

# AUSTRALIA

## Annual Report on Consumer Issues 2002

### Australia's Consumer Protection Framework

The current Australian regulatory framework for consumer protection is comprised of Federal and State/Territory consumer protection legislation and some self-regulatory initiatives.

The development of consumer protection policy rests with the Competition and Consumer Policy Division of the Department of the Treasury and it is part of the ongoing work of the Division to examine the regulatory framework for consumer protection.

The Australian Competition and Consumer Commission (ACCC) is the agency primarily responsible for the enforcement of consumer protection laws in Australia at the national level. In addition, other relevant Commonwealth regulators include the Australian Securities and Investments Commission (financial services), the Australia New Zealand Food Authority (food safety), and the Department of Health and Aged Care (therapeutic goods).

The ACCC's enforcement work is complemented by the work of fair trading authorities in each State and Territory which administer mirror fair trading legislation at the regional level. All these organisations perform a valuable role in providing consumers with access to effective redress when assistance is required.

### *The Legislation*

The primary piece of consumer protection legislation in Australia is the *Trade Practices Act 1974* ('TPA'), administered by the ACCC. The objective of the TPA, as set out in the legislation, is to:

Enhance the welfare of Australians through the promotion of competition and fair trading and providing for a consumer protection framework.

It contains a range of provisions aimed at protecting consumers and corporations that qualify as consumers. These provisions are contained in Part IVA (unconscionable conduct), Part IVB (Industry Codes), Part V (consumer protection) and Part VA (Liability of Manufacturers and Suppliers for Defective Goods) of the TPA.

More specifically:

- Part IVA of the TPA covers:
  - Unconscionable conduct within the meaning of the unwritten law of the States and Territories (s 51AA)
  - Unconscionable conduct in consumer transactions (s 51AB)
  - Unconscionable conduct in business transactions (s 51AC)
- Part IVB provides for industry codes of conduct to be mandated and enforced.

- Part V of the TPA covers:
  - Misleading and deceptive conduct (s 52)
  - False representations (s 53, 53A, 53B, 53C)
  - Offering gifts and prizes with no intention to provide (s 54)
  - Misleading conduct to which Industrial Property Convention applies (s 55)
  - Bait advertising (s 56)
  - Referral selling (s 57)
  - Accepting payment without intending or being able to supply as ordered (s 58)
  - Misleading statements about certain business activities (s 59)
  - Harassment and coercion (s 60)
  - Pyramid selling (s 61)
  - Unsolicited credit cards (s 63A)
  - Assertion of right to payment for unsolicited goods or services, or for making entry in directory (s 64)
  - Liability of recipient of unsolicited goods (s 65)
  - Country of origin representations (Division 1AA)
  - Product safety and product information (Division 1A)
- Part V Division 2 sets out implied conditions and warranties in all consumer transactions;
- Part V Division 2A sets out the actions against manufacturers and importers of goods that can arise for breaching these implied warranties; and
- Part VA sets out the liability of manufacturers and importers for defective goods.

Under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), ASIC administers the same consumer protection powers in relation to financial services, as those generally administered by the ACCC under the TPA. These provisions are contained in Part 2 Division 2, Subdivisions C (Unconscionable conduct), D (Consumer protection) and E (Conditions and warranties in consumer transactions).

## **I. Institutional developments**

### ***Amendments to the Trade Practices Act 1974***

The TPA was amended in 2002 by the *Trade Practices Amendment Act (No 1) 2002*. The amendments clarify the TPA's prohibition of pyramid selling, amend the law relating to defences to prosecutions, and correct a legislative oversight from a previous amendment to re-insert a penalty that was inadvertently omitted.

The TPA was also amended by the *Trade Practices Amendment (Liability for Recreational Services) Act 2002*. The amendment permits self assumption of risk by individuals who choose to participate in inherently risky activities. It does this by allowing individuals to waive their rights under the TPA to sue businesses providing inherently risky services, should they suffer personal injury as a consequence of the service provider's failure to supply the services with due care and skill.

### ***Financial Services Reform Legislation***

The *Financial Services Reform Act 2001* (FSRA) commenced on 11 March 2002. The FSRA is incorporated into existing legislation as Part 7 of the *Corporations Act 2001*.

The new legislation introduces:

- a single licensing regime for providers of financial services, including banks, credit unions, insurance companies (life and general), superannuation providers, securities dealers and financial intermediaries;
- a single product disclosure regime for financial products (excluding offers of shares and debentures);
- an amended market regulation regime; and
- standards of conduct for financial services providers dealing with retail clients, including a requirement to have a dispute resolution system and compensation arrangements in place.

There is a two year transitional period for participants in the industry to make the transition from their current regulatory structure to the new arrangements. Persons caught by the FSRA must apply to ASIC for an Australian Financial Services Licence in order to carry on business in Australia.

From 11 March 2002, ASIC's consumer protection provisions under the ASIC Act 2001 also apply in relation to credit. This is because the FSRA amends the definition of a financial product in the ASIC Act to include a credit facility (s12BAA(7)(k)). The licensing and disclosure provisions of the FSRA do not, however, apply to credit providers. This is because responsibility for licensing or registration of credit providers remains with State or Territory authorities.

### ***Ministerial Council on Consumer Affairs (MCCA)***

The Competition and Consumer Policy Division, the ACCC and ASIC maintained close links with State and Territory consumer affairs and fair trading agencies. Formal links between these agencies are maintained through the Ministerial Council on Consumer Affairs (MCCA).

MCCA's key activities in 2002 included:

- Review of Builders Warranty Insurance;
- Addressing problems with fringe credit providers;
- Introduction of temperature compensation for petroleum fuels;
- Continuing work on e-commerce and m-commerce;
- Investigating problems with unfair contract terms in consumer contracts; and
- Continuing work on the introduction of mandatory requirements for comparison rates in relation to fixed term credit.

### ***International Cooperation Agreements***

#### ***European Commission***

A Consumer Protection Arrangement between the European Commission and Australia was signed at Officials level on 21 March 2002 in Brussels. The Arrangement is primarily concerned

the exchange of information between Australian agencies including Treasury, ACCC and ASIC and the Consumer Protection Directorate of the European Commission on consumer policy and protection. It is the first such arrangement between the EC and a foreign government.

The Arrangement recognises the mutual benefits of:

- administrative cooperation;
- timely exchange of information which may affect the actions of either Party;
- pursuit of more effective consumer protection law and policy in and beyond the European Community and Australia; and
- avoiding inconsistencies or conflicts between laws, standards and guidelines.

#### *Other international activities*

The ACCC regularly coordinates and receives study visits to Australia by international delegations and officials who wish to learn about Australia's framework for consumer protection regulation and the ACCC's role, functions and work in enforcing Australia's consumer protection legislation. In 2002, the ACCC hosted delegations from China, East Timor, Egypt, Ghana, Hong Kong, Indonesia, Japan, Kenya, Korea, Malaysia, Netherlands, New Zealand, Singapore, South Africa, Sri Lanka, Taiwan, Tanzania, United Kingdom and United States.

In 2002, the ACCC also continued to conduct staff exchange and secondment activities with several of its counterparts including the Canadian Competition Bureau, Taiwan Fair Trade Commission, New Zealand Commerce Commission, United States Federal Trade Commission, Hong Kong Office of Telecommunications Authority and the United Kingdom Office of Electricity and Gas Markets.

The ACCC's International Internship Program continued in 2002, enabling an officer from the Competition and Tariff Commission of Zimbabwe and from the Zambian Competition Commission as interns at the ACCC for approximately one year. The aims of the ACCC's International Internship Program are:

- to contribute to the development of competition, consumer protection and utility regulation policies and initiatives internationally;
- to enhance the ACCC's links with its international counterpart agencies;
- to enable participants to develop a sound knowledge of the legislation relevant to the functioning of the ACCC; an understanding of competition, consumer protection, pricing and utility regulation issues; an awareness of the political, commercial and social environments and the management framework in which the ACCC operates; and
- for those parties to positively contribute to the operation of the ACCC through the completion of work placements in various branches of the Commission.

## **II. Product safety**

### *Product safety recalls*

Under the TPA, companies conducting safety related voluntary recalls are required to notify the Commonwealth Minister responsible for Consumer Affairs. From 1 July 2001 to 30 June 2002, there were 644 safety related voluntary recalls conducted in Australia relating to: therapeutic goods (265), motor vehicles (95), food (71), agricultural and veterinary chemicals (4) and consumer products (209).

### *Product Recalls Australia Web Site*

The Product Recalls Australia web site, “Products Recall Australia” at [www.recalls.gov.au](http://www.recalls.gov.au) lists all current safety related recalls being conducted in Australia as notified under the TPA and by State and Territory regulators. The web site operates on a searchable database and provides up to date information on product recalls to both consumers and suppliers. During 2002, the site was upgraded to include an alleged hazardous products register for use by Australia and New Zealand safety regulators.

### *Product safety and information standards*

During 2002 two new mandatory standards were introduced. A mandatory standard for bunk beds came into force on 1 November 2002. It requires the provision of guardrails for elevated beds and the elimination of gaps that may result in head entrapment from the bed structure.

A mandatory standard for baby walkers also came into force on 1 November 2002. It requires a mechanism to prevent the walker falling down steps, that the walker is stable, and a warning label.

### *Bans*

A ban on mini cup jellies containing konjac was gazetted on 21 August 2002. Mini cup jelly products containing konjac do not dissolve in saliva, unlike gelatine based products, and, when accidentally swallowed whole, which is a great risk with infants, the product acts like a plug and cuts off the air supply. These products have been responsible for at least 15 deaths around the world.

A permanent ban on candles with lead core wicks was gazetted on 30 October 2002. The original temporary ban was introduced on the basis of ample evidence from public health experts in Australia and overseas that lead emissions from lead wick cores pose an unacceptable public health risk. Australia was the first country in the world to take action on lead candlewicks.

### *ACCC Activities*

Under the TPA, the ACCC has the responsibility for enforcement of mandatory consumer product safety and information standards and bans on unsafe products. Currently there are twenty-four consumer product safety standards, three consumer information standards and 11 banned products.

The ACCC is very pro-active in its approach to product safety, not only in regard to enforcement action but also in monitoring compliance in the market. National market surveys are carried out

throughout the year and products are selected for surveys according to their relative level of hazard. As a result of the surveys during 2002:

*Trolley jacks* – in April 2002 the Commission obtained undertakings from Golden Sun Australia Pty Ltd for the importation and supply of non-compliant hydraulic trolley jacks. The jacks did not carry the required warnings and safe usage information. Golden Sun carried out testing following which the jacks were recalled. The company has agreed to staff training as well as implementation of a compliance program.

*Pedal bicycles* – also in April 2002 Bikes Direct provided court enforceable undertakings to the Commission. As a result of testing by the company some faults were identified, although none were major structural problems. Bikes Direct undertook to carry out a recall and rectification program. They will also implement a trade practices compliance program.

*Car ramps* – in April-May of 2002 the Federal Court in Darwin granted injunctions against Autobarn Pty Ltd and Dictomax Pty Ltd preventing them from supplying non-compliant car ramps. Autobarn was required to conduct additional staff training to supplement its existing program. This product was found during the course of the staff survey program.

*Vehicle jacks* – in October of 2002 the Commission instituted legal proceedings against BMW (Australia) Limited in relation to the safety warning carried on vehicle jacks supplied with BMW vehicles and in the vehicle owners manual in respect of safe usage instructions for the jack. The matter is currently being prepared for trial.

*Household cots* – Also in October 2002, Lane Wrigley Pty Ltd provided court enforceable undertakings to the Commission. As a result of the 8036 Baby Bed failing to comply with many parts of the mandatory safety standard for household cots, Lane Wrigley Pty Ltd undertook to carry out a product recall program. They published recall advertisements and also implemented a trade practices compliance program.

*Cosmetics* – again in October 2002, Private Formula International Pty Ltd provided court enforceable undertakings to the Commission. As a result of Dr LeWinn's Cosmetic Lift Pack, containing A+ Revita Cell, and Dr LeWinn's Cosmetic Lift Powder, not complying with the mandatory product ingredient labelling requirements, Private Formula International Pty Ltd undertook to carry out a retail recall and re-label program. They also published corrective advertisements and implemented a trade practices compliance program.

*Jelly cups containing konjac* – In December 2002 the Commission instituted proceedings in the Federal Court, Perth against Trans Oriental Import and Export Pty Ltd and one of its Directors, Mr Thai Tran, alleging the company sold to consumers banned mini-cup jelly confectionaries containing the ingredient konjac. The matter is currently being prepared for trial.

*Pool Toys* – In December 2002 the Commission warned families to carefully check pool toys (known as 'noodles') for indelible safety warnings after an ACCC pre-Christmas survey of children's toys led to one brand's withdrawal from sale. Thermotec Australia Pty Ltd, Toys 'R' Us and other retailers agreed to withdraw from sale products with inadequate safety warnings following concerns raised by the ACCC that the labelling of some Thermotec Australia products failed to meet the mandatory product safety standard. The required labelling warns that these pool toys are to be used only under competent supervision.

### **III. Protection of the economic interests of consumers**

#### *Consumer protection in electronic commerce*

A Model Code for Traders in Electronic Commerce, entitled *Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business* was released in May 2000. The Best Practice Model constitutes Australia's implementation of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce. The Competition and Consumer Policy Division maintains an electronic commerce ([www.ecommerce.treasury.gov.au](http://www.ecommerce.treasury.gov.au)) website that promotes the Best Practice Model.

The Best Practice Model will be reviewed in 2003.

#### *Electronic junk mail*

In 2002, the National Office for the Information Economy (NOIE) reviewed the extent of problems caused by electronic junk mail (commonly known as spam), the adequacy of current measures to counter it and possible additional measures that may be necessary. Key findings of the NOIE review include:

- spam has become a popular vehicle for promotions that are illegal or commercially unscrupulous;
- Spam is low cost for the sender and transfers most of the costs to recipients;
- key problems surrounding spam include privacy breaches, illegal and/or offensive content, misleading and deceptive trade practices, cost-shifting to recipients (including employee productivity losses) and network integrity risks;
- some Australian businesses are being 'spoofed' by spammers, where in nuisance email is being routed through reputable firms so that business managers are obliged to spend inordinate time rectifying their reputation with disgruntled recipients; and
- the international dimension of spam makes it necessary to have a strategy in the medium term that fits in with broader international counter-measures although this will inevitably take longer to negotiate and implement.

In August 2002, NOIE published an interim report entitled, *The Spam Problem and How it Can Be Countered*, requesting public comments. Public comments were sought on the proposed development of a widely accepted working definition of spam; and the new legislative options canvassed in the report. In 2003, NOIE will prepare a final report for consideration by the Government.

#### **ASIC activities**

##### *The financial services sector*

Section 1101A of the FSRA gives ASIC a power to approve industry codes of conduct which relate to the activities of financial licensees for which ASIC has regulatory authority. It is not mandatory for an industry code of conduct to be approved, but if approval is sought, the code must meet certain standards. To date, no applications for approval of a code have been received, although some industry sectors are considering seeking approval for their codes in the near future.

In April 2002, the revised Electronic Funds Transfer (EFT) Code was launched. The revised Code extends the scope of the previous EFT Code to cover all forms of electronic funds transfers, including ATM and EFTPOS transactions, telephone and internet banking, all credit card transactions (other than those intended to be authenticated by a manual signature), and stored value products such as smart cards, pre-paid telephone cards and digital cash. The Code protects consumers by setting out rules relating to:

- disclosure information consumers must receive before they first use a new form of electronic banking;
- the information consumers must receive on receipts;
- liability for unauthorised transactions and system or equipment malfunction;
- protection of a consumers' privacy;
- when electronic communications rather than paper ones are allowed;
- complaints investigation and dispute resolution processes.

The revised Code also sets out what responsibilities consumers have in protecting the security of identification codes (such as PINs or passwords) and when they might be liable for unauthorised transactions.

Over 200 businesses had signed up to the revised Code by the end of 2002, including all Australian banks and credit unions.

In August 2002, a revised and updated Code of Banking Practice was launched. The revised Code followed a comprehensive review of the existing Code with widespread stakeholder consultation. ASIC made a substantial submission to the review process. The new Code, which will commit subscribers to a range of conduct and disclosure obligations in their dealings with customers, will come into effect from August 2003.

During 2002, ASIC conducted its fourth monitoring exercise for compliance with the Banking, Building Society, and Credit Union Codes of Practice and the EFT Code of Practice, covering the period 1 April 2001 to 31 March 2002. A report of the results will be released in the first quarter of 2003.

### *Book Up*

In March 2002, ASIC released a major report about Book Up, a practice whereby a trader offers small amounts of short-term credit to individuals. Typical traders are stores, taxi drivers, hawkers and regional airlines. Many of these traders are only prepared to offer credit if the consumer has their social security cheque posted care of the store or hands over their debit card to the store along with their Personal Identification Number. Book up practices are prevalent mainly in rural and regional Australia, and the consumers involved are mainly Indigenous Australians.

The report concluded that there are a number of problems with the practices associated with book up that can cause consumer detriment. These include tying consumers to particular retailers, overcharging, excessive credit and exposing consumers to liability in the event of an unauthorised transaction on their account. The report put forward a number of possible actions that ASIC could take.

As a first step, ASIC hosted, jointly with ATSIAC and the ACCC, a workshop on Indigenous

consumer issues in April 2002. ASIC has also conducted seminars for people and organisations with an interest in the issue and is currently preparing a kit for use by storeowners and Indigenous people in remote and regional communities to help them determine how, if at all, they want to book up to operate in their communities.

#### *Good Transaction Fee Disclosure*

In June 2002, ASIC issued a guide to good transaction fee disclosure for bank, building society and credit union deposit and payment products. The guide sets out current disclosure requirements and ASIC's views on good disclosure.

#### *Past Performance*

In September 2002, ASIC released a discussion paper on the use of information concerning past performance of investments in advertising. This was in response to earlier research that had shown that past performance was a weak and unreliable indicator of future performance and could, therefore, be misleading. ASIC also released a draft guide to assist industry in the use of past performance. The key provisions of the guide included:

- advertisements should give a 5 year return figure, in addition to figures for any other periods;
- 'hypothetical' or 'simulated' past performance figures should not be used
- past performance figures should be up to date
- information about returns should be balanced with information about risk
- returns should be calculated after all ongoing fees have been deducted.

#### *Socially Responsible Investing*

In December 2002, ASIC released a discussion paper seeking views on whether it should issue guidelines on the new FSRA requirement for investment products to disclose the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (known as socially responsible investing).

The main arguments for ASIC guidelines are to provide consumers with better disclosure to enhance their ability to ensure that the products they purchase match any SRI goals they may have and to provide industry with greater certainty about how they can meet the new obligation. The closing date for submissions was 28 February 2003.

#### *Enforcement activities in the financial services sector*

ASIC took a large number of enforcement actions during 2002 under the consumer protection provisions of the ASIC Act, the Corporations Law, and industry specific legislation.

Major or typical activities included:

- actions to stop illegal fund raisings;
- actions to protect vulnerable consumers;
- actions to prevent misleading statements and conduct;

- stopping unlicensed investment advice on the Internet;
- stopping illegal cyber investment offers;
- actions against insurance agents and brokers who misuse client funds;
- actions against misuse of superannuation funds; and
- actions to recover loss of behalf of consumers, often through class actions.

ASIC has a number of regulatory tools for dealing with contraventions of the legislation it administers. These include administrative solutions, such as enforceable undertakings, and civil and criminal litigation. In each matter, the most appropriate set of tools will be used to meet the enforcement goals of:

- stopping the illegal conduct;
- ensuring consumer redress;
- deterring others from engaging in similar conduct;
- punishing wrongdoing; and
- removing dishonest operators from the marketplace.

#### *Surveillance activities*

Quality of Advice Survey - In April 2002, ASIC announced, jointly with the Australian Consumers Association, the commencement of an Australian-wide survey of the financial planning industry. The survey involves consumer volunteers seeking financial plans from more than 150 financial planners around Australia. The advice received by the consumers is assessed by an expert panel, which includes experienced financial planners and compliance experts.

The results of the survey were published in February 2003. Out of a total 124 plans obtained, more than half were graded as Borderline, Poor or Very Poor and only 2 per cent were graded as Very Good. ASIC will now be implementing a range of strategies to address the shortcomings identified by the survey.

International Cold Calling Scams - In June 2002, ASIC released a major research report, *International Cold Calling Investment Scams*, with recommendations about how to combat these scams. Research showed that more than 82 unlicensed overseas telemarketing firms had cheated Australian investors out of an estimated A\$400m between 1999-2001.

During 2002, ASIC continued to work with overseas regulatory authorities to tackle these international scams. In terms of Australian consumers, ASIC published a list of known cold calling organisations on its consumer website and issued regular warnings to consumers through radio, TV and media releases. Enforcement action was also taken against cold callers in this jurisdiction.

#### *Consumer Protection in electronic commerce*

As noted above, the revised EFT Code came into effect on 1 April 2002.

During 2002, ASIC continued to take enforcement action in e-commerce matters, using the resources of the Electronic Enforcement Unit. This Unit constantly monitors the Internet for

websites that breach the *Corporations Act*, for example by illegally promoting an investment scheme or offering financial advice without a licence. In addition, in October 2002, ASIC participated in the Asia-Pacific Region 'Surf Day 2002'. During the year, a number of websites were closed down or extensively modified as a result of ASIC action.

### ***ACCC activities***

In general, the ACCC seeks compliance with the consumer protection legislation it administers by a range of means including administrative settlement (including the acceptance of court enforceable undertakings), promotion of self-regulation, litigation, compliance programs, liaison and education.

Self regulation remains the optimal method of achieving fair business practices and protecting consumers.

The ACCC is continuously looking at codes of conduct, charters and voluntary standards as avenues for maintaining compliance with the TPA but must always strive to strike a balance between encouraging such practices without taking on a central role in their development.

In 2002, the ACCC provided feedback on the following voluntary codes:

1. Automotive Body Repair Code
2. Cinema Code
3. Jewellery and Timepieces Code
4. Fruit Juice Code
5. Car Hire Code
6. Horse Industry Council
7. Model Direct Marketing Code
8. Australian Compliance Professionals Association Code
9. Australian Direct Marketing Association Code
10. Retail Tenancy Code
11. Supermarket Scanning Code
12. Tourism Code
13. Therapeutic Goods Ad Code

The ACCC often accepts a court enforceable undertaking (87B Undertaking), requiring that a company implement a TPA compliance program, as an alternative to court action. Compliance programs are also requested by the ACCC when seeking court ordered injunctions or non-punitive remedies (s.80, 86C) following a prosecution.

Recent judgements in 2002 have questioned the use of compliance programs that are not readily measured in application and that have no statutory recognition. In addressing these concerns, the ACCC is actively investigating the development of tailored compliance program strategies for specific industry sectors allowing greater flexibility and accountability.

The ACCC is recognised as a consultative body and conducts extensive liaison with industry groups and consumers.

In 2002 the ACCC hosted two round table discussions to mediate between the disparate interests of smash repair businesses and insurance companies after an investigation found that their conduct did not breach the TPA.

The ACCC encourages active consumers and seeks to contact groups that may otherwise have limited access to information on their rights and responsibilities as businesses and consumers. In

2002 rural and regional businesses and consumers and other disadvantaged consumers were the recipients of targeted information on the TPA.

### *Enforcement of the TPA*

In 2002 the ACCC received approximately 60 000 complaints and undertook hundreds of major investigations.

The number of matters in litigation began to rise sharply in 2000 and this trend has continued in 2002.

Enforcement actions range from informal warnings and administrative settlements to court enforceable undertakings and civil or criminal based enforcement actions.

Targeted enforcement activity by the ACCC accounts for approximately 60 per cent of the activity undertaken to gain compliance with the consumer protection provisions of Part V of the TPA. Most of these matters including misleading and deceptive conduct.

The ACCC's enforcement strategy is achieved through:

- appropriate case selection;
- professional and efficient investigation and assessment of potential breaches;
- the use of measured enforcement responses to relevant conduct;
- strategic assessment of priority areas; and
- liaison and cooperation with other relevant law enforcement agencies.

Fines can be imposed by a court of up to \$1.1million for a corporation and \$200 000 for an individual for a breach of a consumer protection provision. Injunctions, corrective advertising and damages can also be ordered.

Some examples of cases handled in 2002 include the following:

*Crowded Planet:* Concerned the supply of contraceptives over the Internet. On 22 March 2002, the Federal Court found that David Zero Population Growth Hughes, trading as Crowded Planet, engaged in misleading or deceptive conduct and made false representations about the supply of oral contraceptives through the Crowded Planet Internet site.

The Court found that Mr Hughes had misled or deceived consumers by not telling them that it was illegal to supply or acquire oral contraceptives without a prescription in Australia and the US; failing to tell consumers of significant health risks involved for some people in taking some oral contraceptives; that within Australia free medical assistance is available to Australian citizens and permanent residents contemplating using oral contraceptives; and that it is significantly cheaper in Australia to get oral contraceptives from a pharmacy.

The orders restrained Mr Hughes from supplying oral contraceptives in Australia in any promotional medium, including any Internet site, without disclosing these matters.

*Purple Harmony Plates:* The ACCC alleged, and the Federal Court ruled, that Purple Harmony Plates Pty Ltd, based in Melbourne, had made unsubstantiated claims about the future benefits for its products, which were made of anodised aluminium in various shapes, sizes and colours.

Purple Harmony Plates Ltd was ordered by the court to publish a corrective statement on its website. It was required to offer refunds and the corrective statement will be displayed

immediately upon accessing the website's homepage and the order form. Consumers must disable the pop-up corrective statement before using the homepage or order form.

The corrective statement was not published and on 11 April 2002, the Federal Court fined Purple Harmony Plates Pty Ltd \$20,000 and imposed \$10,000 fines on the company directors Helen Therese Glover and Neal Arthur Lyster for contempt. The fines were not paid, and on 2<sup>nd</sup> December 2002, the Federal Court again found Lyster and Glover guilty of contempt and issued warrants of committal for a prison term of one month, suspended on condition that they comply with orders to transfer the domain name to the ACCC for the purpose of placing a corrective notice on the website.

*The Buyers Group:* On 27 July 2001 the Commission filed an application in the Federal Court Brisbane against the promoters of an electronic muscle stimulation device known as the Feminique Slimming System. On 10 August 2001 the Federal Court granted interim injunctions against The Buyers Group, restraining them from representing that the Feminique, or any other muscle stimulation product has certain performance characteristics. The matter has been set for trial in the Federal Court in Brisbane starting 7 April 2003.

*Emerald Ocean Distributors:* Promotion of electronic muscle stimulation products generally referred to by the trade name 'Slendertone'. The ACCC has alleged that the firm has made representations about the benefits of Slendertone that were false, misleading or deceptive, and is seeking court orders restraining the firm from promoting the supply of Slendertone products using the claims above; declarations of breaches of the law; refunds for affected consumers; a compliance program and costs. The trial commenced on 22 July 2002, and the matter has been partly heard. A directions hearing was held on 7 November 2002 with arguments put forward on the admissibility of the respondent's expert and lay witnesses. A ruling is expected on these issues with the trial to recommence on 11 March 2003.

*Skybiz.com Inc:* The ACCC alleged that SkyBiz operated and promoted the "Skybiz 2000 Home Based Business Scheme" using a pyramid selling scheme. Participants paid SkyBiz US\$100 for a website in order to take part in the scheme. The ACCC alleged SkyBiz claimed participants could then earn monetary payments by introducing new consumers into the scheme and that the Skybiz scheme could be operated as an e-commerce business.

On 27 September 2002, the Federal Court declared a United States web-based company, Skybiz.Com Inc, breached the pyramid selling and other consumer protection provisions of the TPA. Skybiz consented to orders that included declarations that the Skybiz scheme was a pyramid scheme and that Skybiz.Com Inc had engaged in referral selling.

*Medical Benefits Fund of Australia Ltd (MBF):* The Commission alleged that MBF advertisements were misleading and deceptive because of the inappropriate use of fine print disclaimers. They contained pregnancy-related images in an endeavour to entice consumers to transfer and/or join MBF private health insurance. However, the advertisements also contained fine print disclaimers that a 12-month waiting period for pregnancy related services would not be waived. It was also alleged that the advertising agency John Bevins Pty Ltd was knowingly concerned in the alleged breaches.

On 9<sup>th</sup> September, the Federal Court found that the advertising had been misleading, and ordered corrective advertising on television and in the newspapers. The decision has been appealed by MBF and John Bevins Pty Ltd. The appeal is due to be heard in May 2003.

*Medibank Private:* On 26 October 2000 the Commission instituted proceedings against Medibank Private in the Federal Court, Melbourne, alleging false, misleading and deceptive

advertising of its health insurance products in two advertising campaigns in breach of the consumer protection provisions of the ASIC Act.

In the first advertising campaign for Medibank Private's Package Plus products, the Commission alleges that, among other things, from early March 2000 Medibank Private advertised 'no rate increase in 2000' when the rates on these products increased on 1 July 2000.

In the second advertising campaign in major newspapers around Australia in August 2000, Medibank Private offered consumers who switched from another fund 'any waiting periods waived' and 'get 30 days free if you change to Medibank Private'. However, the advertisements failed to disclose, or adequately disclose, that only the 2-month general waiting period and the 6-month optical waiting period were waived. This was only indicated in very small print at the bottom of the ads. The advertisements also failed to disclose, or adequately disclose, that conditions applied to the offer of 30 days free health insurance. Again a mention that 'conditions apply' appeared at the bottom of the ads.

Medibank Private lodged a strike out application that was heard on 13 March 2001 and refused on 21 March 2002. Medibank Private appealed this decision and was ultimately successful in having paragraphs 10-12 struck out. The ACCC lodged a special leave application in the High Court on 10 October, and filed its summary of argument in the High Court on 7 November 2002.

Health insurance, as it falls within the definition of financial product, is regulated through the ASIC Act. However, ASIC has formally delegated the regulation of all consumer protection aspects of health insurance to the Commission.

*Info4pc.com Pty Ltd:* On 23 January 2001 the Commission instituted proceedings for an interim injunction in the Federal Court against a Perth-based computer retailer, Info4pc.com Pty Ltd, for allegedly advertising, including through the Internet, but not delivering very cheap computers.

Motions for contempt of court, for alleged breaches of the injunctions were heard on the 15 June 2001 and 21 December 2001. On 31 July 2002, Info4pc and director Mr James Rae were fined a total of \$14 000 and ordered to pay costs. A hearing was held on 9 August 2002 with judgment reserved.

*Greenstar Cooperative Ltd:* The Commission instituted legal proceedings on 5 June 2001 in the Federal Court alleging that Greenstar had engaged in an illegal pyramid and referral selling scheme during the promotion of an organic fertiliser product and transaction card, and misleading and deceptive conduct and false representations regarding the transaction card.

On 14 June 2001 the Federal Court granted interim injunctions against Greenstar Co-operative Ltd and four of its directors until the matter is settled. The injunctions prevent them from inducing any further members joining the scheme. On 31 July the ACCC obtained a mareva injunction freezing the assets of Greenstar and Mr Smith.

The trial in this matter was held from the 24-28 June 2002. Judgment has been reserved, with the Mareva injunction extending to the other directors of Greenstar until a judgment is handed down.

*Mitre 10 Australia Ltd:* Mitre 10 conducted advertising campaigns in June 2001 including the statements '15 per cent OFF STOREWIDE' and '15 per cent Off everything'. The Commission alleges that Mitre 10 failed to adequately disclose exceptions to the sale. The Commission instituted proceedings on 21 September 2001, alleging misleading or deceptive conduct and false or misleading representations about the price of goods and services. The trial is expected to start on 23 June 2003.

*Furniture Direct Pty Ltd:* The ACCC instituted proceedings on 21 December 2001 alleging false, misleading and deceptive conduct in relation to a 'Store Cost Plus \$1' advertising campaign. The ACCC alleged that the prices advertised were in fact calculated by adding approximately 60 per cent to the prices paid for the items by the stores, plus one dollar. On 18 September 2002, the Federal Court made orders by consent of the liquidator of one respondent, including an injunction restraining it for three years from engaging in similar advertising conduct. Proceedings against other respondents are continuing, with the matter listed for further review on 18 February 2003.

*Danoz Direct Pty Ltd:* The Commission seeks to prevent Danoz from representing that a health and fitness industry product, the Abtronic, has performance characteristics that include that it can flatten your stomach 'once and for all'; that you just sit, relax and watch your 'abs' tighten, your 'love handles' disappear and your thighs and bottom firm up – with no sweating involved; and that you can get the results of up to 600 sit-ups in just 10 minutes without any effort. Proceedings were instituted on 3 May 2002 alleging misleading or deceptive conduct, and false or misleading representations regarding the performance characteristics of goods. The matter was due for trial in October 2002, but has been adjourned until 19 March 2003.

*Collagen Aesthetics Australia Pty Ltd:* Proceedings were instituted on 17 May 2002, with the Commission alleging that Collagen Aesthetics made false and misleading representations in various magazines about its collagen and hyaluron products which are inserted into the skin for the purpose of reducing wrinkles and/or filling lips. The matter is listed for 6 February 2003 to discuss consent orders.

*Voyages Hotels and Resorts Pty Ltd:* The Commission instituted proceedings on 18 July 2002, alleging misleading or deceptive advertising for tours to Aboriginal land near Uluru.

The advertising claimed 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; that they had an exclusive right to conduct tours into Yulara Pulka when another company had been conducting tours in Yulara Pulka since December 1999; that traditional Aboriginal owners would meet with Voyages tour groups at Yulara Pulka when there was no agreement between any of the traditional Aboriginal owners and Voyages to assist in, attend or meet the tour groups and that the traditional Aboriginal owners would receive a significant amount of the tour price from Voyages when there is no agreement whereby the traditional Aboriginal owners would receive a significant amount of the tour price.

The ACCC is seeking interim injunctions, permanent injunctions, the publication of public notices, declarations, costs and a trade practices compliance program. A directions hearing is listed for 4 February 2003.

*Dodo Internet Pty Ltd:* Proceedings were instituted on 17 September 2002 against Dodo Internet Pty Ltd and one of its directors Maxim Zabelov. Two other directors, Larry Kestleman and Mark Baranov were joined to the proceedings by consent on 25 November 2002. The Commission alleges that Dodo made false and misleading representations with regard to local call cost connection, that Dodo made false representations with regard to non-excludable conditions and warranties and that Dodo engaged in unconscionable conduct in its dealings with consumers who incurred STD telephone charges as a result of its misleading or deceptive conduct. A trial date has not been set.

*Internet TV Australia Pty Ltd t/a Free2aiR:* On 21 November 2002 the Federal Court declared that Free2aiR, and its director Mr James Young, had engaged in misleading or deceptive

conduct, unconscionable conduct and harassment and coercion. The Commission had alleged that Free2aiR represented to consumers that its Internet access services included free access time, there was a once-off 'set-up' fee for subscribing to its access services and that there were no ongoing fees and charges other than a charge for any downloads in excess of a specified amount each month.

The court declared, by consent, that terms and conditions were not brought to the consumer's attention, including the discretion to charge a quarterly administration fee. It further declared that Free2aiR acted unconscionably, including threatening to disconnect consumers if they contacted Free2aiR to query the imposition of the administration fee and deducting the fee from customers' credit cards without express authority. Free2aiR was also found to have used undue harassment and coercion by threatening to disconnect customers who did not pay the fee, and stating that outstanding fees would be referred to a debt collection agency for recovery which may involve additional fees and charges and damage to consumer's credit history.

*Virgin Mobile (Australia) Pty Ltd:* On 11 December 2002 the Federal Court found that Virgin Mobile made false and misleading representations and had failed to state the full cash price of mobile phones. Their advertisements had contained representations such as 'Nokia 8310 on us, handcuffs off you', 'No long term contracts' and 'Leave when you like' when in fact, unless consumers continued to pay the monthly call charges for the full period of 24 months, they had to pay the full cost of the telephone handset. Further, Virgin Mobile failed to disclose to consumers the cash price of the handset (up to \$1039 for one package) or the minimum costs of joining the Dial High Club package (as high as \$1069 for one package).

*Allans Music Group Pty Ltd:* On 12 December 2002 Allans Music Group, which claims to be Australia's largest musical instrument retail group, was fined \$80 000 in the Federal Court following a guilty plea by Allans to nine counts of making false or misleading representations concerning price. These 'WAS-NOW' price claims appeared in its Christmas 2000 catalogue. The Court found that the items in question had not been sold in the pre-Christmas period at the 'WAS' price but rather at prices substantially below the claimed 'WAS' price. The Commission commented that this is the first time a retailer has been convicted by the Federal Court for the use of false 'WAS-NOW' advertising.

*Dell Computer Group Pty Ltd:* On 20 December 2002 the Full Federal Court declared that advertisements published by Dell Computer Pty Ltd before November 2001 were false and misleading as to price (s53(e)). The advertisements did not disclose the compulsory nature of Dell's delivery charges. Customers could not purchase a Dell computer for its prominently advertised price as an additional delivery charge of up to \$99 generally applied.

The Federal Court had ruled on 2 July 2002 that the advertisements were misleading or deceptive for failing to make the compulsory delivery charge clear to customers (s52), but found no breach of s53(e) or 53C. The Commission appealed this decision, and the Full Court found a breach of s53(e) but no contravention of s53C.

*GIA Pty Ltd (in liq) t/a Tamar Knitting Mills:* On 23 October 2002 the Federal Court imposed a \$50 000 fine on Tasmanian knitwear company Tamar Knitting Mills for falsely representing that Chinese made polo shirts supplied by Tamar over a 12 month period were made in Tasmania by Tamar. The court imposed a \$4000 fine on former Tamar managing director, Mr Eric Thompson, for having been knowingly concerned in the company's contravention. Tamar was also fined \$5000 for providing false and misleading information to the Commission in response to a statutory notice, and Mr Thompson \$1000 for being knowingly concerned in the provision of false and misleading information to the Commission.

*Telstra Corporation Limited:* The ACCC instituted proceedings on 24 October 2002 regarding the Telstra prepaid long distance calling card product 'Say G'day'. Telstra had represented that the 1800 number was 'free' and given the impression that the costs would not be a significant part of the overall charges. The 1800 number had a cost of 53 cents per minute, and that cost was in addition to the advertised long distance call rate. On 15 November 2002, the Federal Court declared that Telstra had engaged in misleading or deceptive conduct when advertising the 'Say G'day' card. Telstra offered undertakings to review its trade practices compliance procedures and would waive the 53c per minute charge until corrected cards are distributed to retailers.

*NRMA Health, Saatchi and Saatchi:* Proceedings were instituted on 5 November 2001 alleging misleading or deceptive advertising of health insurance products. The Commission alleged that the advertisements depicted a mother nursing a baby including representations of 'free delivery' 'no matter how far advanced your pregnancy is' to entice consumers to transfer or join their health fund where an excess or a co-payment was often required, and relevant waiting periods must have been served.

On 4 July 2002 the Federal Court made orders by consent including declarations that NRMA breached the ASIC Act. The Court decided on 18 September 2002 that Saatchi and Saatchi was not a principal in the misleading conduct.

*Sensis Pty Ltd:* On 20 December 2002 the Federal Court found that the Yellow Pages 12451 service misled consumers in its promotion and operation. The service is run by Sensis, a wholly owned subsidiary of Telstra Corporation Limited. Yellow pages connect is a live, operator-assisted business referral service to help consumers find products or services when they do not have a specific business in mind, or only have partial details. Callers are able to search on a combination of business types, suburb and keywords. Consumers are charged \$1.21 per call, with an additional charge if they wish to be connected to the business.

Sensis had offered priority advertising to out-of-area businesses for an extra fee. It was found by the Court that the practice of promoting preference to a priority paying advertiser ahead of and in preference to a non-priority business even when the non-priority advertiser might be a better or closer match to the search criteria was misleading.

*Harvey Norman Holdings Pty Ltd:* On 7 November 2002 the Commission instituted proceedings against three companies in the Harvey Norman group, and 15 Harvey Norman franchisees, alleging bait advertising and misleading or deceptive conduct. It is alleged that before the introduction of the GST in June 2000, national advertising by the respondent featured a promotion for GST-related software, Quicken Quickbooks, for \$199 with a bonus software bundle valued at more than \$900. It is alleged that the parties were aware that quantities of the bonus software were insufficient to meet consumer demand, and made representations that misled consumers about the eligibility for taxation benefits associated with the purchase of Quicken Quickbooks software and digital cameras before the introduction of the GST.

The Commission is seeking declarations, injunctions, a corrective public notice, findings of fact and an independent audit of the companies' trade practices compliance program. A directions hearing was held on 13 December 2002.

*Acepark Pty Ltd, Offtrack Investments Pty Ltd, and Solutions Software International Pty Ltd, Robert James Price:* In July 1999, responding to complaints that Acepark had made false or misleading representations regarding the profitability of horse race betting software and a claimed affiliation with the TAB, the ACCC accepted a court enforceable undertaking from the company for refunds to certain buyers, ending of legal proceedings instituted against these

people, the implementation of complaints handling procedures and the review of marketing and sales practices to ensure that future claims were realistic and justifiable.

The ACCC alleged that Acepark breached the undertaking and continued to advertise and sell the program by making false or misleading statements about its profitability, performance and efficacy in contravention of law, and used unfair and high-pressure sales tactics, such as representing that purchasers needed to purchase the program urgently to avoid imminent price rises, to induce consumers to purchase the program.

On 29 June 2001 the ACCC instituted proceedings, alleging the software falsely claimed to be able to predict horse-race place-getters with high accuracy. Purchasers paid up to \$12,500 for a copy of the program, having been told they could use it to earn up to \$8,000 per month and realise the lifestyle of their dreams.

With increasing globalisation and conduct occurring internationally, the ACCC relied on assistance from the New Zealand Commerce Commission to achieve an effective outcome for both Australian and New Zealand consumers.

On 9 September 2002 the Federal Court found that Robert James Price misled consumers and, in one instance, acted unconscionably in connection with the marketing and sale of horse race betting software in Australia and New Zealand. The Court made orders by consent, restraining future conduct, making declarations, requiring corrective advertisements in Australian and New Zealand newspapers, and financial payments to the ACCC, which will be given to purchasers as partial refunds.

*Sony Computer Entertainment Australia:* Sony Computer Entertainment produces and distributes its PlayStation console incorporating region coding. The effect of this coding is to create three mutually exclusive geographic distribution regions. Region coding means that Australian consumers who buy legitimate PlayStation games overseas may not be able to play those games on consoles distributed in Australia. The Commission is concerned that the main purpose of the RPC restrictions is to prevent parallel imports, not infringement of copyright as alleged by Sony. Sony Computer Entertainment sought in the Federal Court to have the new anti-circumvention provisions of the Copyright Act applied to prevent consumers from having a mod chip installed in their PlayStation console, thus preventing them from playing legitimate games purchased overseas, as well as copies made for legitimate backup purposes under the Copyright Act.

In September 2001, the Commission was granted leave to be heard as *amicus curiae* (friend of the court) in Sony's action in relation to whether modifying PlayStation consoles infringes the Copyright Act. The Commission submitted to the court that RPC does not exist to protect against copyright infringement.

It prevents the use of imported games and backup copies authorised by statute. Under the current legislation it is not illegal to play either imported or copied games although the act of importation or of copying may constitute an infringement in some circumstances. The act of simply playing a disc does not constitute a breach of copyright.

In July 2002, the Federal Court ruled that Sony PlayStation owners have the right to have their consoles 'chipped'. Sony has appealed. The Commission will seek leave of the court to be heard as *amicus curiae* in this appeal. The appeal was to be heard 24–25 February 2003.

### ***Enforcement cooperation***

#### *Internet sweep day*

Sweep days are a regular activity of the International Consumer Protection and Enforcement Network (ICPEN), and have enjoyed an increasing level of success since the first in 1997. The

statistics on compliance assist agencies in targeting their efforts in their local jurisdictions, and a strong compliance message is sent on a global level to consumers and businesses alike.

The ACCC coordinated the 5<sup>th</sup> ICPEN Internet Sweep on in February 2003. The subject was travel products and services. A record participation of 87 agencies in 24 countries reinforced this as a key ICPEN activity. Globally, 1,269 problematic websites were identified, most of which fell short of internationally accepted best practice. Some websites contained obvious breaches of law, such as misrepresentation of price. The ACCC will be presenting Sweep results at Port Douglas, and follow up actions in the first meeting in Finland.

#### **IV Consumer Education and Information**

The Treasury continued to inform the Australian public about important consumer issues through the Consumer Information Program. The Program has the objective of improving and centralising marketplace information as well as providing information to address areas of identified consumer need.

Consumer education initiatives undertaken in 2002 included:

- *Little Black Book of Scams* - The Commonwealth's popular booklet on consumer scams was substantially expanded and updated in March 2002 with strong stakeholder support. The new 76 page booklet provides advice on how to identify and combat a wide range of consumer-based scams and was distributed to over 100,000 consumers in 2002. A complimentary web site was also developed in partnership with State and Territory consumer agencies. <http://www.consumersonline.gov.au/downloads/full.pdf>  
<http://www.scamwatch.gov.au/>
- *The Australian Consumer Handbook* - The Australian Consumer Handbook is a 268 page book that provides information on over 700 organisations that assist consumers with information or complaint handling. The book was launched in September 2002 and distributed to consumer intermediaries and agencies. It is anticipated that this will be an annual publication.  
[http://www.consumersonline.gov.au/downloads/handbook/full\\_hand.pdf](http://www.consumersonline.gov.au/downloads/handbook/full_hand.pdf)
- *Consumer PING software* - In November 2002, the Treasury launched a piece of consumer software to assist online shoppers with relevant information. Called Consumer PING, the software integrates itself within the consumer's Web browser to provide information relevant to purchases they may be making on Web sites. The software is currently available to download in a beta release. <http://www.consumerping.gov.au/>
- *Consumer Issues & Youth Research Report* - In 2001, the Commonwealth Consumer Affairs Advisory Council commissioned research into best practice consumer education for young consumers. The resultant report, released in July 2002, identified key consumer youth issues and what public, private and community sector organisations were doing to inform young consumers of their rights and responsibilities. Copies of the report were sent to a wide range of organisations with the responsibility for information provision to young people. Many of these organisations plan to use the report's findings in future planning for youth projects. Treasury is also responding to the report's recommendations to supplement existing school curriculum resources.
- *Your Rights Fact Sheets* - A series of consumer fact sheets were released throughout 2002 in response to identified consumer needs. These primarily focused on consumer rights

under the TPA but also included responses to consumer “life events” (eg. consumer issues relevant to the Christmas season).

[http://www.consumersonline.gov.au/content/resources\\_fact\\_sht.asp](http://www.consumersonline.gov.au/content/resources_fact_sht.asp)

Treasury also maintained an active presence in publicising consumer awareness at public events such as the Australian Money Show and maintained strategic partnerships with public, private and community sector organisations to promote key consumer messages.

### ***ASIC Activities***

The aim of ASIC's consumer education work, as outlined in the *Consumer Education Strategy*, is:

- to develop a financially literate community, where Australian consumers can make informed decisions about financial products and services, and identify and avoid scams and swindlers.

Specific consumer education initiatives during 2002 included:

- continued promotion and development of ASIC's specific consumer website, FIDO (<http://www.fido.asic.gov.au>), including:
  - adding interactive features, such as an on-line budget planner and financial position statement;
  - developing new material to cover the broad range of ASIC's responsibilities eg credit and debt advice;
  - a new database for consumers to search for unclaimed monies in bank accounts, superannuation and insurance policies;
  - a step by step guide to investing;
  - continued promotion of FIDO News, a monthly e-bulletin (currently 7,000 subscribers).
- additions and updates to ASIC's range of consumer information booklets which give authoritative and independent information to consumers and are widely distributed through a range of channels. The following booklets were released or revised:
  - *Don't Kiss Your Money Goodbye* – a guide to help consumers choose a financial planner was revised and republished in March 2002
  - *Your Guide to the EFT Code* – a plain language guide for consumers about their rights and responsibilities under the EFT Code was launched in April 2002, to coincide with the launch of the new Code
  - *You Can Complain* – a step by step guide to assist consumers to make effective complaints about financial products and services was launched in June 2002
  - *Super Decisions* – a guide to understanding and making choices about superannuation was revised and republished in October 2002.

*You Can Complain* and *Super Decisions* are also available in a number of community languages as part of ASIC's ongoing commitment to develop a multi-lingual library of consumer factsheets.

- in September 2002, ASIC released a report on *Good Practice in Consumer Education for Indigenous People*. The purpose of the report is to provide information and ideas that may assist ASIC, as well as other government agencies, community groups and possibly Indigenous organisations and communities, to undertake more effective consumer education. The report sets out 10 principles of good practice to consider when producing Indigenous-specific consumer education material.
- ASIC is developing a range of targeted education material aimed at Indigenous people, using funds obtained as a result of an enforceable undertaking given by an insurance company;
- regular Consumer Alerts and warnings – including credit card surcharging and cold-calling
- investor forums – public meetings that give information to consumers and investors about investing and other financial services issues
- ASIC is a member of the steering committee overseeing Australia's first national survey of financial literacy levels. The survey is being sponsored by ANZ, one of Australia's major banks.

### *Financial Literacy in Schools*

This is a long term project which aims to improve financial literacy in the community by supporting the delivery of financial services education in schools. The project goals are to:

- see every student leaving school with the necessary basic skills in financial matters to become confident and informed consumers in their work and personal life
- help education jurisdictions across Australia enhance and build on existing financial literacy educational tools in schools
- see a variety of up-to-date, relevant and stimulating teacher resources to support the teaching of financial literacy
- develop a coordinated approach to the supply and sharing of information on financial literacy for teachers across Australia
- promote teacher training and professional development courses to support the effective teaching of financial literacy

The project is in its early stages. In November 2002, ASIC established an Advisory Committee of key stakeholders in the education sector to provide advice and assistance as they take matters forward. As a first step, ASIC have commissioned some research to gain a snapshot of where and how personal finance is currently taught in Australian high schools. The results of this research, together with ASIC's proposals for a National Action Plan, will be set out in a consultation paper which ASIC plan to publish in mid-2003.

### *ACCC activities*

The ACCC maintains an Information Centre that handles almost all telephone calls and e-mails complaints and inquires from consumers. Consumers are given up to date information on consumer issues by experienced operators and offered publications relevant to their concerns.

Consumers may also be provided with publicly available information on current investigations or matters before the court or given assistance in navigating the ACCC website to locate information of interest to them.

In 2002, the ACCC produced and distributed a number of regular publications, videos and CD's including:

- Storecharter brochure – a service charter for stores serving remote and indigenous communities
- Advertising and selling and the Trade Practices Act
- All inclusive pricing in the travel industry
- Rural industry and the Trade Practices Act
- Updated Travel and Tourism and the Trade Practices Act
- Competing Fairly Forum – Prevention is better than Cure (video);
- Competing Fairly Forum – Future Directions;
- Small business and the and the Trade Practices Act
- Country of Origin claims and the Trade Practices Act
- Best and Fairest: compliance training package (how to comply with the TPA)

#### *Periodicals*

- Consumer Express (monthly)
- International Weekly Bulletin (weekly)
- ACCC Briefing (every second month)\
- Small Business (monthly mailout)
- Retail Flash (quarterly)
- ACCC Annual Report

The ACCC has undertaken an extensive upgrade of its internet facility. The internet site has become an important adjunct to the range of paper publications the ACCC produces. The site provides consumers with basic information about the work of the ACCC, online versions of most publications, online text of media releases and other public statements, advice for consumers and business, draft and discussion papers on which public comments are sought and links to related sights.

During 2002, the ACCC continued to form strategic alliances with business, consumer, and government organisations especially where they afford access to established networks or target audiences. This particularly evident in the rural and regional program where the ACCC actively gets involved with regional chamber commerce and consumer organisations to deliver information and to receive feedback about issues affecting these communities.

#### **V. Redress and complaints facilities**

Consumer complaints and inquiries about goods and services purchased in Australia are generally handled by State and Territory government consumer affairs/fair trading agencies. These agencies deal with issues such as credit, door-to-door sales, refunds and exchanges. Other government bodies, such as the Small Claims Courts also provide dispute resolution services to consumers.

### *ASIC activities*

Under the FSRA, it is compulsory for financial services licensees that deal with retail clients<sup>1</sup> to have a dispute resolution system in place, comprising:

- internal dispute resolution procedures that comply with standards or requirements made or approved by ASIC and that cover complaints made about all of the financial services offered under the licence; and
- membership of one or more ASIC-approved external dispute resolution schemes that cover, or together cover, complaints about all of the financial services offered under the licence.

During 2002, ASIC approved two more external dispute resolution (EDR) schemes, namely:

- the Credit Union Dispute Resolution Centre (approved 1 September 2002); and
- the Insurance Brokers Disputes Scheme (approved 13 November 2002).

At the end of 2002, ASIC had approved a total of 5 EDR schemes, and was considering applications from further schemes. ASIC's approval guidelines, as set out in Policy Statement 139, are designed to ensure that all schemes operate from a platform of common minimum standards. Consumers can, therefore, be confident that treatment of complaints and levels of redress should be consistent, regardless of which EDR scheme deals with their dispute.

There are now ASIC-approved finance-sector EDR schemes in Australia covering deposit taking and credit activities of banks and credit unions, general insurance, life insurance, funds management, advisory services and insurance broking.

### *ACCC activities*

Consumer complaints and enquiries about goods and services purchased in Australia are generally handled by State and Territory government consumer affairs/ fair trading agencies.

However, should a matter involve any of the following circumstances, the ACCC has jurisdiction:

- when the matter involves a trader who does business across jurisdictions (ie, interstate); or
- when the matter involves a breach of consumer protection law within the State and the offender involves an incorporated entity, the ACCC has jurisdiction (by virtue of the corporations power of the Commonwealth /Federal Government); or
- when matters occur in Territories, consumers have the choice of using their local (Territory) fair trading laws or federal laws, as both are applicable.

The Federal Court of Australia has original jurisdiction over matters brought by the ACCC. The High Court of Australia, which sits at the apex of Australia's legal system, has the general power to decide on appeals from all judgments, decrees, orders or sentences of any federal court or court exercising federal jurisdictions of the Supreme Court of any State.

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<sup>1</sup> A 'retail client' is defined in the FSRA and includes private individuals and small businesses, meaning a business employing less than 20 people, unless the business is or includes the manufacture of goods in which case, a business employing less than 100 people.

The ACCC maintains an information centre that receives around 82 per cent of all complaints referred to the Commission. In 2002 the information centre received an average of 1415 calls per week. More than 65 per cent of these complaints relate to consumer protection (under Part V of the TPA).

The ACCC releases publications on consumer protection issues on a regular basis. Examples for 2002 include “Debt Collection – Are you being harassed about debts” and the Storecharter brochure – a service charter for stores serving remote and indigenous communities, developed with ASIC.

Consumers are also able to subscribe to receive “Consumer Express” a monthly publication exploring current consumer issues.

The ACCC’s online complaints facility, ‘Slam-a-Cyberscam’ is a useful tool for monitoring trends in online behaviour, quick enforcement and educative responses to emerging issues and determining agency priorities for pro-active investigation in this sector.

The ACCC also encourages businesses to provide mechanisms for adequate and responsive complaint handling and industry based dispute resolution. Such mechanisms ensure that many disputes can be resolved without the need for ACCC involvement.

## **VI. Consumer issues related to other policy areas**

### ***Food Regulation***

The ACCC continues to work closely with Food Standards Australia New Zealand (FSANZ), formerly known as the Australia New Zealand Food Authority (ANZFA). In December 2002 the Food Standards Code became the sole food standards system in Australia, New Zealand and the Australian States and mainland Territories.

FSANZ seeks guidance and advice from the ACCC in the development and review of individual food standards to identify potential competition issues and to protect consumers from misleading or deceptive conduct, as it applies to the supply of food in trade or commerce. For example, the ACCC provided guidance and advice to FSANZ, the food industry and consumer interest groups on the implementation of Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations.

In 2002 the ACCC became an advisory member of the Commonwealth Food Regulatory Officials Group. The purpose of this group is to identify regulatory issues and advise Government on food policy.

The ACCC also provided advice and made submissions to Codex Alimentarius on various international food regulatory issues.

### ***Competition law enforcement work***

The competition provisions of the TPA are also critical to protecting the interests of consumers. It is recognised that anti-competitive conduct has the effect of reducing consumer choice and increasing prices. The ACCC was active in enforcing the restrictive trade practices provisions of the TPA in 2002. One example of this is the action against Colgate-Palmolive Pty Ltd. On 15 May 2002 the Federal Court imposed penalties of \$500 000 on Colgate-Palmolive for engaging in resale price maintenance. Colgate-Palmolive had tried to stop Tasmanian discount retailer Chickenfeed Bargain Stores, advertising Colgate’s Ajax, Palmolive, and Colgate lines at cheap prices. In addition to the monetary penalty, the court imposed five year injunctions on Colgate restraining the company from engaging in similar conduct in Australia. The company also undertook to implement a trade practices compliance program.

Further, the ACCC instituted proceedings in April 2002 against three specialist obstetricians who provide private in-hospital obstetrics services in Rockhampton, alleging they agreed to boycott 'No-Gap' billing arrangements offered by a number of private health insurance funds. It was alleged that Dr Mark Leyden, Dr Stephen Robson and Dr Paul Khoo made arrangements in December 2000 and January 2001 that none of them would provide private in-hospital obstetrics services to their patients on a 'No-Gap' billing basis.

The ACCC alleged that this amounted to an exclusionary provision (primary boycott) in breach of the TPA. It meant about 200 women in the Rockhampton region incurred an out-of-pocket-expense (gap) for private in-hospital obstetrics services that would have been covered by the patients' health funds but for the alleged arrangement. Many rural/regional patients each paid up to about \$700 more than they would have, if the agreement had not existed.

On October 29 2002 the Federal Court made orders by consent including declarations that all three obstetricians engaged in conduct in contravention of the TPA and/or the Competition Code of Queensland, injunctions restraining them from future like contraventions and costs. Dr Leyden and Dr Khoo provided undertakings to refund affected patients the 'gaps' they had paid, and Dr Robson has paid his patients a portion of the gap. In total, almost \$97 000 will be repaid to affected patients in and around the Rockhampton region as a result of the Commission's action.

### ***Electronic Commerce Issues***

The ACCC continued policy research work, investigating the competition implications of B2B cooperative arrangements such as 'e-hubs'. It also sat on Advisory Panels of the administrator of the .au domain (auDA) to assist in formulation of policies on domain name registration and competition in this area. It takes part in working and discussion groups with the law enforcement community on issues such as:

- protection of infrastructure;
- cyber crime;
- privacy, secrecy and information sharing; and
- coordinated approach to electronic investigation.