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# Appendix 1 Continuing matters

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## 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 chapter.*

### 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 Proceedings withdrawn 17.9.93.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.

The 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. On 24.6.99 the 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.

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

**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 sought penalties and injunctions. On 30.5.97 the Federal Court imposed a penalty of \$1.25m on George Weston Foods Limited, which admitted the contraventions. The trial against Safeway began in February 1999 and finished on 20.10.99. Judgment is pending.

**Boral Ltd and Boral Masonry Ltd (formerly 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. The Commission sought a penalty, declarations, injunctions and findings of fact. Trial commenced on 6.7.99. First instance judgment handed down on 22.9.99 holding that Boral Ltd and Boral Masonry Ltd had not contravened s. 46. The Commission appealed to the Full Court of the Federal Court. Appeal heard from 7–10.2.00. Appeal judgment handed down on 27.2.01 unanimously holding that Boral Masonry Ltd's pricing below manufacturing costs contravened s. 46 but dismissing the appeal against Boral Ltd. Boral Masonry Ltd has applied for special leave to appeal to the High Court of Australia. The parties are currently completing interlocutory processes.

**Visy Paper Pty Ltd** s. 45. Alleged attempt by Visy Paper to induce another business (Northern Pacific Paper) to enter into a market sharing agreement in relation to the collection of recyclable waste paper.

Proceedings instituted 18.11.98. The Commission sought orders against Visy Paper including declarations, injunctions, orders requiring the institution of a trade practices compliance program and costs. It also sought penalties against Visy Paper and two senior employees. Matter was heard 16–18.8.00 and 10–12.10.00 before Sackville J. 20.11.00 Sackville J dismissed the Commission's application with costs. 29.11.00 the Commission appealed. Appeal heard 17–18.5.01 before Hill, North, Conti JJ. Awaiting judgment.

**Rural Press Limited and ors,** ss. 45, 46. 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.

On 1.3.01 judgment was handed down in the Federal Court, Adelaide. Rural Press Limited and its subsidiary, Bridge Printing Office Pty Ltd were found to have misused their market power in the market for the provision of regional newspapers in the Murray Bridge area in contravention of s. 46. Law and McAuliffe were found to have been knowingly concerned in that contravention. Rural Press, Bridge Printing Office and Waikerie printing House were found to have entered into and given effect to an anti-competitive agreement concerning the circulation of *The River News* in contravention of s. 45. Law, McAuliffe, and Paul and Darnley Taylor were found to have been knowingly concerned in that contravention. Penalty hearings were scheduled for 16 and 17.7.01.

**SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd,** ss. 45(2), 45A, 48. Alleged primary boycott, price fixing and resale price maintenance 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 the court accepted a joint submission and imposed penalties totalling \$60 000 on Baker Bros and two directors. Baker Bros also provided an s. 87B undertaking to implement a trade practices compliance program and pay part of the Commission's costs.

SIP Australia filed its defence on 30.6.99. Trial held on 16–18.10.00 and recommenced on 13.11.00 with final submissions being heard on 14.11.00. Judgment is pending.

**Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited,** ss. 45, 45A. 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.

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. Judgment was handed down on 26.7.00, imposing pecuniary penalties and costs on Queensland Ice Supplies (\$25 000 penalty, no costs), Kenneth John Smith (\$15 000 penalty and \$12 500 costs) and Roderick Ian Matheson (\$7500 penalty and \$2500 costs). In addition, injunctions were ordered against those respondents, restraining them from engaging in similar conduct for five years. Queensland Ice Supplies, Brian Bradley and Roderick Ian Matheson, who are still in the industry, also

agreed to implement or upgrade trade practices compliance programs.

The penalty hearing and trial concerning the remaining respondents was heard in December 2000. Judgment was handed down on 2.5.01, imposing pecuniary penalties on Ithaca Ice Works (\$100 000), Anthony Mee (\$7500) and Gregory Mee (\$7500) and those respondents were ordered to pay the Commission's costs. The Commission's application against Ansonguard Pty Limited, Leo Grevis and Gary Grevis was dismissed, and the Commission ordered to pay those respondents' costs. On 13.6.01 the court ordered, by consent, injunctions restraining Ithaca Ice Works, Anthony Mee and Gregory Mee. The Commission is appealing the penalties imposed on Ithaca Ice Works and Anthony Mee.

**PolyGram (now Universal Music), and Warner Music**, ss. 45, 46, 47. Alleged anti-competitive arrangements, misuse of market power and exclusive dealing.

Proceedings instituted 30.8.99. The Commission alleges that the respondent record companies, as well as some senior personnel of PolyGram and Warner, breached certain restrictive trade practices provisions of the Act in attempting to prevent the importation of recorded music after the Copyright Act was changed to allow for parallel imports. Proceedings were discontinued against Music Industry Piracy Investigation Pty Ltd, Michael Speck and Adrian Fitz-Alan in March 2001.

Trial commenced on 2.4.01 and is part heard. Proceedings were discontinued against Sony on 2.4.01. Sony provided undertakings to the court without admitting liability.

The trial will resume in September 2001.

**Maritime Union of Australia**, ss. 45DB(1), 60. Alleged secondary boycotts, undue harassment and coercion.

Proceedings instituted 14.4.00. The Commission alleges that the union and certain officials unlawfully hindered and prevented vessels sailing from various Australian ports unless the shipowner agreed to use MUA labour to clean the holds. Trial set down for 15.10.01 for three weeks.

**AMA (WA) and Mayne Nickless Ltd**, ss. 45, 45A. Alleged agreements lessening competition and price fixing.

On 21.7.00 the Commission instituted proceedings in the Federal Court, Perth, against the West Australian branch of the Australian Medical Association (AMA) and Mayne Nickless when it became aware that the AMA (WA) had, on behalf of visiting medical practitioners at Joondalup Health Campus, entered into negotiations with Mayne Nickless to determine terms and conditions under which the medical practitioners would provide their services for the care of public patients at the Joondalup Health Campus. Directions hearings were held on 23.3.01, 24.5.01 and 6.7.01. A penalty hearing submissions date for the AMA (WA), Mr Paul Boyatzis and Dr David Roberts was set for 7 August 2001. Proceedings against the other respondents are continuing.

**Colgate-Palmolive Pty Ltd**, s. 48. Alleged resale price maintenance between 1994 and 1998 to stop Tasmanian retailer Chickenfeed from advertising Colgate lines at cheap prices after complaints from Woolworths supermarkets.

Proceedings instituted on 15.11.00 with Commission seeking penalty and injunctions. First directions hearing was held on 13.12.01. Interlocutory processes continue and a further directions hearing was listed for 24.7.01.

## Unconscionable conduct

**Farrington Fayre Shopping Centre**, s. 51AA. Alleged unconscionable conduct in relation to leasing arrangements.

Proceedings instituted 6.4.98 and the trial was held on 31.1.00 to 3.2.00. French J handed down his decision on 26.9.00 that the conduct of the owners and their representatives, in one of the pleaded cases, was unconscionable.

The owners subsequently appealed and the Commission cross-appealed. A hearing was held on 31.5.01 and judgment handed down on 27.6.01 upholding the appeal and dismissing the Commission's cross-appeal.

**Samton Holdings Pty Limited**, s. 51AA. Alleged unconscionable conduct by a company towards one of its tenants.

Proceedings instituted on 26.2.99. On 29.11.00 Carr J dismissed the Commission's application against Samton Holdings and the six individual landlords. A notice of appeal was filed on 20.12.00 and a hearing held on 28.5.01. The decision was reserved.

**Lux Pty Ltd**, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion by a company towards an intellectually impaired couple to secure the sale of Lux vacuum cleaner.

Proceedings instituted on 27.7.00. On 29.8.00 Lux instituted proceedings to transfer the matter interstate. The application was denied. After compliance with some programming orders, a mediation conference was held on 16.7.01.

A date will also be set for a hearing of objections to witness statements. Should the matter remain unresolved a date for trial will then be set.

**Commodore Homes (WA) Pty Ltd**, ss. 51AB, 52. Alleged unconscionable conduct, misleading or deceptive conduct.

Proceedings instituted on 5.4.01. The Commission alleges that in the lead-up to the introduction of the GST, Commodore Homes represented to potential homebuyers that, if they signed up with them, their homes would be built by 1 July 2000 and they would avoid having to pay GST. The Commission is seeking declarations that Commodore Homes' conduct breached the Trade Practices Act, orders restraining Commodore Homes from engaging in such conduct in the future, for Commodore Homes to publish a corrective public notice and implement a trade practices compliance program, refunds of the GST money paid to Commodore Homes by those affected homebuyers, and costs.

A directions hearing was held on 20.4.01 in Perth.

**inthebigcity.com Pty Ltd and APN Newspapers Pty Ltd**, ss. 51AB, 52, 53(c), 53(d). Alleged unconscionable conduct in taking unfair advantage of consumers, misleading or deceptive conduct, misrepresentations about the uses and benefits of goods and about approval

or affiliation, misleading conduct regarding the availability, nature, terms or conditions of employment.

Interlocutory orders made on 9.4.01 against inthebigcity.com Pty Ltd and its directors, Craig Leggo and John Barton; and against APN Newspapers Pty Ltd and its group development manager, David Cowan. These interim orders stopped inthebigcity.com Pty Ltd and its directors from operating or promoting this or any other 1900 employment service. APN and David Cowan gave an interim undertaking not to operate or promote any 1900 premium rate telephone number providing employment or employment advisory services. A directions hearing was held on 11.5.01 and the matter is to be heard in September 2001.

**Esanda Finance Corporation Ltd and others**, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion.

On 12.4.01 the Commission instituted proceedings in the Federal Court against Esanda Finance Corporation Ltd, Capalaba Pty Ltd trading as Nationwide Mercantile Services, and a number of individuals alleging the use of physical force, undue harassment and coercion, and unconscionable conduct in connection with the supply and payment for services by a consumer. The Commission has also alleged some individuals breached s. 23 of the *WA Fair Trading Act 1987* (which mirrors s. 60 of the *Trade Practices Act*).

Programming orders were made at directions hearings held on 4.5.01 and 8.6.01.

**Avanti Investments Pty Ltd and Dr Giuseppe Barbaro** (ss. 51AA, 51AC, 52, 53A). Alleged unconscionable conduct, undue harassment or coercion in connection with land, misleading or deceptive conduct, false or misleading representations about land.

Proceedings instituted on 27.4.01. The Commission is also taking action against Dr Giuseppe Barbaro, a former director and representative of Avanti Investments, for allegedly aiding or abetting or being knowingly concerned in the breaches.

The Commission is seeking injunctions, declarations, findings of fact, and orders to vary the market gardeners' agreements so they are

no longer responsible for the cost of excess water and so that the rent returns to \$600 per acre per year. It is also seeking refunds of the excess rent paid by the farmers since the 1994 lease was terminated. A trial is set for five days from 22.10.01.

## Consumer protection

**Top Snack Foods Pty Limited**, ss. 52, 59. Alleged misleading conduct in relation to selling franchises for the distribution of confectionery.

On 23.9.96 proceedings were instituted in the Federal Court, Sydney, against Top Snack Foods Pty Limited, one of its directors and two of its employees. The court granted leave to the ACCC on 7.11.97 to join two further parties to the action, Nick Kritharas Holdings Pty Limited and Adway Holdings Pty Limited. It also granted the ACCC a mareva injunction against Gatsios Holdings Pty Limited, which held all the company assets as trustee of a family trust, and which prevented either party from dealing with or removing certain property from the jurisdiction without first giving the ACCC 14 days notice in writing. A hearing was held on 15-26.3.99.

On 4.6.99 Tamberlin J found that Top Snack Foods had engaged in misleading and deceptive conduct and that George Manera, a director and manager of Top Snack Foods, and Nick Kritharas, general manager, were knowingly concerned. Damages of over \$400 000 were awarded to the ACCC for franchisees of Top Snack Foods. On 29.2.00 and 9.3.00 a liquidator was appointed to Adway Holdings Pty Limited, Top Snack Foods Pty Limited and Nick Kritharas Holdings Pty Limited. George Manera was declared bankrupt on 4.1.00 and on 31.10.00 Nick Kritharas was declared bankrupt. In July 2000 an application was made to the Equity division of the NSW Supreme Court by the liquidator of Nick Kritharas Holdings Pty Limited (funded by the ACCC as creditor) for a declaration that Nick Kritharas Holdings Pty Limited was entitled to be indemnified out of the assets of the family trust in respect of the ACCC's judgment debt, over and above the beneficiaries of the trust. Hamilton J made the above declaration on 25.5.01 and granted a stay of execution until 22.6.01. Assets of the trust

will therefore pass to the liquidator of Nick Kritharas Holdings Pty Limited for the benefit of ACCC as creditor in respect of the more than \$400 000 debt. The ACCC has been notified an appeal is being lodged.

**Commercial and General Publications Pty Ltd**, ss. 58, 64(2A). Alleged asserting of a right to payment for unsolicited services with no reasonable cause to believe that there is a right to accepting payment without intending or being able to supply.

Proceedings instituted 17.1.01 against Commercial and General Publications Pty Ltd (CGP) and its director, Anthony Robert Hassett, in the Federal Court, Hobart. It is alleged that CGP asserted a right to payment from some Tasmanian small businesses for advertising services in publications produced by CGP without reasonable cause to believe that there was a right to payment. It is also alleged that CGP accepted payment from a number of Tasmanian small businesses for advertising services in a proposed publication when CGP was aware, at the time of accepting payment, that it would be unable to supply the advertising services. A directions hearing was held before Heerey J in the Federal Court, Hobart, on 8.6.01. The next directions hearing was set down for 21.8.01.

**Mr Stephen Henry Wayt**, ss. 52, 53. Misleading or deceptive conduct, false or misleading representations.

Proceedings instituted on 5.4.01. The Commission is alleging that a fax sent by Mr Wayt was likely to mislead or deceive recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain address registration and that it had dealt with those businesses and organisations previously.

The Commission is seeking court orders including declarations that Mr Wayt breached the Act, injunctions to prevent Mr Wayt from making similar representations in the future and to implement a trade practices compliance program in any future business of which he has managerial control. The Commission is also seeking an order for costs. COM.AU.REGISTER has closed down its website and advised the Commission that all money paid to COM.AU.REGISTER has been refunded to customers.

Directions hearings were held on 12.4.01 and 17.8.01. A further directions hearing is listed for 12.10.01

**Guardian Finance**, ss. 57, 61. Referral selling scheme and pyramid selling scheme.

Proceedings instituted on 5.4.01. The Commission is alleging that Guardian Finance and Insurance Consultants Pty Ltd promoted a scheme that amounted to an illegal pyramid selling scheme or referral selling scheme. The Commission is also alleging that its sole director, Mr Peter Martin James (also known as Peter St James), was knowingly concerned in the alleged conduct.

At an interlocutory hearing on 12.4.01 in the Federal Court, Brisbane, the Commission obtained interlocutory injunctions to prevent Guardian Finance and Insurance Consultants from contravening the pyramid selling provisions of the Act by promoting the scheme in its current form.

At the final hearing the Commission is seeking declarations that Guardian Finance and Insurance Consultants and Mr James breached the Act, injunctions to prevent a repeat of this conduct in future, refunds for affected consumers, the implementation of a trade practices compliance program and costs.

A directions hearing was held on 30.7.01 in the Federal Court, Brisbane, and a further one will be held before a Registrar at a date to be fixed after 9.9.01.

**Listen Systems Pty Ltd, Mr Stephen John Alexander**, ss. 52 and 53(c). Misleading or deceptive conduct, false representations with respect to alternative health therapy device.

On 7.4.00 the Federal Court, by consent, made numerous declarations and orders relating to misleading and false representations made by Listen Systems Pty Ltd with respect to alternative health therapy devices known as the EQ4 system. The court also found that Mr Stephen Alexander, a director of Listen Systems Pty Ltd, had aided or abetted the breaches of the Trade Practices Act by Listen Systems Pty Ltd.

On 8.1.01 the Commission instituted contempt of court proceedings against Listen Systems Pty Ltd and Mr Alexander. The Commission alleges that Listen Systems Pty Ltd failed to comply with orders made on 7.4.00 and that Mr Alexander

failed to take reasonable steps to ensure that the company complied with the orders.

The Commission's contempt application was listed for hearing before the Federal Court on 4.4.01. After Mr Alexander acted to comply with the original orders of 7.4.00, including offering a refund to all affected consumers, the Commission entered into consent orders with him on 20.4.01 whereby he personally undertook to reimburse the one consumer who sought a refund.

**HRJ Financial Services Pty Ltd**, ss. 52, 53(c), 55A, 51AB. Alleged misrepresentations in relation to the provision of personal loans to callers using premium 1900 telephone services.

Proceedings were instituted on 6.7.98. On 18.2.00 consent injunctions were obtained against HRJ Financial Services Pty Ltd (now in liquidation) and its two directors Rowland William Thomas and Helen Elizabeth Lewis (both of whom are now bankrupt). Consumers wanting to make a claim against HRJ were invited to submit their details to the liquidator.

**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. Those orders were discharged 8.11.99. A directions hearing was held on 11.4.01 and the date for a further hearing is to be advised by the court.

**Giraffe World Australia**, ss. 52, 57, 61. Referral selling and pyramid selling.

Proceedings instituted on 6.5.98. Undertakings given by Giraffe World on 23.4.99 not to represent that the 'negative ion' mat it marketed produced negative ions, relieved health ailments or promoted health. On 29.6.99 the court found that Giraffe World had breached that undertaking. 26.8.99 Lindgren J found in the Federal Court that Giraffe World Australia Pty Ltd (in liquidation) had engaged in misleading or deceptive conduct, promoted a pyramid selling scheme and engaged in referral selling. Lindgren J also found that Mr Akihiko Misuma,

founder and director of Giraffe World and Mr Robin Han, its president and chief executive officer until November 1998, were knowingly concerned in, and a party to, the contraventions by Giraffe World.

In November 1999 the Commission commenced a representative action under the Act on behalf of those persons who suffered a loss as a result of the contravening conduct of Giraffe World and its representatives. The representative action was adjourned in February 2000 pending the outcome of the liquidator's recovery action against the directors. A directions hearing was listed for 6.8.01.

**Medibank Private Limited,**

ss. 12BB, 12DA, 12DB, 12DF of the ASIC Act (equivalent to ss. 51A, 52, 53 and 55A of the TPA). Alleged false, misleading or deceptive advertising of the price and benefits of health insurance products.

Proceedings instituted on 26.10.00. Directions hearing on 4.12.00. Strike out application heard on 13.3.01. Judgment reserved.

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.

**The Australasian Institute,** ss. 52, 53(c), 55A. 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 the Commission with the names and addresses of students currently enrolled in the course. On 18.6.99 court ordered that mediation take place between the parties. Mediation took place on 19.10.99 and short minutes were agreed to settle the matter. They provided for declarations that the Australasian Institute had engaged in conduct in breach of ss. 52, 53(c) and 55A of the Act and orders that the institute display a corrective notice on its website for six months, provide refunds to certain students and contribute \$24 000 to the Commission's costs. On 15.3.01 a liquidator of the company was appointed.

**Back to Basics Worldwide Education Aids Systems Pty Ltd,** s. 59(2). Alleged misrepresentation in relation to profitability of a business.

On 17.5.00 the Commission filed criminal proceedings in the Federal Court in Adelaide against Queensland based Back to Basics Worldwide Education Aids Systems Pty Ltd, Hartwich Pty Ltd, and company directors John Moon (aka John Croke) and Wayne Baker.

A trial was set down for 30.3.01 to 5.4.01. On 30.3.01 the defendants pleaded guilty and penalty submissions were made. Spender J reserved judgment.

**Rod Turner Consulting Pty Ltd,** ss. 52, 53(e), 53(d). Misleading or deceptive conduct, misrepresenting prices in relation to the New Tax System and misrepresenting a corporation as having approval or affiliation.

Proceedings instituted on 3.7.00 in the Federal Court, Melbourne, against an accountancy firm and its principal, Mr Rod Turner, over representations about how the New Tax System will affect residential rents and water rates.

The Commission is seeking declarations that the conduct is unlawful, injunctions restraining the respondents from making similar statements and orders that the respondents take corrective action and apologise to the affected tenant.

**Skybiz Pty Ltd (Skybiz 2000),** s. 61. Alleged pyramid selling by Kevin Ryan of Perth, a participant in a scheme called Skybiz 2000 Home Based Business.

Proceedings were instituted on 4.8.00 in the Federal Court, Perth. The Commission is seeking declarations that Mr Ryan was involved in a pyramid selling scheme, injunctions restraining him from further involvement, and orders requiring him to attend a trade practices compliance seminar and to inform others that the scheme is a pyramid selling scheme.

On 2.4.01 Nicholson J referred the matter to mediation at a date to be fixed by the Federal Court registrar.

**Australian Industries Group Pty Ltd t/a Half Price Shutters,** ss. 51AC, 51AD, 52, 59(2). Alleged misleading or deceptive conduct, unconscionable conduct and contravention of the mandatory industry codes by Australian Industries Group t/a Half Price Shutters,

Tony Gullotti (national manager) and Robert Keirle (a former director).

Proceedings were instituted on 4.8.00, a case management conference set down for 19.7.01 and a further conference held on date set for 10.9.01.

**Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd**, ss. 51A, 52, 53(c). Alleged false and misleading representations by a firm about the benefits of electronic muscle stimulation products.

Proceedings instituted on 19.7.00. A directions hearing was held on 2.11.00. Discovery of products, specifications or instructions were ordered. Leave was granted to respondents to seek to join the parent company, Bio Medical Research Ltd located in Ireland, as a cross-respondent to the action. The Commission opposed the application in part as it did not believe the cross-respondents fell within the jurisdiction of the Federal Court. Nicholson J ruled in favour of the Commission's submissions on the matter. The respondents have sought leave to appeal this decision and a hearing to determine whether leave to appeal will be granted is due in July. Standard programming orders are in place and if the matter remains unresolved a date for trial will be set following the appeal hearing.

**Will Writers Guild Pty Ltd**, ss. 51AD, 52, 53(g). Alleged failure to comply with mandatory Franchising Code of Conduct, false or misleading representations.

Proceedings instituted on 27.3.01 in the Federal Court, Hobart, against WWG and its director, Sidney Murray. A directions hearing was held on 5.6.01 and 8.6.01. Interlocutory processes continue until a directions hearing set down for 21.8.01.

**Purple Harmony Plates Pty Ltd**, s. 52. Alleged misleading or deceptive advertising and promotion of products that claimed to protect against the effects of electromagnetic radiation, increase health, reduce pain, stress and fatigue, and promote healing.

On 4.12.00 the Commission instituted court action in the Federal Court, Melbourne, seeking court orders including corrective advertising and refunds to consumers who believe they were misled by the advertising.

The matter was heard on 23.5.01 and the judgment reserved.

**Michigan Group Pty Ltd, Immobiliare (trading as the Queensland Juice Company), Yeppoon Pty Ltd and ors**, ss. 52, 53(a), 53(bb), 53(c), 53(d), 58 and 59. Alleged misleading or deceptive conduct and misrepresentations in relation to the promotion, sale and distribution of commercial orange juice machines.

On 6.10.00 the Commission instituted proceedings in the Federal Court, Brisbane.

The Commission is seeking court orders, including declarations and injunctions. Proceedings are set for trial on 3–14.12.01 in the Federal Court, Brisbane.

**Pacific Dunlop Limited (PDL)**, ss. 52, 75AD. Alleged misleading or deceptive conduct, liability for defective goods causing injuries — loss by injured individual.

Proceedings instituted on 21.1.00. The proceedings were brought under the representative action and product liability provisions of the Act. The Commission is seeking compensation for a consumer who has allegedly developed a serious form of latex (rubber) allergy through the frequent and consistent use of PDL's Ansell brand of household rubber gloves. On 10.10.00 court-ordered mediation was held, but a settlement was not reached. On 18.6.01 the Federal Court granted leave for the Commission to amend its current application and amended statement of claim to include an action under the misleading and deceptive provisions of the Act (s. 52). A directions hearing was scheduled for 20.8.01.

**Info4pc.com Pty Ltd**, ss. 52, 56, 58. Alleged misleading or deceptive conduct, bait advertising and accepting payment not intending to supply.

Proceedings instituted on 23.1.01 when the Commission asked for an interim injunction in the Federal Court, Adelaide. A hearing on 24.1.01 removed the matter to the WA Federal Court. An ex parte interim injunction restrains the company from, among other things, advertising and accepting orders for computers and/or upgrades, and freezes the company's business bank account.



Directions hearings were held during February, April, May, June and July 2001.

**Signature Security Group Pty Limited**, ss. 52, 53 (c), 53(e), 53(d), 53(g)

Alleged misleading or deceptive conduct, cash prices to be stated in certain circumstances, false or misleading representations, alleged breach of s. 87B undertakings.

Proceedings instituted on 19.3.01. The Commission is seeking court orders including injunctions restraining Signature from making similar misrepresentations in the future; declarations that Signature has contravened the relevant provisions of the Act; orders that Signature publish and broadcast corrective advertisements in newspapers and on the same radio stations as the original advertisements appeared; compensation for affected consumers, one requiring Signature to comply with its undertaking given pursuant to s. 87B of the Act, and one requiring Signature to implement a compliance program at its own expense.

Directions hearings were held on 11.4.01 and 15.6.01 in the Federal Court, Sydney. A directions hearing was held on 3.8.01.

**Medical Benefits Fund of Australia Ltd (MBF) and John Bevins Pty Ltd**, ss. 52, 51A, 53(c), 53(g), 55A. Alleged misleading or deceptive conduct, representations as to future matters, misrepresentation of performance characteristics, accessories, uses or benefits, misrepresentation of warranties, conditions, guarantee, right or remedy, certain misleading conditions in relation to an MBF print and television advertising campaign, conducted by John Bevins Pty Ltd.

Specifically, the Commission has alleged that MBF engaged in misleading or deceptive conduct and made false representations by advertising financial services in breach of ss. 12DA, 12DB & 12DF of the *Australian Securities and Investment Commission Act 1989*. It is alleged that John Bevins Pty Ltd, an advertising agency, was knowingly concerned in the alleged breaches.

Proceedings were instituted on 5.2.01 and discovery orders were made on 12.6.01. Substantive hearing date yet to be set.

## Adjudication

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

### Authorisation applications under consideration

**Advertiser Newspapers Limited and others** (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.

Tribunal's authorisation for NSW/ACT, Queensland and Victoria expired 1.2.01.

**Advertiser Newspapers Limited and others** (A60022) Agreement regarding newsagency territories and termination of agreement to adopt newsagency administration rules.

**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 authorisation 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 Victorian 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.

**Queensland vesting contracts (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.

**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.

2.12.99 Interim authorisation granted.

Agsafe (A90680–1) Accreditation scheme code of conduct and sanctions process.

30.3.99 Interim authorisation granted until final determination issued.

**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 Queensland 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 (A90704–6)** Code changes to allow for market network services.

28.12.00 Draft determination issued.

15.3.01 Pre-determination conference.

**Independent Private Hospitals Association (A30203)** Proposal to form a network for mutual cooperation through the inter-hospitals agreement.

6.12.00 Interim authorisation granted.

6.12.00 Draft determination issued.

**The Showmen's Guild of Australia (A90729)** Application for authorisation of the guild's proposed code of conduct for sideshow entertainment at agricultural shows.

**CSR Ltd (A90733)** Agreement for supplying sugar cane to the Invicta Sugar Mill and Pioneer Sugar Mill in Queensland.

6.9.00 Interim authorisation granted with conditions.

12.12.00 Draft determination issued.

23.2.01 Pre-determination conference.

11.7.01 Final determination issued.  
(authorisation details will be in the adjudication chapter of *ACCC Journal* no. 35)

**CSR Ltd (A90734, A90769)** Negotiation of cartage contracts for pre-mixed concrete carriers in the West Australian market.

23.11.00 Additional application for authorisation (A90769) lodged (rostering provisions which establish the system for the distribution of CSR's cartage work among its carriers).

20.6.00 Interim authorisation granted.

26.7.00 Draft determination issued.

**Real Estate Institute of Western Australia** (A70011) Application to authorise member's code of practice, multiple listing service by-laws and standard exclusive agency agreements.

20.7.01 Draft determination issued proposing to deny authorisation.

**Full retail competition** (A90739–41) Authorisation of national electricity code changes (minimalist changes introduced to facilitate the introduction of full retail competition).

20.9.00 Interim authorisation granted.

11.4.01 Draft determination issued.

**Premium Milk Supply Pty Ltd** (A90745) Collective negotiations of farm milk prices and milk standards through a representative body (Premium) for supply to Pauls Ltd.

14.2.01 Draft determination proposed.

14.2.01 Interim authorisation granted.

**Chevron Overseas Petroleum Inc.** (A40081) Proposal to commercialise, discuss and establish terms and conditions for offering gas for sale in Australia.

13.10.00 Interim authorisation granted.

**Basslink code changes** (A90747–9) To facilitate consideration by the Inter-regional Planning Committee of the network issues associated with Basslink and to empower NEMMCO to impose any necessary technical requirements on its connection to the mainland grid.

6.12.00 Draft determination issued.

**Queensland derogations** (A90751–3) NEC Queensland derogations — Qld/NSW interconnector. Application to extend the end dates of eight derogations from the date of the commissioning of the QNI to 31.12.02 as an interim measure pending further applications; and to make minor clarifications to definitions contained in the Qld derogations.

**NSW Department of Health** (A90754–5) Authorisation for supply of pathology services to private inpatients in public hospitals.

**Sydney Futures Exchange Ltd** (A90756–7) Requirement of participants of the Sydney Futures Exchange to acquire clearing services

from the Sydney Futures Exchange Clearing House (SFECH) and membership requirements for the SFECH.

15.11.00 Interim authorisation granted.

**Australian Stock Exchange Ltd** (A90758) ASX third line forcing of cleaning services with Options Clearing House (OCH) and tied membership of ASX/OCH.

15.11.00 Interim authorisation granted.

**Tasmanian derogations and vesting contracts** (A80010–11, 90759–61) Filed by NECA and the Crown in Right of Tasmania.

**NECA** (A90762–4) Extension of Schedule 9G and Clause 9.35.7 of the code jurisdictional derogations.

28.11.00 Interim authorisation granted.

**Royal Australian College of Surgeons** (A90765) RACS processes for selecting trainees for all specialities in which it conducts training, and for its application processes and assessment guidelines for assessing overseas-trained doctors.

**National Electricity Code Administrator Limited** (N90766–7) (NECA) Treatment of losses: interim issues and inter regional transfer of TUOS — code changes.

20.12.00 Interim authorisation granted to two components.

1.2.01 Interim authorisation granted to another component.

**Mater Misericordiae Hospital, St Vincent's Hospital and others** (A90770–2) Proposal to operate as a single economic entity following the acquisition of the Mater Hospital by St Vincent's.

20.12.00 Interim authorisation granted.

**Australian Funeral Directors Association (WAFDA)** (A70012) Agreement to provide concessional rates for funeral services.

**Southern Sydney Waste Board (SSWB) and Inner Sydney Waste Board (ISWB)** (A30204–5) Eleven councils joint venture. Contract with recycling contractor for provision of dry recyclable materials (DRM). Contracts to be managed by SSWB. Seven councils in the ISWB region, together with ISWB, make single contract with provider of DRM services. Contracts to be managed by ISWB.

**Australian Dairy Farmers Federation Ltd** (A90782) Proposing to negotiate pricing and supply terms and conditions for agreements between dairy farmers and the dairy company to which they supply milk.

**Distribution losses** (A90783–5) Application for authorisation to the National Electricity Code, relating to distribution losses.

6.6.01 Draft determination issued.

**VIC Derogations — FRC** (A90786–8) Application for authorisation for change to Victorian derogation relating to FRC.

**Western Sydney Waste Board** (A90789) Proposing to enter into a contract with an operator in respect of the pre-treatment facility, to be known as the build own operate (BOO) contract.

**Franklins Limited** (A30206–8) Proposing a joint marketing arrangement with Pick'n Pay and Foodland for promotion of food and grocery products under their Franklin's banner.

4.7.01 Interim authorisation granted.

## Notifications under consideration

**Advertiser Newspapers Ltd** (N60023–5) Arrangements for supply of newspapers published by Advertiser (exclusive dealing).

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

**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 (third line forcing).

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

**National Australia Bank Ltd** (N40420) Supply of discounted Corporate Express Services on condition that the customer uses a National card product to make the purchase (third line forcing).

**The Herald and Weekly Times Ltd** (N40421–3) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

**Queensland Newspapers Pty Ltd** (N40424–6) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

**Adelaide Newspapers Ltd** (N40427–9) Territorial distribution agreement — retail agency agreements (third line forcing).

**Gold Coast Publications Pty Ltd** (N40430–2) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

**Nationwide News Pty Limited** (N40433–5) Territorial distribution agreement — setting of maximum price for home delivery — retail agency agreements (third line forcing).

**ASX Operations Pty Ltd** (N31088) ASX World Link Service package involving Bloomberg software and ASX Settlement and Transfer Corporation Pty Ltd (third line forcing).

**Bloomberg Tradebook** (N31093) Terminal discount services on condition that users acquire brokerage services from B Trade or G Trade Services and clearing services from BNY and others.

**AGL Electricity Ltd, AGL SA Ltd, AGL Retail Energy Ltd & Actew AGL** (N90843–6) Offer of interest-free repayment options to customers who acquire appliances from nominated parties (third line forcing).

**Western Australian Land Authority t/a LandCorp** (N70169) House and land packages (1000 lots) in Atwell Perth — nominated builders.

**Austrapay Limited** (N90851) Payment processing. Appointment of Westpac as CS1 representative and entering into representative deed with Westpac

**The Australian Baseball Federation** (N90853) Proposing to implement a preferred buyer program for items used in the sport of baseball.

# Certification trade marks

## Completed

**Computing Technology Industry Association Inc.** (CTM 712106) Certification of computer service providers.

**Australian Fertiliser Services Association** (CTM 738734) Fertiliser spreading equipment.

**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.

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

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

## Under consideration

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

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

**Centre Technique du Bois et de l'Ameublement** (CTM 750620) Certification of wooden casks and barrels.

**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.

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

**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.

**The Bio-Dynamics Research Institute** (CTM 704565, 709823) Clothing and other apparel made from horticultural crops.

**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.

**Harris Tweed Authority** (CTM 705888) Amendment to the rules for Harris Tweed cloth.

**Standards Association of Australia** (CTM 743379) Certification of quality management systems under the 'StandardsMark'.

**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.

**Meat Research Corporation** (CTM 762759) Classification of beef meat and meat products.

**Tasmanian Quality Assured Inc.** (CTM 795314) Quality assurance of Tasmanian primary products.

**Migration Institute of Australia Ltd**

(CTM 786309) Certification of migration advisory services.

**National Indigenous Arts Advocacy**

**Association** (CTM 772566) Collaboration mark — certification of products carrying indigenous artwork licensed for amendments to the rules of authenticity label for indigenous art and cultural works.

**Leeton Development Corporation**

(CTM 770200) Certification of products and services produced in the Leeton, NSW region.

**Deer Industry Projects and Development**

**Pty Ltd** (CTM 796848) Certification of deer farms and transportation systems.

**The Bio-Dynamic Research Institute**

(CTM 776347) Certification of persons using the application of bio-dynamic methods of agriculture and horticulture.

**The Bio-Dynamic Research Institute**

(CTM 774682) Certification of clothing, headgear and footwear produced using methods approved under Bio-Dynamic guidelines.

**Healthy Waterways** (CTM 763115)

Certification of a wide range of goods and services relating to the use of the Brisbane River and Moreton Bay waterways.

**Deer Industry Projects and Development**

**Pty Ltd** (CTM 825966, 827816 and 828929) Certification of deer antler, deer meat and deer transportation systems.

**Standards Australia**

(CTM 743608, 741723, 741725–6) The Australian Design Award and Australian Design Mark Scheme — variation to the rules.

**Consorzio Del Prosciutto Di Parma**

(CTM 815585) Certification of 'Parma' ham products.

**Cornelis Johaanes & Marcella Maria De**

**Groot** (CTM 798087) Certification of installers of a patented locking function for hinged doors or windows.

**Prufgemeinschaft Mauerbohrer**

(CTM 795774) Certification of drills, bits and boring tools for use with machine tools.

**Department of Agriculture, Western**

**Australia** (CTM 774429–30) Certification of food and beverage businesses involved in the production, processing, transport, storage, distribution and sale of agricultural, horticultural and forestry products.

**Australian Pork Corporation** (CTM 492376)

Amendment to the rules and licence agreement.

**Australian Lowline Cattle Association Inc.**

(CTM 813064) Certification of lowline cattle producers.

**Wireless Ethernet Compatibility Alliance**

**Inc.** (CTM 492376) Certification of Wireless Local Area Networking (WLAN) equipment as interoperable with each other.

**Community Child Care** (CTM 836887)

Certification of child care centres as being community owned.

**International Standards Certification Pty**

**Ltd** (CTM 816463–4, 816838) Certification of quality management system.

**National Office for the Information**

**Economy** (CTM 841106) Certification to provide users with the comfort that their digital signatures meet stringent standards.

**The Institute of Inspection, Cleaning and**

**Restoration** (CTM 789517) Certification of technicians and firms within the carpet and upholstery cleaning industry.

**Deer Industry Projects & Development Pty**

**Ltd** (CTM 836187) Certification that processed deer antler is Australian in origin and has been farmed and removed in accordance with certain standards.

**US Environmental Protection Agency**

(CTM 787534) Certification of Energy Star Program to promote the manufacturing and marketing of energy-efficient computer equipment.

**Certified Financial Planning Board of**

**Standards** (CTM TM0097) Certification of financial planners as being trained, tested and disciplined to certain standards.

**National Archives of Australia Standards**

(CTM 752089) Variation to rules governing CTM which certifies that paper and similar products are of archival quality.