
Appendix 1 Continuing matters

Enforcement

The following is a list of enforcement matters before the courts — in addition to the new and recently concluded matters reported in the Enforcement section.

Anti-competitive practices

IMB Group Pty Ltd, Logan Lions Ltd & ors, ss 47(6), 52. Alleged third line forcing and misleading or deceptive conduct in relation to financial planning and property development. Interlocutory proceedings commenced 6.9.93. Proceedings withdrawn 17.9.93. Proceedings recommenced 20.9.93.

Federal Court consolidated this and *ACCC v National Mutual Life Association of Australasia Ltd* (QG No. 77 of 1994) on 12.3.96.

National Mutual admitted that certain conduct alleged in the statement of claim contravened s. 52 of the Act and that it was indirectly involved in the conduct through its agent. National Mutual and the Commission agreed to a settlement. The Commission discontinued proceedings against National Mutual on 3.6.96.

Action against the agents, IMB Group Pty Ltd, and against Logan Lions Ltd and certain individuals continues. Trial in this matter began 7.9.98 and was adjourned on 24.9.98. Trial recommenced on 22.2.99 and was further adjourned on 24.3.99 to resume on 13.9.99. Directions hearing held on 16.6.99 to hear argument on the number and relevance of witnesses called by the respondents, and on the application of s. 51A.

On 17.6.99 Drummond J declared that in this particular case the Commission (applicant) had the persuasive burden of proof in regard to representations made by the respondents about future events. 24.6.99 Commission filed and

served a notice of motion to appeal this decision. A date for a directions hearing on the notice of motion is pending. The trial resumed on 13.9.99. The Commission provided its closing submissions on 18.10.99 and the respondents were to provide their written submissions by 19.11.99 and any oral submissions on 10.12.99.

On 14.1.00 the respondents filed their written submissions, and on 24.1.00 the Commission filed applicants' submissions in reply. Judgment is now pending.

CC (New South Wales) Pty Ltd, Holland Stolte Pty Ltd, Multiplex Constructions Pty Ltd, Leighton Contractors Pty Ltd, Australian Federation of Construction Contractors (AFCC) & ors, ss 45, 52, 53, 55A. Alleged collusive tendering practices in relation to the building project known as the Commonwealth Offices Haymarket project. Proceedings instituted on 30.8.94. Directions hearing on 29.9.94 — Mr Russell Richmond, a former national executive director of the AFCC, announced that he would not defend the proceedings brought against him and consented to the entry of a judgment against him. On the same day AFCC informed the court that it did not propose to take further part in the proceedings. On 24.11.94 the court imposed a penalty of \$10 000 on Mr Richmond.

On 5.5.95 Holland Stolte Pty Ltd and Mr Graham Duff, a former Managing Director of Holland Stolte Pty Ltd, withdrew their defences and consented to judgment. Penalties totalling \$400 000 were imposed against Holland Stolte, and \$50 000 against Mr Duff.

On 8.9.95 Lindgren J in the Federal Court imposed on Leighton Contractors Pty Ltd and Multiplex Constructions Pty Ltd the (previous) maximum penalty of \$250 000 for each of two offences and ordered each company to pay \$75 000 costs. Personal penalties were imposed on Mr Leonard Dixon, a chief estimator for Leighton, (\$25 000) and Mr Geoffrey Thomas Palmer, a retired director

of Multiplex, (\$50 000). The penalties followed the withdrawal of defences by Leighton, Multiplex, Dixon and Palmer. The companies also made full restitution to the Australian Government of the \$750 000 'unsuccessful tenderer's fee' (UTF) which each had received from the successful tenderer, Holland Stolte.

Trial against CC (NSW) Pty Ltd was held in Sydney on 6–8 October 1998. Lindgren J found on 14.7.99 that CC (NSW) Pty Ltd had contravened s. 45(2)(a)(ii), b(ii) of the Act in reaching an understanding with the other respondents to implement a UTF. Lindgren J held that, although the UTF was only a small percentage of the overall tender price, it still maintained the tender price within the meaning of s. 45A.

Lindgren J dismissed the Commission's allegation that a further fee known as a special fee was an agreement between the respondents.

On 21.1.00 Lindgren J handed down a penalty of \$200 000 against CC (NSW) Pty Ltd. This offence took place when the maximum penalty was \$250 000.

J McPhee & Son (Australia) et al., s. 45. Alleged, and attempted, price fixing arrangements in relation to transport services. Proceedings instituted in the Federal Court Melbourne on 20.12.95. On 2.2.98 Federal Court found that J McPhee & Son (Australia) Pty Ltd and three of its employees had attempted to have a competitor enter into a collusive agreement in tendering express freight services to a McPhee client. It also found that the company had entered into a price fixing arrangement with a competitor in relation to prices quoted to another McPhee customer. On 27.3.98 Heerey J imposed penalties of \$4 million on J McPhee & Son and four executives for price fixing. Respondents have appealed the decision. Appeal heard in February 1999 and decision reserved.

Australian Safeway Stores Pty Ltd (trading as Safeway) and George Weston Foods Limited (trading as Tip Top Bakeries), ss 45, 45A, 46, 47, 48. Alleged price fixing, misuse of market power and resale price maintenance in relation to the sale of bread in Victoria. Proceedings instituted on 23.12.96. The Commission seeking penalties

and injunctions. On 30.5.97 Federal Court imposed penalty of \$1.25 million on George Weston Foods Limited, which admitted the contraventions. Trial of allegations against Safeway began in February 1999 and finished on 20 October 1999. The decision has been reserved.

Sundaze Australia, s. 48. Alleged resale price maintenance in relation to Oakley sunglasses. Proceedings instituted on 18.6.97. The Commission seeking penalties and injunctions. Directions hearing on 17.10.97. On 9.7.98 Commission granted leave to file and serve amended statement of claim. Respondents were to file and serve amended defence and affidavits, then parties to advise court registry that matter is ready for further directions. On 13.10.98 this matter was before the Deputy Registrar of the Federal Court for case review and the matter is to undergo a mediation process on or before 14.12.98. On 10.12.98 the parties attended mediation and settlement negotiations commenced as a result. The negotiations were a little drawn out; however, on 21.10.99 the parties came to an agreement on how the matter should proceed via joint submissions and consent orders. The matter was listed before the court on 17.11.99 for directions and it was anticipated that the joint submissions would be provided to the court on that date.

On 17.11.99 the matter proceeded by filing of joint submissions. The court found that Sundaze had contravened the resale price maintenance provisions of the Trade Practices Act. Sundaze was penalised \$500 000 and a three-year injunction was imposed on the company, its servants and agents. Sundaze agreed to contribute \$120 000 toward the Commissions costs.

Simsmetal Ltd, Babister & Jaks, ss 45, 46, 76. Alleged attempted market sharing arrangement and misuse of market power in the South Australian steel scrap and South Australian foundry steel markets. On 22.6.99 by consent, respondents ordered to file and serve its list of discovery documents by 28.6.99. Other interlocutory orders were made.

Trial set to begin on 27.3.00 and run for nine weeks.

Boral Limited and Boral Besser Masonry Ltd, s. 46. Alleged predatory pricing and misuse of market power in relation to the supply of concrete masonry products. Proceedings instituted on 6.3.98. Commission seeking penalty, declaration, injunctions requiring the companies to implement a corporate compliance program, and findings of fact. Trial commenced 6.7.99. Justice Heerey found that Boral Besser Masonry Ltd did engage in below cost pricing for the purpose of deterring new entrants and driving competitors out of the market. However, the Commission did not satisfy the court that Boral Besser Masonry Ltd had a substantial degree of power in the Melbourne concrete masonry market which is an essential element for establishing a contravention of s. 46. The court found that the relevant market was the Melbourne metropolitan market for wall and paving material. The Commission appealed these findings and the Full Federal Court heard the appeal on 7–10 February 2000. The parties are currently awaiting the decision of the full Federal Court.

George Weston Foods Limited and ors, s. 45. Alleged attempts to induce price fixing agreement between two Tasmanian retailers in relation to biscuits. The Commission instituted proceedings on 28.10.98 seeking orders including pecuniary penalty, injunctions, declarations and findings of fact. The company has since admitted the contraventions and a penalty hearing held on 6.8.99 is pending decision.

SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd, ss 45(2), 45A. Alleged primary boycott and price fixing in relation to the supply of ABAC compressors. Proceedings instituted on 23.4.99 against Baker Bros and two directors, Andrew Baker and Guy Baker. At 5.5.99 directions hearing Baker Bros admitted to the conduct. At 7.5.99 penalty hearing Baker Bros and Commission presented joint submission seeking injunctions, penalties and a compliance program. On 29.6.99 court accepted joint submission and imposed penalties totalling \$60 000 on Baker Bros and two directors. Baker Bros also agreed to offer a s. 87B undertaking to implement a trade practices compliance program and pay part of Commission's costs.

SIP Australia filed its defence on 30.6.99. The next directions hearing in this matter is scheduled for 19 April 2000.

Rural Press Limited and ors, ss 45, 46. Alleged misuse of market power and anti-competitive agreement in relation to the withdrawal of *The River News* regional newspaper from the Mannum area in South Australia. Proceedings instituted 14.7.99 against Rural Press Limited and its subsidiary, Bridge Printing Office Pty Ltd, in respect of ss 45 and 46, and its employees Ian Law and Trevor McAuliffe for being knowingly concerned. Also instituted against Waikerie Printing House Pty Ltd in respect of s. 45 and its directors, Paul and Darnley Taylor, for being knowingly concerned. Trial held from 8.12.99 to 17.12.99 before Mansfield J, closing submissions heard on 10–11 February 2000. Decision reserved.

Tubemakers of Australia, Associated Water Equipment and Geoff Clegg Enterprises formerly known as Watergear Distributors, ss 45, 45A. Alleged price fixing, market sharing, tender rigging and exclusionary provisions in the supply of fittings and valves suitable for use with ductile iron cement lined (DIDL) pipe and plastic pipe. Proceedings commenced 13.7.99. Penalties handed down against Tubemakers of Australia and Coastline Foundry (Qld) on 12.11.99. Penalty handed down against Associated Water Equipment on 6.3.00. Proceedings against Geoff Clegg Enterprises continue. Geoff Clegg Enterprises and Commission to submit agreed statement of facts if possible. The matter to be listed for further directions on 7.4.00 if parties do not provide confirmation to the court that relevant affidavits and outline of submissions have been filed by 6 April 2000.

Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited, s. 45. Alleged price fixing and market sharing in Queensland ice market. On 12.8.99 the Commission filed proceedings in the Federal Court, Brisbane against Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited, Kenneth John Smith, Anthony John Mee, Gregory Paul Mee, Brian Bradley, Leo Grevis, Gary John Grevis, Roderick Ian Matheson and Jack Numan Berry.

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The Commission alleges that the respondents promoted price fixing and market sharing arrangements in the ice industry in south-east Queensland between August 1993 and September 1996. Directions hearings were held on 3.9.99 and 5.11.99. A penalty hearing in relation to some respondents was held on 31.3.00. The trial, concerning the remaining respondents, has been set down for 4.12.00.

Unconscionable conduct

Farrington Fayre Shopping Centre, s. 51AA. Alleged unconscionable conduct in relation to leasing arrangements. Proceedings instituted 6.4.98 with the Commission seeking orders including declarations, injunctions, public apology, institution of a corporate compliance program and findings of fact.

Trial commenced 18.10.99, but was adjourned with French J raising concerns as to the constitutional validity of s. 51AA. Commission directed to issue notices under s. 78B of the Judiciary Act to the Attorneys-General for their consideration. This was completed on 25.10.99. Matter set down for 22.11.99 for argument on constitutional issue.

On 14.1.00 French J handed down his decision that s. 51AA was constitutional. Trial held on 31.1.00 to 3.2.00 and decision reserved.

Leelee Pty Ltd, s. 51AC. Alleged unconscionable conduct by a landlord towards one of its tenants. Proceedings instituted 4.2.99 against Leelee Pty Ltd and Pua Hor Ong, Managing Director, for aiding and abetting or being knowingly concerned. Commission seeking injunctions, declarations that the tenant has suffered loss or damage, findings of fact, and orders for payment of damages. Notice of motion to strike out part of the statement of claim and stay the proceedings heard on 2.7.99. Order made on 20.8.99 for Commission to file amended statement of claim. Amended statement of claim filed on 23.9.99. Notice of motion to amend application to include s. 51AA accepted without objection on 27.10.99. Next directions hearing 1.2.00.

Samton Holdings Pty Limited, s. 51AA. Alleged unconscionable conduct by a company towards one of its tenants. Proceedings instituted on 26.2.99. Commission seeking

orders against the company, each of the landlords and their legal adviser, including declarations, injunctions, the publishing of public notices, the institution of corporate compliance programs, damages and costs. On 15.10.99 the applicants' notice of motion seeking further and better discovery on the basis of the legal adviser's claim of privilege was mentioned and programming orders made for the hearing of the matter.

Simply No Knead Franchising Pty Ltd, ss 51AC, 51AD. Alleged unconscionable conduct by the company towards its franchisees and breach of the Franchising Code of Conduct. Proceedings instituted 16.6.99 against SNK and its director.

At a directions hearing on 9.7.99 the parties consented to adjourn the hearing of the interlocutory application and SNK undertook to take no further steps in its legal proceedings against the franchisees until the determination of such application. A notice of motion to strike out part of the statement of claim was filed on 24.9.99. On 29.9.99 an amended notice of motion sought to dismiss or forever stay the proceedings on the grounds that it was vexatious, oppressive and/or abuse of process.

The interlocutory application was heard on 29.9.99. Judgment reserved until determination of the amended notice of motion.

On 24.12.99 Justice Sundberg ordered that SNK's application seeking to dismiss or forever stay the Commission's proceedings on the grounds that it is vexatious, oppressive and/or abuse of process be dismissed. The court also upheld the Commission's application for interlocutory relief and ordered that SNK be restrained from further prosecution of its State court proceedings against its ex-franchisees until the hearing and determination of the Commission's proceeding. The order was given on the condition that the Commission file an undertaking by each of the ex-franchisees that they will not prosecute their counterclaims in the various State court proceedings until the hearing and determination of the Commission's proceeding. Such undertakings were filed with the Federal Court on 3.2.00.

A directions hearing was held on 3.3.00 and a court timetable was set. The trial date is yet to be set.

Consumer protection

Venture Industries Pty Limited and Collings Construction Company Pty Limited, ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to building homes. Proceedings instituted 3.9.93 against Collings Construction Co Pty Limited, Wayne Collings, Venture Industries Pty Limited, Harry Kioussis, Penny Kioussis and June Collings. Representative action on behalf of seven families.

On 16.9.94 matter cross-vested to NSW Supreme Court. On 28.9.95 Hunter J adopted report from court-appointed referee. Trial before Hunter J from 9.10.95 to 28.11.95. In December 1995 Venture parties sought to overturn the cross-vesting of the matter from the Federal Court to the NSW Supreme Court. On 23.5.96 application refused.

On 10.12.96 Hunter J found five of the respondents had breached s. 52. Damages of \$1 081 498.55 awarded to seven families represented by the Commission. No findings as to breaches of s. 51AB. No findings and no damages awarded against June Collings.

On 7.2.97 Hunter J made orders, including interest, against each of the five defendants found liable (effectively joint and several) of between \$1 412 798.92 and \$1 592 927.54, with a total award of \$1 618 507.24. Venture Industries Pty Limited, Harry Kioussis and Penny Kioussis are generally restrained from holding a pecuniary interest in an organisation offering services which would require a licence under the *Building Services Corporation Act 1989* (NSW). Venture Industries Pty Ltd, Harry Kioussis and Penny Kioussis sought a stay through the Court of Appeal, which was refused 17.3.97. Each of the five defendants found liable appealed the decision to Court of Appeal. Appeal dismissed 3.3.98. Venture Industries, Harry Kioussis and Penny Kioussis have sought special leave to appeal the decision to the High Court.

The High Court refused special leave to appeal the decision of the Court of Appeal on 20.11.98.

Recovery proceedings continue. Collings Construction Co Pty Ltd (now called CAN 000

443 176 Pty Ltd) has been placed in voluntary administration. Wayne Collings has been placed into bankruptcy (24.3.98) as have Harry Kioussis and Penny Kioussis (both on 10.7.98).

Venture Industries was placed into liquidation on 20.7.98.

Stephen Gregory Wyer, Optell Pty Ltd, Geoffrey Allan Beckett, Clinton Wade Andela, ss 52, 53(aa), (bb), (c), (d), (f), 64. Alleged misleading and deceptive conduct in relation to business registers and consultancies. On 9.8.96 proceedings instituted. On 15.8.96 Finn J granted consent orders against Mr Wyer restraining him from carrying on the OSA and SAR schemes, freezing moneys obtained through the schemes and ordering him to forward any moneys obtained through the schemes to the Commission or to the court. On 26.8.96 Finn J made interlocutory orders against Optell and others preventing them from carrying on the register and consultancy businesses, and ordering them to forward to the Commission moneys received in relation to the businesses. Commission seeking permanent injunctions and other orders for corrective action.

On 6.9.96 proceeding transferred to Brisbane. Hearing for future conduct of proceedings 19.1.98. Final hearing 26–27.3.98. Judgment for the plaintiff handed down by O'Loughlin J on 3.6.98. Injunctions granted against Andela and Beckett. Draft orders filed on 1.7.98. Awaiting final orders.

Black on White Pty Limited (trading as Australian Early Childhood College), ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to the accreditation of courses and enforcement of enrolment contracts. Proceedings instituted on 1.8.97. On 15.8.97 court accepted undertakings from respondents in terms of interlocutory orders sought by the Commission. Administrator appointed 17.10.97. Validity of appointment being challenged in Supreme Court. At directions hearing on 17.10.97 court ordered joinder of fourth respondent. Directions hearing on 21.11.97 set down new timetable for discovery, filing of defences and affidavits. On 15.1.98 creditors resolved to wind up company. Proceedings to continue against individual respondents. On 26.10.98 notice of

motion by fourth respondent to have their conduct tried as a preliminary issue. Motion unsuccessful. On 30.11.98 directions hearing amending timetable for second and third respondents. On 12.3.99 directions hearing. Trial set down for 3.4.00 for seven days.

HRJ Financial Services Pty Ltd, ss 52, 53(c), 55A, 51AB. Alleged misrepresentations in relation to the provision of personal loans. Proceedings instituted against HRJ and its directors Rowland William Thomas and Helen Elizabeth Lewis on 6.7.98. On 10.7.98 court issued restraining orders against HRJ and its directors and ordered a freeze on funds.

Billbusters Pty Limited, s. 53. Alleged misrepresentations in relation to the supply of telephone bill-paying services. Proceedings instituted on 13.11.98. Commission obtained interim restraining orders against Billbusters Pty Limited and its director Miles Kendrick-Smith on 23.11.98, restraining them from making certain representations and dealing with their assets. Next directions hearing on 23.3.00.

Giraffe World Australia, ss 53, 61. Alleged contravention of referral selling and pyramid selling provisions of the Trade Practices Act. Alleged false representations about the product it promotes, negative ion mats. Proceedings instituted on 6.5.98. Undertakings given by Giraffe World on 23.4.99. On 29.6.99 found that Giraffe World had breached its undertaking. Commission awaiting judgment on the substantive issues in the matter.

Golden Sphere International Incorporated, s. 61. In 1996 the Commission instituted proceedings against Golden Sphere International Incorporated, Victor Michael Cottrill and Pamela Reynolds to obtain injunctive and other relief for an alleged breach of s. 61 of the Trade Practices Act. The Commission also commenced proceedings to obtain monetary relief on behalf of the members of the public who had been participants in the Golden Sphere scheme. On 1 June 1998, O'Loughlin J in the Federal Court of Australia, held that the three respondents had breached section 61(2A) of the Trade Practices Act which prohibits pyramid selling schemes. The Company, Mr Cottrill and Ms Reynolds were ordered to pay \$550 000 into a fund to provide refunds to consumers who invested in its pyramid

selling scheme. The fund was administered by the Official Trustee and the staff of the Insolvency and Trustee Service of Australia (ITSA). Over \$250 000 was recovered and paid into the trust fund. This money was obtained as a result of the Commission's mareva injunction orders (an injunction which enables the court to freeze the assets of a defendant). The Commission and ITSA notified participants in the Golden Sphere scheme of the Federal Court orders in major national newspapers and invited the participants to submit claims for refunds from the fund.

The respondents have not paid the full balance of the \$550 000 in accordance with the June 1998 judgment, and the Commission obtained evidence that monies due to the company had been transferred to Vanuatu. On 14.9.99 the Commission obtained judgment and other orders against the three respondents in the Supreme Court of Vanuatu before Saksak J.

ITSA has advised that the claims of the members of the pyramid selling scheme have been determined and claimants have been paid the money they were entitled to from the fund in accordance with the 1.6.98 orders. The surplus monies in the fund are to be distributed in accordance with the Federal Court orders of June 1998. That matter is currently progressing.

Shercind Pty Ltd (trading as Eyetastique) (in liquidation), s. 65C. Alleged non-compliance with mandatory consumer product safety standard for sunglasses and fashion spectacles. Proceedings instituted against former directors, Farid and Matta on 15.10.98. Trial held from 18-19.10.99. Proceedings against Farid dismissed. On 5.11.99 Matta found guilty of two offences. Ordered to pay fines of \$500 per offence and the applicant's costs of the proceedings including reserved costs. On 8.12.99 Matta filed a notice of appeal. Hearing week commencing 15.5.00.

Pauls Limited, s. 53. Alleged misleading advertising of its white milk products in the Northern Territory. Proceedings instituted 25.2.99. On 9.3.99 court ordered Pauls not to make certain representations. Orders remain in place until full hearing. Commission seeking corrective advertising, permanent injunctions and refunds.

Abel Rent-A-Car, ss 52, 53, 56. Alleged misleading advertising of car rental services. Proceedings instituted on 24.2.99. Interim orders obtained on 27.3.99. Further interim orders obtained by consent on 5.5.99. Orders varied, and hearing on contempt issues on 24.6.99. Further directions made by consent on 25.6.99. Awaiting judgment on contempt issues. Company placed into voluntary liquidation on 26.7.99. Company placed in a creditors voluntary liquidation on 20.8.99. Further directions are being sought.

Commission is seeking permanent injunctions and declarations.

Instant Document Retrieval Pty Ltd, ss 52, 59. Alleged false representations in relation to distributorships for 'doctrieve' product. Proceedings instituted 13.4.99 against the company, its managing director, Mr Earl Woolley, and Mr William McIntosh.

In January 2000 the Court made orders by consent against Instant Document Retrieval Pty Ltd and Mr Woolley. The orders provided:

- more than 20 court injunctions preventing both IDR and Mr Woolley from making representations, similar to those alleged by the Commission, in the future; and
- damages to two franchisees, in Brisbane and Townsville, totalling over \$60 000.

Mr Woolley also provided a court enforceable undertaking requiring him to implement a trade practices compliance program in any company over which he has control in the future.

MHG Plastic Industries Pty Ltd, s. 65C. Alleged non-compliance with mandatory consumer product safety standard relating to protective helmets for vehicle users. Proceedings instituted on 13.5.99. On 15.6.99 Federal Court found that MHG Plastic Industries had manufactured and offered for sale motor cycle helmets that failed to comply with the relevant mandatory safety standard. On 28.6.99 Federal Court Sydney ordered MHG Plastic Industries to conduct a recall of all helmets manufactured by it since 1.7.96. These orders stayed to argue the mechanics of the recall. On 13.7.99 the court ordered the recall and that consumers be given a full cash refund. MHG has appealed. No appeal date has been set.

Australian Taxation Services, s. 52. Alleged distribution of forms appearing to be issued by the Australian Taxation Office. Proceedings instituted on 5.7.99. On 7.7.99 court made interlocutory orders restraining ATS and its director, Michael Ivanoff, from distributing forms seeking businesses to register for the GST and to pay a fee. On 9.7.99 Kiefel J continued the injunction and ordered a freeze on the company's bank account. On 16.7.99 court handed down permanent orders restraining the company and its director from continuing the conduct, freezing ATS' bank account, and ordering refunds.

Goldseal Australia Pty Ltd, Specialty Products International Pty Ltd, ss 52 and 53. Alleged misrepresentations in relation to franchises and distributor agreements. Proceedings instituted on 7.6.99 against the company and Mr Norman English, a director of the company. In February 2000 the court made orders by consent against Goldseal Australia Pty Ltd and Mr English. The orders provided:

- court injunctions preventing both Goldseal and Mr English from making representations, similar to representations alleged by the Commission, in the future;
- declarations that Goldseal and Mr English had breached the Act; and
- findings of fact.

The Australasian Institute, s. 52. Alleged misleading representations in relation to the promotion and teaching of Internet-delivered degrees. Proceedings instituted on 21.5.99. On 27.5.99 the Australasian Institute undertook, for the present, to stop promoting the Global Master of Business Administration degree, and to provide to the Commission the names and addresses of the students currently enrolled in the course. On 18.6.99 court ordered that mediation take place between the parties. On 14.7.99 the Commission applied to add representative proceedings. This is now being opposed. Matter next before the court on 27.10.99.

Stephen Frederick Grant, director Furniture Wizard Pty Ltd (in liquidation), ss 52, 59(2). Alleged misrepresentations in relation to the sale of mobile furniture repair franchises in SA, Qld and Vic.

On 29.10.99 proceedings instituted in Federal Court Adelaide against Stephen Frederick Grant, director of Furniture Wizard Pty Ltd (in liquidation). Commission seeking interim orders to restrain respondent from making certain representations. Permanent orders sought as to false and misleading representations in the sale of franchises and in like activities in the future, as well as findings under s. 83, refunds to franchisees and costs. Directions hearing has been set down for 18.11.99.

Cash Return Mercantile Pty Limited and Sharyn McCaskey, ss 52, 53(g) and 60.

Alleged harassment or coercion in relation to payments of goods and services. The Commission has alleged that Ms McCaskey and Cash Return engaged in undue harassment of a number of consumers in relation to the payment for goods and services supplied by clients of Cash Return. The Commission has also alleged the conduct involved threatening, aggressive and frequent telephone contacts with consumers and that Ms McCaskey and Cash Return made a number of false representations during their telephone contacts with consumers. Proceedings instituted on 13.10.99. Directions hearing 20.1.00. Trial date — after 30.3.00 — to be set by Registrar of the Federal Court.

Australian Billboard Connections Pty Ltd,

ss 52, 59(2). Alleged false representations regarding the viability of franchises. Proceedings instituted 30.6.99 against Australian Billboard Connections Pty Ltd and its employees, Michael Hollingworth and Kevin Hall, for aiding and abetting or being knowingly concerned. Commission seeking injunctions, declarations and findings of fact. Defences filed 31.8.99. Next directions hearing 28.1.00. Trial commencing 26.4.00 and then 1–5.5.00.

Anti-competitive conduct — telecommunications

Telstra. Alleged anti-competitive conduct in relation to its local call transfer process. Proceedings instituted 24.12.98 following the issuing of three competition notices. Two notices the subject of the present proceedings came into force on 9.12.98; the third came into force on 25.1.99.

On 9.4.99 the Commission issued a fourth notice alleging Telstra's package of conduct in relation to churn amounts to a breach of the competition rule. The Commission has also instituted proceedings against Telstra in relation to the third and fourth notices. All proceedings are due to be heard by the Federal Court in March 2000.

The legislation provides that Telstra may be liable for significant penalties if it is found to have breached the competition rule, of up to \$10 million for each offence and \$1 million per offence per day for each day that the conduct continues.

Adjudication

The following authorisation applications and notifications are under consideration by the Commission. New authorisation and notification matters are discussed in more detail in the Adjudication chapter.

Authorisation applications under consideration

Advertiser Newspapers Limited & ors (A60020–1)

Contracts and rules for the operation of SA newsagency system.

26.3.97 Interim authorisation extended to three months after the date on which the Commission's review of the NSW/ACT, Queensland and Victoria systems is completed.

12.12.97 Commission's review completed.

Interim authorisation to date consistent with Tribunal's decision for arrangements in NSW/ACT, Queensland and Victoria.

TransGrid and other NSW applicants, VPX and other Victorian applicants (A90601–12)

Proposed National Electricity Market Stage 1 (NEM1) arrangements (comprising the revised NSW code, the revised VicPool Rules, co-extensive rules, aligned provisions and enforcement agreement).

5.3.97 Interim authorisation granted until Stage 2.

10.11.97 VicPool Rules revoked — new interim granted for amended pool rules which incorporate the Victorian capacity support program.

19.12.97 Amendment to application received.

24.12.97 VicPool Rules revoked and regranted to accommodate new entrants to the Vic market.

2.2.98 Revision to amendment to application.

25.2.98 Interim authorisation granted to amend NEM1 codes until either of NEM commencement or 1.7.98.

27.3.98 Amendment to application received.

9.4.98 Amendment to application received.

6.5.98 Interim authorisation granted to amended NEM1 codes until earlier of NEM commencement or 1.7.98.

1.12.98 Amendment to application received.

9.12.98 Interim authorisation granted to amend NEM1 codes until 180 days after NEM commences.

Interim authorisation has since lapsed.

Victorian Egg Industry Co-op Ltd
(A90621)

Franchise and marketing agreement.

27.8.97 Interim authorisation granted until 31.3.98.

25.3.98 Interim extended until final determination issued.

Queensland Electricity Transmission Corporation (Powerlink) (A90626–8)

Proposed Queensland interim electricity arrangements from 1.10.97 until National Electricity Market begins in 1998.

17.9.97 Interim authorisation granted until 31.12.98 or start of NEM, whichever is earlier.

Minister for Mines and Energy (Qld)
(A90632–6)

Queensland electricity vesting contracts between the three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

Stanwell Corporation (A90634)

Queensland electricity vesting contracts, proposed hedging contracts between three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

Tarong Energy (A90635)

Queensland electricity vesting contracts between three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

CS Energy Ltd (A90636)

Queensland electricity vesting contracts between three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

Chevron Niugini Pty Ltd and others
(A90667–9)

Arrangements for marketing of PNG gas, terms of supply to customers.

5.8.98 Interim authorisation granted subject to certain conditions.

3.12.99 Interim authorisation revoked and new interim authorisation substituted — primarily to clarify reporting requirements.

Tarong Energy Corporation (A90677)

Coordination of generator output at times of involuntary load shedding in the Queensland electricity market.

2.12.98 Conditional authorisation granted.

2.12.99 Interim authorisation granted.

Estate Agents Co-operative Ltd (A90678)

Amendment to EAC by-laws to require residential properties listed for sale to be listed into EAC multilist.

9.12.98 Interim authorisation refused.

3.12.99 Draft authorisation proposing to refuse authorisation.

14.2.00 Pre-determination conference.

Mater Misericordiae Hospital & ors
(A90679)

Proposed collective negotiating group of private hospitals.

3.12.99 Draft determination issued proposing to refuse authorisation.

24.2.00 Pre-determination conference.

Agsafe (A90680–81)

Accreditation scheme code of conduct and sanctions process.

30.3.99 Interim authorisation granted until final determination issued.

Golden Circle Ltd (A50022)

Seeking authorisation of constitutional arrangement that deals with acquisition of shares and conditions of a shareholding in the company.

24.2.99 Interim authorisation granted.

13.3.00 Draft determination proposing to grant authorisation.

Australian Newsagents Federation Ltd
(A30196)

Negotiation of trading terms with publishers.

16.4.99 Interim authorisation granted.

23.12.99 Draft determination issued.

NECA (A906484–6)

NSW intra-regional loss factor derogation amendment.

30.6.99 Interim authorisation granted.

Allgas Energy Ltd (A90691, A50024–5)

Exclusive dealing for aggregation of gas supply from PNG.

The Commission granted interim authorisation to Allgas on 9.6.99 to negotiate contracts to supply PNG gas to Qld customers. Allgas was not authorised to enter into or give effect to such contracts.

The Commission understands that it is Allgas's intention to bring any such proposed gas sales contracts to the Commission for authorisation and that any proposed gas sales contract would be conditional upon authorisation.

NECA (A90698–700)

NSW derogation on code augmentation test.

NECA (A90704–6)

Code changes to allow for market network services.

BHP (Fertiliser Holdings) Pty Ltd, Incitex Ltd, Pivot Ltd (A90707)

Supply agreements with a number of fertiliser distributors in Australia.

Investment and Financial Services Association (A30200–1)

IFSA draft policy on genetic testing.

Qantas Airways, British Airways (A30202)

Assess application for authorisation of restated joint services agreement.

8.3.00 Draft determination proposing to grant authorisation until July 2003.

National Electricity Code changes
(A90711–13)

Amendments to the NEC dealing with capacity mechanisms, VoLL and the price floor.

2.12.99 Interim authorisation granted.

The Uniting Church in Australia Property Trust (Q) and others (A90714–7)

Application for exclusionary provisions arrangements which may substantially lessen competition.

Council of Textile and Fashion Industries Ltd and Footwear Union of Australia
(A90722–25)

Homeworkers code of practice.

NECA (90726–28)

Amendments to the Queensland derogations.

Independent Private Hospitals Association (A30203)

Proposal to form a network for mutual cooperation through the inter-hospitals.

The Showmen's Guild of Australia
(A90729)

Code of conduct.

Notifications under consideration

Advertiser Newspapers Ltd (N60023-5)
Arrangements for supply of newspapers published by Advertiser.

15.4.96 Consideration in abeyance pending review of authorisation of related conduct.

Amex (N90722)
Provision of health insurance to members of HCF (third line forcing).

ADJR action by HBF.

Provet Queensland Pty Ltd (N50094)
Supply of 'Pharmaceutical; vet only' and 'Open seller' product to veterinary surgeons on certain conditions only.

Tamawood Pty Ltd (N90642)
Offer of certain building work for the construction of dwellings to various independent builders on condition they acquire certain goods or services from certain suppliers (third line forcing).

Mobil Oil Australia Ltd (N40327)
Proposes to offer a discount from the Mobilcard price in relation to purchases by Toll Transport Pty Ltd of petroleum products from participating stores (third line forcing).

Subway Systems Australia Pty Ltd (N50100)
Requirement that franchisees purchase a computer based point of sale system and software from a supplier (third line forcing).

Henley Arch, Henley Properties (QLD), Henley Properties (NSW), Northridge Homes (N50102-5)
Engagement of contractors to paint houses on condition they use only Taubmans paints.

AGL Retail, AGL Electricity, AGL Sales, AGL Marketing (N90731-34)
Proposes to offer a discount to customers who acquire one or more natural gas or energy services from AGL companies (third line forcing).

Gilsan Pty Ltd (N70136)
Sale of building blocks on condition customer execute a building contract with Austin Crowe Homes (third line forcing).

NRMA Insurance Ltd (N90740)
Supplying motor vehicle insurance at a discount on condition customers acquire hire car services from a nominated supplier and smash repair services from repairer in NRMA's competitive partnering scheme (third line forcing).

Cheque Exchange (Australia) Pty Ltd (N70137)
Supply of a franchise on condition the franchisee acquire stationery and other goods from suppliers approved by the franchisor and a computer system from CX.

The Herald and Weekly Times, Advertiser Newspapers, Nationwide News, Queensland Newspapers, Advert (N40373-82)
Transitional arrangements for distribution of newspapers and magazines.

SOCOG (N30887)
Promotion and sale of tickets to customers of SOCOG by Internet or through the Olympic Call Centre who acquire the credit or debit services of VISA in conjunction with box office sales (third line forcing).

Australian Competition Tribunal

Australasian Performing Right Association (A30186-88, A30190-1, A30193 and N30751) Arrangements for acquisition rights to music and licensing performances.

3.12.97 Draft determination issued proposing to deny authorisation for input and licensing arrangements.

14.1.98 Determination issued denying authorisation of input, output and distribution arrangements; granting conditional authorisation for overseas arrangements; and revoking the notification relating to input arrangements.

4.2.98 APRA filed appeal to Australian Competition Tribunal.

13.11.98 Hearing — decision reserved.

16.6.99 Tribunal decision proposing to grant authorisation subject to rule amendments, adjourned for nine months. Interim authorisation granted.

Victorian Energy Networks Corporation (VENcorp)
(A90646-8) Market and System Operations Rules (MSOR)

19.8.98 Determination issued granting authorisation subject to a number of amendments.

9.9.98 Application for review lodged by BHP Petroleum Pty Ltd and BHP Petroleum (Bass Strait) Pty Ltd

23.11.98 Matter stood over to 22.12.98 pending passage of legislation introduced by the Victorian Government to exempt the MSOR from the Trade Practices Act.

1.12.98 Victorian legislation came into force.

22.12.98 Directions hearing adjourned to a date to be set, at which the Tribunal will consider whether it has jurisdiction to hear the review given the existence of the Victorian legislation.

15.3.99 Application for variation of interim to cover rule changes.

28.5.99 Directions hearing. Tribunal accepted jurisdiction.

4.10.99 Application for review withdrawn.

Certification trade marks

Completed

The Law Society of WA
(CTM 708877) Law practices under Quality Practice Standard.

Certifire Pty Ltd
(CTM 750533) Systems relating to passive fire protection systems and services.

Printsoft Development
(CTM 730216) IT software for high speed printing.

Seed Industry Association of Australia
(CTM 768023) Sowing seed quality.

Department of Industry, Science and Resources, Commonwealth of Australia
(CTM 451318) Goods bearing; Australian made; logo.

Department of Agriculture WA
(CTM 707595) Quality systems requirements for the food industry.

Department of Agriculture WA
(CTM 707596) Quality systems requirements for use by primary producers, food manufacturers or food distributors.

Department of Agriculture WA
(CTM 744849) Quality systems for the food industry.

Chrissie Maher
(CTM 712256) Certification of document standards.

Waters and Rivers Commission WA
(CTM 716402) Plumbing and landscaping services.

Under consideration

Elicos Association Ltd
(CTM 701445) Provision of travel programs and training for overseas students.

Australian Vine Improvement Association
(CTM 720347) Grapevines and cuttings/graftings/cultures of grapevines.

Standards Association of Australia
(CTM 667437) Certified Laboratory Practice Program.

Consorzio Per La Tutela Del Formaggio Grana Padano
(CTM 732270-1) Italian cheeses.

Australian Owned Companies Association Ltd
(CTM 652664-6) Provision of goods and services provided by a wide range of Australian companies.

Australian Registered Cattle Breeders Association and Beef Improvement Association of Australia Inc.
(CTM 727387) Sale of beef cattle seedlot.

Sheepmeat Council of Australia

(CTM 703607, 704634, 710728)
Live sheep and lambs, processed sheep meat and products.

Centre Technique du Bois et de l'Ameublement

(CTM 750620) Certification of wooden casks and barrels.

Consorzio del Formaggio Parmigiano Reggiano

(CTM 677876-8) Certification of Italian dairy cheeses.

Victorian Conveyancers' Association

(CTM 758563) Certification of conveyancing services.

Department of Mines and Energy, Qld and others

(CTM 714440) Certification of household electrical goods — assignment and variation to the rules.

Craft Australia

(CTM 746821) Certification of craft products, materials and techniques.

National Safety Council of Australia Ltd

(CTM 725527) Certification of audit services of occupational health and safety activities.

Cattle Council of Australia

(CTM 647073, 669943)
Assignment to Cattlecare Ltd.

The Bio-dynamics Research Institute

(CTM 704565, 709823) Clothing and other apparel made from horticultural crops.

Australian Fertiliser Services Association

(CTM 738374) Fertiliser spreading equipment.

Recording Industry Association of America

(CTM 704384) Certification of enhanced CDs, musical sound recordings with accompanying text, graphics and audio-visual images with interactive capabilities.

Benchmark Certification Pty Ltd

(CTM 764299) Laboratory standards auditing services.

Australian New Zealand Food Authority

(CTM 770228) Health claims on foods and beverage products.

Standards Association of Australia

(CTM 743608) Design award program and consultancy services.

Standards Association of Australia

(CTM 741723, 741725-6) Certification of products under the Australian Design Award scheme.

Harris Tweed Authority

(CTM 705888) Amendment to the rules re Harris Tweed cloth.

Cotton Australia Ltd

(CTM 763065) Certification of cotton textiles and other cotton goods.

The Institute of Chartered Financial Analysts

(CTM 680354) Financial advising services.

The Pharmacy Guild of Australia

(CTM 761785) Quality of business management systems and customer service in pharmacies.

Commonwealth of Australia c/- Department of Industry, Science and Resources

(CTM 786060) Paints, varnishes, lacquers and other coatings relating to the Australian Paint Approval Scheme.

State of Victoria c/- Department of Infrastructure

(CTM 769535) Accreditation of road transport passenger services.

Australian Wood Panels Association Inc.

(CTM 785600) Wood panels of particleboard and medium density fibreboard.

Commonwealth of Australia c/- National Archives of Australia

(CTM 752089) Variation to the rules.

Meat Research Corporation

(CTM 762759) Classification of beef meat and meat products.

Meatlink Network Pty Ltd

(CTM 789679) Competence measurement of metropolitan retail outlets.

Tasmanian Quality Assured Inc.

(CTM 795314) Quality assurance of Tasmanian agricultural, horticultural and other primary products.

Migration Institute of Australia Ltd
(CTM 786309) Certification of migration advisory services.

National Indigenous Arts Advocacy Association
(CTM 772565) Amendments to the rules of the authenticity label for indigenous art and cultural works.

Standards Australia International Limited
(CTM 740328) Certification of quality management systems for advertising, business management, insurance, financial, real estate, building construction, repair and maintenance and telecommunication services.