply with the code, or observe the form and not the substance of the code, will not escape with impunity. The ACCC's aim will be total compliance with industry codes.

The Commission's preferred method of achieving compliance is education of the market, but enforcement will be taken seriously when it is needed. If a franchisor, for example, hasn't produced appropriate compliance material, then the Commission will be keen to ensure that they do this.

In relation to the Franchising Code of Conduct, the Commission will be focussing on educating franchisors about responsibilities and implementing a cooperative approach to averting breaches.

COMPLIANCE

The question may be asked “why does the ACCC consider compliance so important?”. We have been pushing a self-regulatory approach as the most cost-effective means of achieving the objectives of the *Act*. For those who disagree with the objectives then think about the consequences of non-compliance as they can be extremely high. 1993 amendments to the *Trade Practices Act* raised maximum penalties for breach of the competition provisions of the *Act* to \$10 million for companies and \$500,000 for individuals. In addition, penalties for offences against Part V (the fair trading and consumer protection provisions) now stand at \$200,000 for companies and \$40,000 for individuals. I think there are few companies that could claim that a fine in the order of \$10 million is an acceptable risk. Consider also the personal liability that may attach to a breach of the *Trade Practices Act*. It is ACCC policy to seek out where possible the individual most responsible for the illegal conduct and to sheet home liability to that individual.

Costs of non compliance

The ACCC has an excellent record in terms of success in litigated cases. The Commission wins more than 90% of the cases it runs. In addition to any fines or penalties the business will generally have to pay the ACCC’s costs (as well as their own). This is daunting but the ACCC’s costs are comparatively lean compared to private parties. Legal costs may be tax deductible but are by no means productive.

Orders to pay damages are also often an element of trade practices matters and obtaining damages or other relief for affected consumers is always a priority for the Commission. The recent Telstra wiring plan case illustrates the potential scale. The settlement with Telstra for alleged breaches of s.52 (misleading and deceptive conduct) will deliver refunds of \$45 million to 1,500,000 customers.

Brands are a valuable asset. Australian companies spend in excess of \$300 million per year purchasing sponsorship and at least that amount again backing up this

sponsorship. Add to this the amounts spent on brand or image advertising across the media and you would have to reach the conclusion that corporate image is a highly prized part of any modern business. Any legal action has the potential to harm business by demonstrating the poor judgement of the staff involved. Where it is a trade practices action, the subject matter merely multiplies that risk. Consider the possible headlines:

- exploitation of the weak;
- abuse of market power;
- calculated lies; &
- no regard for safety.

What do these accusations say to your customers and suppliers? To spend large amounts on corporate image while allowing it to be exposed in these ways is an absurd strategy for any company.

The defence of a trade practices action may also involve the exposure in open court of sensitive documents or commercial practices. Whether it is clean or dirty, most of us prefer our linen unexamined. Related to this is who is doing the exposing. Often the people called to give evidence will be staff of the company's main customers. Somehow in court, one's deeds always seem to be in the worst possible context. After an experience like that, how many of those staff will continue to make an effective contribution? And let's not forget who is likely to be learning from these disclosures - your competitors.

Relevant, timely and easy-to-access information is important to small business. It also plays a role in reducing the costs to the community of small business failure and legal disputes. The information packages will be developed specifically for potential and existing small business operators. The Government is interested in using the existing avenues already accessed and trusted by small business. Distribution will be through a wide range of sources including industry associations, the new Business Information Service, and business intermediaries, including accountants and the financial industry.

Therefore, it makes sense to comply with the *Act*, not just to avoid big fines but because it leads to more efficient and profitable business, and the welfare of all

Australians is improved as a result. It is clear that more and more businesses are realising that it is important, if not essential, to develop a culture of compliance. In the process Australia is undeniably becoming more and more globally competitive.

SMALL BUSINESS DISPUTES

Turning now to the Commission's involvement in disputes between big business and small business, the ACCC has played a significant role in this area over the years. It takes the view that very often the best approach to resolving the disputes appropriately is not through legislation but through appropriate codes which address the real issues. The most important issue typically is inadequate disclosure or inadequate understanding of the position of the small business once it becomes involved in a leasing relationship. A disclosure code is a valuable way of reducing these problems. Another chronic problem occurs when there are disputes during the life of a tenancy. The ACCC believes that there is a strong case for having low cost, effective dispute resolution mechanisms that avoid the need for expensive litigation.

Alternative Dispute Resolution Mechanisms (ADRs)

In recent times the Commission has been keen to stress the importance that it places on effective alternative dispute resolution mechanisms (ADRs). In this context, the Commission has made a commitment to helping with the development of dispute avoidance and resolution systems. The Commission receives around 2500 complaints by small businesses against large businesses each year. In many cases, these complaints do not involve breaches of the TPA but should be amenable to resolution by ADR procedures.

Common features of the small business complaints made to the ACCC include:

- limited ability to negotiate terms of the contract (often pro-forma "take it or leave it" contracts are used);

- inadequate disclosure of relevant and important commercial information of which the weaker party should be aware before entering a transaction;
- inadequate or unclear disclosure of important contract terms, particularly provisions weighted against the weaker party, resulting from, for example:
 - the technical wording of the document;
 - failure to include material information
 - where the small business person is under-represented, lacks the legal fire power of the other party, and is discouraged from considering the detail of the contract (or not given the opportunity); or
 - failure to bring to the smaller party's attention, or fully explain, terms which might operate against its interests;
 - attempts by the larger party to vary the terms of a long term relationship, eg. a lease or franchise, to the disadvantage of the smaller party;
 - absence of effective dispute avoidance or resolution mechanisms or a reluctance by the smaller party to use them for fear of reprisal; &
 - an essentially adversarial relationship based on power and rights rather than mutual interests.

The Commission believes that many business disputes can be resolved by alternative dispute resolution (ADR) methods such as mediation or negotiation. ADR can be very useful to business as it is cheaper and quicker than litigation. It is cost-effective, particularly where there is an imbalance of power between large and small businesses. ADR tends to be less adversarial, helping to preserve the commercial relationship between the parties and encouraging creative solutions. As ADR seems particularly suitable for small business dispute resolution, the Commission is working with industry organisations to publicise it.

The Waterfront

Of particular interest is the waterfront settlement. Parliament passed strong laws regarding secondary boycotts in 1997 and especially strong ones concerning

boycotts affecting the movement of goods and services into and out of Australia, of special relevance to the waterfront. The provisions are quite different to those which applied from 1977 to 1993, as well as from 1993 to 1996.

I am sure you are all familiar with the secondary boycott case in which the Commission was involved last year, concerning the MUA and Patrick Stevedoring. Let me emphasise, the ACCC did not take sides in the dispute. It investigated behaviour on both sides of the waterfront. Its duty is to seek compliance with the law. Following private and then public warnings, boycott action affecting Australian exports and small business that we considered unlawful continued. We had no choice but to go to Court. To turn a blind eye to substantial, very public breaches of the law would have been to override the clear intent of Parliament and would damage the ACCC's general credibility.

One matter of concern to the Commission was that in the course of a private dispute economic damage had been done to small business and exporters. The damage in our view was done by unlawful boycotts, in breach of the Trade Practices Act. Something needed to be done about this. As well the Commission required some commitments regarding future behaviour.

The parties finalised a private agreement between themselves to resolve their private dispute. They made it a condition of their final agreement that the ACCC withdrew its public interest litigation and that those involved in other litigation do so also.

The ACCC did not agree. It insisted that the MUA, in the same way as other persons in Australia that breach the TPA, should give undertakings to the Court not to repeat the unlawful behaviour. Eventually the MUA complied. In addition, the ACCC considered that damages should be paid. Patricks paid an amount up to \$7.5 million to compensate small business and exporters damaged by the dispute.

In October last year, the Commission established the Stevedoring Industry Reform Small Business Compensation Fund to compensate businesses which suffered losses during the waterfront dispute. The Commission considers that the

establishment of the Trust Fund is an excellent result for those small businesses which suffered loss during the dispute. Throughout the dispute the ACCC was determined to protect the interests of these small businesses without taking sides in the broader dispute.

The Trustee has already received a number of claims from small businesses which are currently being assessed. Also a large number of claims are expected in the next four weeks prior to the closing date for claims. It is anticipated that payments from the Trust fund will start occurring within the next few months.

It must also be noted that the ACCC is currently looking into further complaints received earlier in the month in relation to the port of Newcastle. We have written to the MUA seeking clarification of some issues raised by the complainant.

GST

Also topical at the moment is the GST. As a result of the Government's re-election, the ACCC will be overseeing pricing behaviour pursuant to the introduction of the GST in July 2000. The Coalition has introduced legislation to provide the ACCC with special transitional powers to monitor retail prices formally.

The *A New Tax System (Trade Practices Amendments) Bill* will amend the *Trade Practices Act 1974* (TPA) inserting a new Part VB to provide the Australian Competition and Consumer Commission with power to monitor prices, in order to prevent the possibility of consumer exploitation and excessive profit taking in the transition to the new tax system.

The primary focus for the ACCC is promoting compliance. We encourage prevention rather than enforcement but enforcement is there as a 'big stick'. The ACCC's role is not to scare people, we are here to help.

To cope with the new responsibilities, the ACCC will have 40 new staff concerned solely with the GST transition, and an increased budget of \$27 million over three

years to perform its role. The ACCC further plans a \$10 million campaign to educate businesses of their rights and responsibilities under the new tax system.

The Commission warns businesses to play fair or risk legal action that may result in large fines. The Commission will be ready to work with those businesses wishing to comply with the law. However, the Commission will be equally ready, willing and able to take action against those who don't. The ACCC has been given powers to impose fines through the courts of up to \$10 million.

The ACCC will issue interim guidelines in the next 2 months in close consultation with industry and the ACCC's own Consultative Committee and the Small Business Advisory Group.

As the legislation becomes a reality, the role of the ACCC will become more clearly defined. There is a huge education campaign planned to ensure the obligations under the GST are well understood.

ENFORCEMENT STRUCTURES

I would now like to discuss the structures that the ACCC has in place and is currently implementing to deal with small business in particular.

Firstly, the ACCC, will, in the near future, have appointed to it two new small business associate Commissioners and a full time small business Commissioner. This recognises the significant role that the Commission has in dealing with small business issues and the importance of this role. The reason for the appointment of the "Small Business" Commissioner is not to ensure that there is special protection for small business but to ensure that adequate account is taken of small business considerations that are relevant to the *TPA* when the Commission is deliberating in any field that it is involved in.

The Commission has also created a Small Business Unit which is charged with the task of educating and advising the small business sector about the *TPA* and the benefits its observance brings business and consumers. It also assists in the

enforcement of and compliance with the *Act* by receiving complaints and informing businesses of the *Act*'s requirements.

The main areas of work for the Unit are:

- raising awareness of and compliance with the new, mandatory Franchising Code of Conduct, which seeks to redress imbalances in the relationship between franchisors and franchisees' and
- briefing business and its advisers on the new unconscionable conduct provision. The provision is expected to have considerable influence in ensuring that retail tenancy arrangements, in particular, are fairer and more equitable in future.

To reflect the importance of the increasing small business role, the ACCC has expanded its small business unit so that it is fully represented nationally. This means that a small business officer has been appointed in seven ACCC State/Territory Offices to augment the work of the already established small business unit in Canberra.

The small business program analyses small business aspects of current Commission activities, from complaints to court action. Staff discuss trade practices issues with a wide range of small business organisations. Such consultation also takes place through the Commission's Small Business Advisory Group. This group, which comprises representatives from industry associations in industries as diverse as petroleum, professions and property as well as business lobby groups, meets every couple of months to discuss trade *practices* issues affecting small businesses. The Commission has also developed links with small business organisations, Ausindustry and State/Territory Government small business corporations, including rural organisations.

In summary, the ACCC's Small Business Unit is seeking to add value to business operations, improve their performance and reinforce the broad benefits of compliance with laws enhancing competition and market openness.

A new Code of Conduct Enforcement Unit within the Commission is also being created, and will be responsible for advising the public on prescribed codes and taking enforcement action. This Code of Conduct Enforcement Unit will be located in the Commission's National Office in Canberra

CONCLUSION

The ACCC is often thought of as a body which is concerned with looking after the interests of consumers. However in most cases the "consumer" we are protecting is a small business in its capacity as a buyer or consumer of inputs. It is also important to recognise that it is not just the ACCC who can take action under the TPA. The TPA provides a right for private parties such as yourselves or your competitors to take legal proceedings in relation to possible breaches of the TPA.

The ACCC is totally committed to expanding its work in the area of small business. The ACCC plans to develop its small business culture and inject more resources nationwide into its work in this area and has started this by increasing the number of staff, not only in Canberra but also in the other capital city regional offices, that are dedicated to the needs of small business.

In the coming years the ACCC will inject an even greater small business focus into all its activities across the economy and across all its functions. I hope that tonight I have been able to clarify that even though the ACCC is an enforcement agency, our goal is also to be there for the many businesses that require guidance and protection.

In conclusion, the new unconscionable conduct legislation offers significant benefits for small business in terms of the fair trading environment. The Commission is keen to ensure that the potential gains that can be made by small business as a result of these reforms are in fact achieved. The Commission will enforce the new provisions rigorously but even-handedly, including in relation to such things as mandatory codes of conduct, unconscionable conduct in business transactions and the misuse of market power against small businesses by large businesses.

Thank you.