

AUSTRALIA

Annual Report on Consumer Policy Developments 2001

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 regulation rests with the Consumer Affairs 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 Commonwealth regulators in the area of consumer protection 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 in relation to a range of fair trading issues.

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.

The *Australian Securities and Investments Commission Act 2001*, administered by the Australian Securities and Investment Commission (ASIC), provides equivalent consumer protection in the financial sector through provisions similar to those contained in Part IVA and V of the TPA.

I. Institutional developments

Amendments to the Trade Practices Act 1974

The TPA was amended in 2001 by the *Trade Practices Amendment Act (No 1) 2001*. These amendments clarify and expand the types of sanctions a Court may impose where there has been a breach of the TPA, and improve access to the remedies available under the TPA.

A new Part VC was also inserted in the TPA, clarifying the physical and mental elements of offences under the Act and by clearly stating offences which are of strict liability. The amendments are part of a program of harmonisation of all Commonwealth legislation with the Commonwealth Criminal Code, which took effect on 15 December 2001.

Review of legislation

Development of legislative amendments arising from the audit of Australia's consumer protection laws continued through 2001. The Consumer Affairs Division of the Department of the Treasury worked with States and Territories to promote uniformity in consumer protection provisions, in particular, the regulation of pyramid selling.

Financial Services Reform Legislation

On 23 August 2001, the *Financial Services Reform Act 2001* (FSRA) was passed by the Australian Parliament, following widespread consultation. 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.

The FSRA will commence on 11 March 2002, with 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 will need to apply to ASIC for an Australian Financial Services Licence in order to carry on business in Australia.

When the FSRA commences, ASIC's consumer protection provisions under the *ASIC Act 2001* will also apply 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 will not, however, apply to credit providers. Licensing or registration of credit providers will remain with state or territory authorities.

Australian Securities and Investment Commission (ASIC)

In April 2001, following an internal management review, ASIC's Chairman, Mr David Knott, announced the creation of a new Consumer Protection National Directorate with responsibility for managing ASIC's consumer protection role. The creation of the new directorate signified the importance of ASIC's consumer protection role and the expectation that it would take a higher profile in ASIC's work.

The Directorate, which is headed by Mr Peter Kell, Executive Director and Ms Delia Rickard, Deputy Executive Director, consists of three specialist teams, namely:

- Compliance and Campaigns – this team undertakes strategic campaigns targeted at issues and practices that are adversely impacting upon consumers of financial services and seeks to promote industry compliance with the law through the provision of guidance, and through assisting in surveillance and enforcement activity;
- Policy and Education – this team leads the development of consumer protection policy, in consultation with internal and external stakeholders, and is responsible for developing and implementing ASIC's consumer education strategy;
- Research and Analysis – this team conducts consumer research and analysis in order to enhance ASIC's understanding of consumer risks and issues and to ensure ASIC can identify high priority consumer protection areas as early as possible.

Ministerial Council on Consumer Affairs (MCCA)

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

MCCA's key activities in 2001 included:

- Addressing the long term regulation of payday lending within the provisions of the Uniform Consumer Credit Code;
- Further development of nationally uniform product safety legislation;
- National Competition Policy Reviews of credit and trade measurement legislation and legislation governing the operation of travel agents;
- Continuing work on reducing inconsistencies, gaps and unnecessary duplication in Australia's consumer protection laws;
- Addressing problems of scam mail;
- Review of Builders Warranty Insurance;
- Introduction of temperature correction for petroleum fuels; and
- Addressing problems associated with credit card overuse.

Commonwealth Consumer Affairs Advisory Council (CCAAC)

The Commonwealth Consumer Affairs Advisory Council (CCAAC) was established by the in 1999. CCAAC continues to provide the Minister responsible for consumer affairs, Senator the Hon Ian Campbell, Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate, with independent advice on the current or likely impact of Australian market developments on consumers. Particular areas addressed in 2001 included consumer representation issues, food safety and consumer education.

International Cooperation Agreements

European Commission

The Consumer Affairs Division continued negotiations with the European Commission on development of an administrative arrangement to share information between Australian agencies including the Consumer Affairs Division, ACCC and ASIC and the Consumer Protection Directorate of the European Commission on consumer policy and protection. The text of the proposed arrangement has been negotiated and it is expected the arrangement will be signed in March 2002r.

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 2000, the ACCC hosted delegations from China, Japan, Malaysia, Sri Lanka, Argentina, Sweden, Vietnam, Cambodia, Korea, Chinese Taipei, United States, Papua New Guinea and Thailand.

In 2001, 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, Malaysian Communications and Multimedia Commission, Korean Fair Trade Commission, Hong Kong Consumer Council and Fijian Department of Fair Trading and Consumer Affairs.

The ACCC's International Internship Program continued in 2001, enabling an officer from the Papua New Guinea Consumer Council 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 2000 to 30 June 2001, there were 435 safety related voluntary recalls conducted in Australia relating to: therapeutic goods (172), motor vehicles (116), food (35), and consumer products (110).

Product Recalls Australia Web Site

The Product Recalls Australia web site, "Products Recall Australia" at www.recalls.gov.au lists all current safety related recalls being conducted in Australia as notified under the Trade Practices Act 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.

Product safety and information standards

During 2001 a new mandatory standard for bunk beds was introduced and a mandatory standard developed for baby walkers. The latter is expected to be introduced in 2002.

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-two consumer product safety standards, three consumer information standards and ten 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 twice yearly and products are selected for surveys according to their relative level of hazard. As a result of the surveys during 2001, a retailer of bicycles had to provide court enforceable undertakings to the Commission, carry

out extensive advertising, repair any bicycles not meeting the standard and implement a compliance program. The surveys also revealed a variety of beanbags, beanbag covers and ottomans containing polystyrene beads that breached the standard. These products were located in a number of cities and resulted in some products being recalled and refunds paid to affected consumers.

Other national enforcement action has been taken in relation to products covered by mandatory standards such as exercise cycles, bicycles, bicycle helmets and sunglasses. These actions resulted in court enforceable undertakings and trade practices compliance programs being implemented.

OECD Prodsafe network

One matter investigated within Australia related to the safety of toy soldiers made of lead that were subsequently recalled. International experience with this product was canvassed with the Prodsafe network, with many responses contributing to the analysis of the product's safety.

Advice to industry

The ACCC continues to produce new and updated publications covering each of the mandatory standards. These publications contain information on the standards as well as guidance for manufacturers, suppliers and retailers to assist them in ensuring their products comply. A number of publications are available on the ACCC website.

III. Protection of the economic interests of consumers

Self-regulation / codes of conduct

Independent Taskforce on Industry Self-Regulation

The independent Taskforce on Industry Self-Regulation appointed by the Government completed its inquiry into aspects of self-regulation in Australia. The Taskforce report was released on 13 December 2000.

In April 2001, as part of the Government's response to the Taskforce report, a specialist website was launched at <http://www.selfregulation.gov.au> containing information and policy advice on self-regulation.

Consumer protection in electronic commerce

Following an extensive national consultation process, involving both written submissions and workshops, 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.

In 2001 the Best Practice Model was promoted online and offline through consultations with businesses and industry associations, national print advertising, press releases, articles in periodicals and the website (www.ecommerce.treasury.gov.au).

Consumer Affairs Division and the ACCC also participated in activities of the OECD Committee on Consumer Policy during 2001.

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. In June 2001, ASIC released a policy proposal paper setting out how it proposed to administer its approval powers under the Act. A final Policy Statement is expected during 2002.

In April 2001, ASIC launched the revised Electronic Funds Transfer (EFT) Code, which was developed by a Working Group, chaired by ASIC, following widespread consultation. 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.

The starting date of the revised Code is 1 April 2002. In August 2001, ASIC announced that the first Australian firm had signed up to the revised Code in advance of the starting date.

In April 2001, ASIC released a draft *Guide to Good Transaction Fee Disclosure for Banks, Building Societies and Credit Unions*, which was developed by ASIC in conjunction with a working group of industry, consumer and government representatives. The draft guide set out the legislative and self-regulatory requirements in respect of the disclosure of transaction fees, as well as ASIC's view on what should be done to comply with those requirements. The draft guide also set out ASIC's views on good practice. A final of the guide will be released in March or April 2002. It will include principles for good transaction fee disclosure at 5 times:

- at the time the consumer is selecting a product or product provider;
- when changes are made to the level of fees or when, why or how they are charged;
- when a statement is received;
- when a consumer is actively seeking information (this may coincide with the other 4 times);and
- immediately prior to making a transaction.

During 2001, ASIC conducted its third 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 2000 to 31 March 2001. A report of the results will be released in the first quarter of 2002.

In 2001 ASIC commissioned a major report on Book Up, a practice that 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 short-term 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 “secured” in these ways have developed in particular historical and cultural circumstances. The consumers involved are mainly Indigenous Australians and the practices are prevalent mainly in rural and regional Australia. The report will be released in March 2002 and ASIC will be undertaking a number of initiatives flowing from it.

Other self-regulatory initiatives that ASIC were involved with during 2001 included a major review of the Australian Banking Code and work on the Direct Debit system. A revised Banking Code is expected to be released in the first half of 2002.

Enforcement activities in the financial services sector

ASIC took a large number of enforcement actions during 2001 under the consumer protection provisions of the ASIC Act, the Corporations Law, and industry specific legislation.

Major or typical activities included:

- actions to improve the quality of investment advice;
- 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 contravention 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.

Cold-calling

During 2001, ASIC worked closely with overseas regulators to take enforcement action against operators of an international cold-calling scam targeting Australian consumers. In September 2001, ASIC welcomed representatives from the Royal Thai Police who came to interview victims of the cold-calling scams that had been operating from Thailand. The visit followed raids by the Thai authorities on cold-calling operators after information provided by ASIC, as well as authorities from New Zealand and Hong Kong. At the same time ASIC issued warnings to investors about the danger of investing as a result of overseas cold-calls or letters and continued to follow up any Australian connections to the cold-calling operations and liaise closely with the Thai and other Asian regulators.

Surveillance activities

In 2001, ASIC commenced a national surveillance inquiry into unlisted solicitors' mortgage investment schemes. The inquiry focused on runout mortgage schemes, which did not transfer to ASIC's managed investments regulatory regime in 1999. ASIC prohibited unlisted solicitors from accepting new mortgage investors, and gave them until 31 October 2001 to wind up their affairs under the supervision of State law societies.

In February, ASIC announced tighter guidelines covering financial forecast and projections in prospectuses. The guidelines provided additional guidance to new issuers and their advisors on the acceptable use of forecasts and projections. The guidelines also specifically addressed the way in which experts should deal with forecasts and projections when preparing reports for inclusions in a prospectus. The guidelines were issued as a result of regulatory concern that financial projections based on hypothetical assumptions were unlikely to be reasonable or verifiable.

Consumer Protection in electronic commerce

As noted above, in April 2001, ASIC launched the revised EFT Code and in August 2001, the first firm signed up to the revised Code. The revised Code starts on 1 April 2002.

During 2001, ASIC continued to address industry fora about the opportunities and challenges for regulators and the financial services industry in taking advantage of new technologies whilst ensuring that consumers are appropriately protected.

In May 2001, ASIC released a discussion paper examining a number of issues arising from account aggregation services and the potential consumer protection issues. The paper looked specifically at the issues of disclosure, allocation of liability for loss, privacy and security standards and the availability of complaints handling processes. Following the release of the paper, ASIC held a Roundtable meeting with interested industry, consumer and government representatives. As a result of that meeting, work has now commenced on a draft account aggregation chapter for the Electronic Funds Transfer Code.

During 2001, ASIC continued to take enforcement action in e-commerce matters, using the resources of the Electronic Enforcement Unit. This included a joint investigation with the New South Wales Fair Trading Department in a matter involving unsolicited spam e-mails and a pyramid selling scheme. The investigation resulted in the NSW Supreme Court ordering the operators of the scheme to cease operations immediately.

In April 2001, ASIC participated in the IOSCO 'Surf Day 2001' and extended this initiative locally in December 2001 by surfing the internet for websites that breached the Corporations Act, for example by illegally promoting an investment scheme or offering financial advice without a licence. ASIC reviewed over 7050 websites and identified 94 sites that required further follow up. This led to 3 websites being closed down or extensively modified.

ACCC activities

The ACCC is increasingly looking at codes of conduct, charters and voluntary standards as a light-handed, market sensitive means of gaining compliance with the TPA. In 2001 the ACCC's role continued as one of providing feedback in code reviews rather than having a central place in their development.

In 2001 the ACCC continued its involvement in development / review of the various codes of the Internet Industry Association and codes of conduct involving the fruit juice industry, Australian Pharmaceutical Manufacturers Association, the marketing of IVF services, the Jewellery Association of Australia, and the Australian Communications Industry Forum.

The ACCC also continues to facilitate interpretive work on the TPA involving all stakeholders and publishing guidelines based on this work.

Enforcement of the TPA

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

Targeted enforcement activity by the ACCC accounts for approximately 60 per cent of work in relation to gaining compliance with the consumer protection provisions of Part V of the TPA. Most matters involve various types of misleading and deceptive conduct. The potential threat of enforcement activity is generally enough to ensure compliance by many industry participants.

Each year the ACCC receives approximately 60 000 complaints and undertakes some 400 major investigations. It must therefore be strategic in its response to those enquiries. 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.

The ACCC has a range of responses available to it in any enforcement action from informal warnings and administrative settlements to court enforceable undertakings and civil or criminal based enforcement actions. 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 2001 include the following:

Crowded Planet: Concerned the supply of contraceptives over the Internet. The ACCC alleged that the defendant engaged in misleading and deceptive conduct in not informing the public that it is illegal to supply or purchase prescription drugs over the Internet. Interim orders for corrective advertisements were ordered on 9 November 2000. A failure to comply with these orders led to contempt orders on 2 February 2001 and a jail sentence for the defendant. The ACCC is awaiting judgement from the Federal Court.

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. It is believed this is the first time such an order has been made by an Australian court in relation to misleading conduct on the Internet.

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 Commission is now awaiting a trial date to be set down.

Australian Institute of Permanent Makeup: After ACCC action, the Australian Institute of Permanent Make-up was ordered to change its advertising on its website. The trader was ordered to publish disclosure statements on its website "that the benefits of cosmetic tattooing are not permanent and will generally only last three to five years. If clients wish to maintain the colour or shape they will require further treatments". They were also ordered by the Federal Court to provide refunds, and refrain from future representations.

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.

Skybiz.com Inc: In September 2001 the ACCC instituted legal action against Skbiz.com Inc, the US company in charge of the Skybiz Home Business Scheme, for breaches of the pyramid selling and other consumer protection provisions of the Trade Practices Act. After a successful action against an Australian agent and promoter of the scheme, the ACCC brought a direct suit against the source of the scheme.

Quality Bakers Australia Ltd (Buttercup): The Commission instituted proceedings against Quality Bakers Australia Limited (Buttercup) in relation to its promotion 'Help Buttercup to Help Our Babies'. Buttercup's advertisements stated that 30 cents would be donated to the Canberra Hospital 'for each additional Buttercup product* purchased' between certain dates. However, the fine print qualification stated that the donation would apply only to products sold over and above the average sales for a defined period. Following Commission intervention Buttercup honoured its promotion by giving a donation to the Canberra Hospital and the Court ordered by consent that Buttercup undertake a compliance program and publish corrective advertisements.

Target Australia Pty Ltd: The Commission instituted proceedings in the Federal Court, Perth on 5 September 2000 alleging that certain Target television and newspaper advertisements breached the Act. Its 'Every Stitch of Clothing' promotion stated in large print that substantial percentage price reductions applied to a broad category of goods but also used fine print to exclude items from the discount sales.

On 25 June 2001 the court declared that the advertisements, which appeared nationally in early 2000, were false, misleading and deceptive. The court ordered Target to broadcast a corrective advertisement nationally on 88 television stations and to publish corrective notices in 37 newspapers across

metropolitan, regional and rural Australia. The orders were made with Target's consent. The court also issued injunctions restraining Target from advertising in the same way for four years; ordered Target to review its trade practices compliance program, and ordered Target to pay Commission costs of \$65 000.

National Australia Bank: The Commission accepted a court enforceable undertaking from the National Australia Bank for a breach of s. 52 of the Trade Practices Act when promoting its Wheat Advance product in full-page newspaper advertisements. The NAB advertisements offered wheat farmers a better deal including underwriting costs around 17.5 per cent lower than its competitor. In this case the comparison was not accurate. NAB knew that its underwriting costs were not 17.5 per cent lower. NAB undertook to implement a trade practices compliance program to ensure future breaches of the Act do not occur.

Sony Australia Limited: On 1 March 2001 the Commission accepted court enforceable undertakings from Sony Australia Limited for alleged false and misleading representations in several Sony handycam sales brochures. Sony accepted the Commission's concerns and agreed to determine who may have relied on the representations in the brochures when buying Sony handycams; provide appropriate compensation to those consumers identified as relying on the representations in the brochures; and conduct an independent review of Sony's trade practices compliance program.

Centrebuy Direct Pty Ltd and Peter Edgar Riley: In proceedings instituted in the Federal Court, Sydney, on 21 March 2001 against Centrebuy Direct Pty Ltd and Peter Riley a director of the company, the Commission alleged that advertisements for the BodyTone machine implied the user could obtain benefits from its use without further effort on their part.

The Commission is seeking declarations and injunctions restraining Centrebuy Direct Pty Ltd and Peter Riley from making false and misleading representations about electro-muscular stimulation machines generally, an order for corrective advertisements and an offer of refunds to purchasers of the machine.

Medical Benefits Fund of Australia Ltd (MBF): MBF and advertising agency John Bevins Pty Ltd are currently defending a matter filed by the Commission in the Federal Court in February 2001. 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. The matter is listed for hearing commencing on 3 June 2002.

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. The judge reserved

his decision.

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. The matter is continuing.

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. A date for hearing has been set for 6 May 2002.

Enforcement cooperation

Internet Sweep Day

Sweep days are a regular activity of the International Marketing Supervision Network (IMSN), 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.

IV. Consumer education and information

Improving and Centralising Marketplace Information

2001 saw the beginning of a new four year Consumer Information Programme with the policy objectives of:

1. **Improving and centralising marketplace information - the "one-stop-shop" approach.** The first tier takes forward the Government's one-stop-shop approach to consumer information as evidenced through the development of the central referral Web site, www.consumersonline.gov.au, and the annual publication of a directory of consumer complaint handling organisations.
2. **Targeted delivery of online and offline information resources to address identified consumer needs.** While the majority of consumers can be serviced through a centralised approach, it is recognised that some consumers will experience particular disadvantage or encounter circumstances that require specific attention. Key initiatives throughout 2001 included information resources targeting consumer scams (www.scamwatch.gov.au, *The Little Black Book of Scams*), product safety recalls (www.recalls.gov.au), child product safety (*Safe Toys For Kids*, *Keeping Baby Safe* publications) and rural consumers (*Country Focus* information kit).
3. **Building Consumer Sovereignty in Electronic Commerce.** The third tier supports the Government's aim to be a best practice centre for e-commerce and included the promotion of the *Australian E-Commerce Best Practice Model* through the Web site

www.ecommerce.treasury.gov.au and the distribution of consumer e-commerce shopping brochures.

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

ASIC Activities

In October 2001, ASIC released its *Consumer Education Strategy*, following widespread consultation with Government, consumer and industry groups. The Strategy sets out how ASIC will carry out its consumer education work during the period 2001-2004, including priority areas, delivery mechanisms and performance measures. The aim of ASIC's consumer education work, as stated in the 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 2001 included:

- continued promotion and development of ASIC's specific consumer website, FIDO (www.fido.asic.gov.au), including in March 2001 the launch of FIDO News, a subscriber service, which delivers information direct to consumers' e-mail addresses (to date there are 4,100 subscribers);
- continued promotion of the Gull Awards, containing true stories about outrageous financial scams submitted by consumers. The best 'Gull' each month wins a prize.
- regular consumer alerts – including direct debits, cold calling and early access to superannuation.
- investor forums – public meetings that give information to consumers and investors about investing and other financial services issues

It is important to note that in addition to the above, ASIC started work, in accordance with the Strategy, on a number of longer term consumer education projects. Work on these projects is ongoing and we hope to see some of the results during 2002. Longer term projects, which were started in 2001, include:

- multi-lingual library of consumer factsheets – work commenced on the development of a best practice guide for the production of community language publications, as a first stage in building up a resource library of community language factsheets. The first factsheet will inform consumers how to exercise their right to complain about a financial product or service. This factsheet will be produced in English and a number of community languages;
- financial literacy in schools project – as the first stage in ASIC's strategy to promote the provision of financial services education to children and teenagers at school, ASIC has started work to gain an understanding of the extent to which personal finance education is already provided in schools in Australia;
- insurance education for Indigenous communities – as a result of an enforceable undertaking given by an insurance company in 2000, funds have been provided to prepare, produce and distribute educative materials about insurance targeted to indigenous consumers;
- plain language summary of the EFT Code – to support the revised EFT Code, we started work on a plain language summary of the Code for consumers, consumer advisers and others. This summary will be launched in April 2002, the same time the revised Code comes into effect.

ACCC activities

The ACCC has a continuing commitment to maintaining substantial information and guidance programs for the general community and, as needed, for specific target audiences. Legislative changes for example in relation to Australia's New Tax System, together with other recent developments in the economy, have considerably increased these responsibilities.

In 2001, a number of new publications were issued including:

- a revised version of the 'Summary of the Trade Practices Act' (TPA), a plain language guide that incorporates recent changes to the legislation;
- 'Consumer Express' a monthly newsletter on ACCC activities;
- reports on the New Tax System pricing issues;
- guides to the application of the TPA to the textiles, clothing and footwear industries in relation to country of origin claims;
- a wide range of product safety publications on goods including pedal bicycles, cosmetics, elastic luggage straps, bean bags, exercise cycles, paper patterns and balloon blowing kits;
- a guide on advertising and selling for businesses in relation to the consumer protection provisions of the TPA;
- a series of guides on the unconscionable conduct provisions of the TPA;
- News for Business publications on issues such as Genetically Modified Foods, and the ACCC's use of penalties; and
- 'Fair.com', a guide for Internet Service Providers (ISPs) in relation to the promotions of their services and their rights and obligations under the TPA.

In addition, the ACCC's Internet home page continues to grow rapidly and has become an important adjunct to the ACCC's range of paper publications. As well as basic information about the work of the ACCC, the site includes on-line versions of main publications, on-line text of media releases and other public statements, advice for consumers and business, drafts and discussion papers on which public comments are sought and links to related sites.

In 2001 the ACCC also continued to give high priority to developing cooperative ventures with business, consumer and government organisations especially where they afford access to established networks or target audiences. In particular, the ACCC instituted its Consumer Consultative Committee, to provide a regular forum for discussion of consumer issues between the ACCC and consumer representatives.

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.

The Government has committed to assessing how it can best support the development of effective dispute resolution mechanisms for electronic commerce.

In October 2001 the Government released a discussion paper titled *Dispute Resolution in Electronic Commerce*. The Paper serves as the basis for discussion regarding the importance of dispute resolution mechanisms in B2C e-commerce as well as encouraging creative thinking about ways of handling e-commerce disputes.

In 2001, two papers of particular relevance to consumer dispute resolution issues were released by the National Alternative Dispute Resolution Advisory Council (NADRAC). NADRAC provides advice to the Commonwealth Attorney-General on ADR issues.

NADRAC's report A Framework for ADR Standards made a number of policy recommendations and proposed a framework for ADR standards that included guidelines for developing and implementing standards.

NADRAC's background paper on on-line ADR examined the potential use and limitations of on-line ADR and identified several policy challenges. Both reports can be found on the NADRAC website at www.nadrac.gov.au.

ASIC activities

The Financial Services Reform Act 2001, which commences on 11 March 2002, makes it compulsory for financial services licensees that deal with retail clients¹ 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.

In November 2001, ASIC released Policy Statement 165 which set out how ASIC would administer the above provisions of the FSRA and the standards that we expect licensees' dispute resolution systems to meet in order to be granted a licence by ASIC.

As regards external dispute resolution, as noted above, licensees must belong to one or more ASIC approved external dispute resolution (EDR) schemes. This is to ensure that retail consumers have access to a quick and easy mechanism means of securing redress. In September 2001, ASIC approved the Australian Banking Industry Ombudsman as an approved EDR scheme.

This means that the three largest finance sector EDR schemes in Australia covering banking, general insurance, life insurance, funds management and advisory services have now been approved. ASIC is currently dealing with applications for approval from EDR schemes operating in the insurance broking, credit union, time share and mortgage industries.

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:

¹ 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.

- 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.

The ACCC maintains an information centre that receives around 73 per cent of all complaints referred to the Commission. It is not unusual for the information centre to receive over 900 matters within a period of a week. More than 65 per cent of these complaints relate to consumer protection (under Part V of the *Trade Practices Act 1974*).

The ACCC releases publications on a regular basis on consumer protection issues. Examples of these publications include: "Internet Auctions: What you should know before you bid or sell"; "Advertising and Selling" which looks specifically at what one can do and cannot do, or say when advertising and marketing goods and services; "Fair.com—advertising and promoting internet access". ACCC publications are accessible on its website on <http://www.gov.au/fs-pubs.htm>.

The ACCC's online complaints facility, 'Slam-a-Cyberscam' is an invaluable 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 has made submissions to a number of the Australia New Zealand Food Authority (ANZFA) related reviews associated with a revised Food Standards Code. In particular, the ACCC participated in an expert advisory committee on Regulation and Enforcement of Health Claims and provided ongoing advice on competition issues in relation to the Draft Protocol for Compliance and Draft Amendments to Standard A18 – Foods Produced using Gene Technology.

The submissions made have centred on reduced reliance on prescriptive regulation, support for appropriate self-regulation, and the use of the TPA to provide universal base level protection to consumers and food producers / suppliers.

In January 2002, the ACCC released a "News For Business" document, which clarified the treatment of labelling of genetically modified foods under the TPA. The News For Business made it clear that "GM free" is an absolute claim that risks misleading consumers if food content is not assured in a legally and scientifically sound way.

Competition law enforcement work

The competition provisions of the TPA are also critical to protecting the interests of consumers as it is recognised that anti-competitive conduct has the effect of reducing consumer choice and increasing prices. The ACCC was also active in enforcing the restrictive trade practices provisions of the TPA in 2001. Domestic and international cartel activity was a priority area. On March 1 2001, following proceedings instituted by the ACCC, the Federal Court imposed recommended penalties totalling \$26 million against three animal vitamin suppliers for price fixing and market sharing in breach of the TPA. Penalties were imposed against Roche Vitamins Australia Pty Ltd (\$15 million) BASF Australia Limited (\$7.5 million) and Aventis Animal Nutrition Pty Ltd, formerly known as Rhone-Poulenc Animal Nutrition Pty Ltd (\$3.5 million). The companies' conduct activated a global anti-competitive agreement between their multinational parent corporations. The ACCC's investigation followed action by overseas competition agencies. The ACCC and the Australian companies jointly recommended that the court impose penalties in the amounts set out above.

In April 2001 the Federal Court imposed corporate penalties totalling \$7 million against Alstom Australia Limited and an individual penalty against its managing director for price fixing and market sharing. The court penalties related to the company's admitted participation in a cartel of transformer manufacturers to fix or maintain prices and prevent competitive conduct in the markets for power and distribution transformers.

Competition issues in e-commerce are also of importance to the ACCC. Issues related to business to business (B2B) e-commerce were discussed at a public conference conducted by the ACCC in November 2001.

Electronic Commerce Issues

The ACCC continued and expanded 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.

Privacy

The *Privacy Amendment (Private Sector) Act 2000* was passed by Parliament in December 2000. It forms part of the Australian Government's legislative package designed to encourage the up-take of electronic commerce by increasing consumer confidence in doing business on-line. The legislation establishes a national scheme for the handling of personal information by private sector "organisations" (defined to mean a body corporate, an unincorporated association, a partnership, a trust or an individual).

The private sector privacy legislation came into effect on 21 December 2001. The reason for the delay in commencement of the legislation was to provide organisations with time to adjust their practices in order to comply with the new obligations. Small businesses (except those that provide a health service) will

have an additional 12 months before the legislation applies to them.² This extra time acknowledges the cost burden of compliance for small businesses.

The provisions of the legislation that implement the private sector privacy scheme are contained in a Schedule to the Privacy Amendment (Private Sector) Act (which amends the Commonwealth *Privacy Act 1988* (the Privacy Act)). The legislation is technology neutral, which means that it applies to regulate how organisations handle personal information both in the on-line and off-line environment.

The private sector privacy legislation establishes a co-regulatory scheme. It sets out a legislative framework for the handling of personal information by private sector organisations and also contains provision for organisations or industry sectors to develop privacy codes that can operate in place of the legislative framework and be tailored to their own industry needs. To ensure consistency across privacy codes they must be approved by the Privacy Commissioner. The standards in approved privacy codes operate in place of the standards in the legislation. Part IIIAA of the legislation sets out the matters that the Privacy Commissioner must take into account when deciding whether or not to approve a privacy code. The Privacy Commissioner may only approve a code if it provides at least the same standard of privacy protection as the NPPs.

The standards in the legislation:

- The legislation establishes the National Privacy Principles (the NPPs) as the minimum privacy standards for the private sector. The NPPs regulate the collection (NPP 1 and 10); use and disclosure (NPP 2); and transfer overseas (NPP 9) of personal information. They require organisations to ensure that the personal information they hold is accurate, up-to-date and complete (NPP 3); and secure (NPP 4). Organisations are also required to be open about how they manage personal information (NPP 5); provide access and correction rights to individuals (NPP 6); and allow people to deal with them anonymously, if that is lawful (NPP 8). The National Privacy Principles also regulate the adoption, use and disclosure of Commonwealth Government identifiers (NPP7).
 - The NPPs in the legislation provide a basis for business to develop practices to ensure that the privacy of individuals is protected. Most private sector organisations are required to comply with them, unless they are bound by an approved privacy code. There are, however, exemptions from the operation of the legislation.

The exemptions:

- The exemptions in the legislation are the result of balancing many issues and interests. Some of the exemptions are at the organisational level. The definition of “organisation” does not include most State and Territory public sector bodies, registered political parties or small business operators (as defined in the legislation). The private sector legislation also contains exemptions for certain acts and practices or certain types of records. There are exemptions for political acts and practices and those in relation to media activities and for employee records. The legislation also contains special rules in relation to Government outsourcing.

Education and enforcement:

- The Federal Privacy Commissioner is a key player in the implementation of this legislation. Part of his job is to help people understand and accept the NPPs (through the development of guidelines) and

² New section 16D; paragraphs 157 - 163 of the Revised Explanatory Memorandum (Senate). Paragraph 163 explains why the delayed application period does not apply to small businesses that provide a health service (new subsection 16D(6)).

to help organisations to develop their own privacy codes. As these codes are developed, the Commissioner will also be responsible for their approval.

- One further role the Commissioner may play is that of an adjudicator in the resolution of complaints. Some privacy codes will have an in-built complaint mechanism and some will not. Where no such mechanism exists, the Privacy Commissioner will automatically become the adjudicator.
- The Office of the Federal Privacy Commissioner has developed guidelines on how the NPPs apply in practice; how the NPPs apply to the health sector; and how to develop a privacy code. The Federal Privacy Commissioner has consulted widely in the development of the guidelines. Copies are available on the Privacy Commissioner's website at <http://www.privacy.gov.au>.

The operation of the legislation will be reviewed in two years:

- As the legislation establishes a new approach to the handling and protection of personal information in the private sector, the Australian Government is of the view that a formal review of the operation of the legislation would be appropriate. The Federal Attorney-General has indicated that he proposes to ask the Federal Privacy Commissioner to perform a review of the legislation two years after it commences.

Electronic Investigations

The ACCC has participated in Internet Investigations Training hosted by the Federal Trade Commission in the USA. The ACCC has hosted training for the local State and Territory Fair Trading agencies, and has developed a high level of expertise in the area of computer forensics. Basic forensic training will be given to all investigators in the ACCC in the long term, with a central expert team based in the National Office.

Health Issues

In June 2001, the Departments of Health and Aged Care and the Treasury released a joint discussion paper on informed financial consent for in-hospital medical services. This paper formed the basis for public consultations that were conducted in the later half of 2001 with the medical profession, health funds, consumers and other stakeholders to discuss options for ensuring consumers of in-hospital medical services are informed about the costs they will encounter.

This consultation process will result in a report to be presented to the Government in 2002.