# Enforcement

*The following are reports on new and concluded Commission actions in the courts, settlements requiring court enforceable undertakings (s. 87B) and mergers opposed by the Commission. Other matters currently before the court are reported in appendix 1. Section 87B undertakings accepted by the Commission and non-confidential mergers not opposed by the Commission are listed in appendix 2.*

*GST enforcement matters are listed at the end of this section.*

## Anti-competitive agreements (Part IV)

### Johnstone Shire Council and Ingham Quarries

*Exclusive dealing (s. 47)*

On 7 August 2001 the Commission accepted court enforceable undertakings from the Johnstone Shire Council and Giandomenico Holdings Pty Ltd, Remo and Francesco Giandomenico (trading as IQC Quarries) as a result of a Commission investigation into lease conditions attached to a council-owned quarry site in North Queensland.

The Johnstone Shire Council owns one of two quarry sites in the Innisfail area. Under a 20-year lease agreement dated 29 March 1995 the council leased the quarry to IQC Quarries. In it the council agreed to a stipulation that all contracts let by the council — which required the use of quarry products of a quality able to be supplied by IQC Quarries — would stipulate that the quarry products would be purchased from IQC Quarries. That stipulation was contained in various contracts and tenders put out by the council.

The Commission believed that the stipulation raised concerns under the exclusive dealing provisions of the Act and specifically the prohibition against third line forcing. Such a prohibition extends to the activities of local authorities which could be categorised as in 'trade or commerce'.

The council and IQC Quarries provided court enforceable undertakings to the Commission to:

- delete the stipulation of concern from the lease agreement and cause a variation of the lease agreement to be lodged for registration; and
- implement a trade practices compliance programs.

### Rural Press Limited

*Misuse of market power (s. 46)*

On 7 August 2001 the Federal Court, Adelaide, imposed penalties of $600 000 against Rural Press Limited for misusing its market power and for making and giving effect to a market sharing agreement contrary to the Trade Practices Act.

Mansfield J also imposed individual penalties of $70 000 against the general manager of Rural Press' Regional Publishing Division, Mr Ian Law, and its South Australian state manager, Mr Trevor McAuliffe, for being knowingly concerned in the contraventions. Waikerie Printing House and its director, Mr Paul Taylor, were penalised $75 000 for entering into the market sharing arrangement with Rural Press.

The penalties finalise proceedings instituted 14 July 1999 when the Commission alleged that Rural Press had misused its market power and entered into an anti-competitive agreement in relation to the withdrawal of *The River News* regional newspaper from the Mannum area in South Australia.

(See Legal notes and Enforcement, *ACCC Journal 33*, for details and discussion of this matter).

### Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd

*Agreements lessening competition (s. 45)*

On 15 August 2001 the Commission instituted proceedings against Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd alleging long-standing price fixing conduct in relation to Pauls and Malanda milk products in the Northern Territory.

It is alleged that the agreement had the purpose and likely effect of controlling or maintaining the price for:

- Pauls and Malanda milk products at the wholesale level in the Northern Territory; and
- unprocessed milk in the Northern Territory.

It is further alleged that, in the course of negotiations which led to the agreement, Pauls, Malanda and ACF made an arrangement whereby ACF and Malanda would supply to Pauls all the unprocessed milk for the production of Pauls, Malanda and ACF milk products at an agreed price, and Pauls would process and package it.

Individuals alleged to be knowingly concerned in the conduct were Mr Barry Jardine the corporate secretary of Pauls, Mr Alan McCray the former general manager international of Pauls, Mr Sydney Morgan the general manager, planning and development of ACF and Mr Richard See the former chief executive officer of Malanda.

The ACCC is seeking orders against Pauls, Malanda, ACF and the senior executives including declarations, injunctions, compliance programs, penalties and costs. A directions hearing set down for 18 September in the Federal Court, Darwin.

## Fair Trading (Part V)

### McDonald's Australia Limited

*Alleged unconscionable conduct against consumers (s. 51AB), misleading or deceptive conduct (s. 52), false representations as to the existence of a right (s. 53(g))*

On 24 September 1999 the Commission instituted proceedings in the Federal Court, Sydney, against McDonald's Australia Limited after complaints from consumers about McDonald's 'McMatch and Win' promotion.

The matter was transferred to the Federal Court, Brisbane, in October 1999. On 14 October 1999 the Commission applied to have the matter heard concurrently with private representative proceedings before the court (*Hurley v McDonald's Australia Limited*); however, this application was not pressed. The Commission reserved the right to apply to have its case re-listed pending the outcome of the representative proceedings.

On 9 March 2001 Dowsett J delivered his judgment in the representative proceedings, finding in favour of McDonald's in the application brought by the 34 claimants. The claimants and other members of the representative class did not appeal Dowsett J's decision. At a directions hearing in Brisbane on 27 April 2001 Dowsett J determined a timetable for hearing be set for the Commission's matter, and the matter was listed for further directions and hearing of any motions on 31 July 2001. On 20 August 2001 Dowsett J, by consent of the parties, dismissed the proceedings.

### Solutions Software International Pty Ltd & Ors

*Alleged unconscionable conduct (s. 51AB and/or 51AC), misleading or deceptive conduct (s. 52), misrepresentation of performance characteristics, uses or benefits (s. 53(c)), misrepresentation of approval or affiliation (s. 53(d)), misrepresentations concerning price (s. 53(e)) and misleading statements about work-at-home schemes (s. 59(1))*

On 29 June 2001 the Commission instituted proceedings in the Federal Court, Brisbane, against Solutions Software International Pty Ltd and related companies, formerly known as Acepark Pty Ltd and Offtrack Investments Pty Ltd. The proceedings were also instituted against the former directors of these companies, Robert James Price and William Greig Millar, and the former offtrack investments sales manager, Ronald James Curtin.

The proceedings relate to activities allegedly engaged in by the respondents in the promotion and sale of computer betting software claimed to predict place winners in horse, harness and greyhound races.

The Commission has alleged that the respondents misled consumers about the success rate, characteristics and profitability of the computer-betting software. Consumers expected to earn up to $8000 per month from the software and understood the software to have an average strike rate of between 70–95 per cent in selecting successful place bets. Consumers also believed the software was an 'investment program', not a gambling system, involved minimal risk, should be purchased urgently to avoid imminent increases in the price of the program, and that the respondents were affiliated with the TAB.

The Commission has further alleged that the respondents engaged in unconscionable conduct through the making of various misrepresentations to induce consumers to purchase the software. It also alleged that Acepark breached the s. 87B undertaking it entered into in July 1999 by failing to review its advertising and selling practices, implement a structured complaints-handling procedure, provide unconditional refunds to specified purchasers and compensate these purchasers for losses sustained while operating the software.

The Commission is seeking:

- interlocutory injunctions;
- final relief in the form of declarations, permanent injunctions and orders for refunds of the purchase price of the software;
- corrective advertising;
- compliance with the s. 87B undertaking by Acepark;
- implementation of a trade practices compliance program; and
- costs.

At an interlocutory hearing held on 8 August 2001 the Federal Court granted interim injunctions, by consent and without admission, restraining the respondents and their servants and agents from making false or misleading representations about the software and, in particular, that the software and any substantially similar software has an average strike rate of greater than 58 per cent in selecting successful place bets. The interlocutory hearing was adjourned to 21 September 2001.

## Telstra Corporation Limited

*Misleading or deceptive conduct (s. 52), misrepresentation (ss. 53(c), 53(f), 53(g))*

On 6 July 2001 the Federal Court, Melbourne, issued an interim injunction against Telstra prohibiting it from making representations to One.Tel Next Generation customers that they would incur termination fees from One.Tel unless they transferred their business to Telstra.

The One.Tel Next Generation mobile network was terminated on 9 June 2001. On 5 July 2001 the Commission publicly asserted that:

- no contract termination fees should apply to customers who transfer to another service provider after One.Tel withdrew its service; and
- customers should not incur a penalty when a business ceases to offer its service.

The Commission wrote to Telstra on 29 June detailing its allegations about Telstra's conduct and seeking assurances that representations would not be made. The Commission's letter was not public. Telstra responded on 2 July. While it denied that the behaviour was occurring, it advised the Commission that instructions had been issued to prevent the alleged conduct.

The Commission produced evidence (on oath to the court) that contrary to Telstra's written advice of 2 July, the representations had continued past this date — at least for calls made by Commission staff to the Telstra call centre. Telstra publicly denied the Commission allegations.

The Commission is aware that since 9 June 2001 Telstra has, having access to One.Tel client data, actively sought to contact One.Tel customers. More than 200 000 customers are affected.

The Commission is seeking declarations of:

- unlawful conduct;
- a permanent injunction to ensure the behaviour is not repeated;
- an opportunity for consumers who may have been misled to rescind their new Telstra contracts without penalty;
- corrective advertisements; and
- a compliance program by Telstra.

The next directions hearing is to be held on 12 February 2002 before Heerey J in the Federal Court, Melbourne.

## Multigroup Distribution Services Pty Ltd & Ors

*Representations as to future matters (s. 51A), false or misleading conduct (s. 52)*

On 11 July 2001 the Commission instituted proceedings in the Federal Court, Brisbane, against Multigroup Distribution Services Pty Ltd, Mr John O'Neile and Mr Malcolm Roberts, alleging that Multigroup Distribution Services Pty Ltd engaged in false or misleading conduct and that Mr O'Neile and Mr Roberts were knowingly concerned in that conduct.

The Commission alleges that between January and September 1999, Multigroup Distribution Services Pty Ltd misled or deceived, or were likely to mislead or deceive Mr Wayne Parker, a director of Parker Freight Express Pty Ltd about the provision of a transport contract in North Queensland to Parker Freight Express Pty Ltd and that Mr O'Neile and Mr Roberts were knowingly concerned in this conduct. It claims that Mr Parker was misled about the provision of freight work between Townsville and Mt Isa that Multigroup Distribution Services would provide to Parker Freight Express.

The Commission is seeking declarations, injunctions, compensation for Parker Freight Express, orders to implement a trade practices compliance program and costs.

A directions hearing was held in the Federal Court, Brisbane, on 3 August 2001. The matter is next listed for directions at a date to be fixed after 22 October 2001.

## Mike Carney Motors Pty Ltd

*Misleading or deceptive conduct (s. 52), misrepresentations about warranties, condition, guarantee, right or remedy (s. 53(g))*

On 7 August 2001 the Commission accepted court enforceable undertakings from Mike Carney Motors Pty Ltd in relation to advertising in regional and rural papers on the GST-inclusive, drive-away price of a Toyota Hilux.

Mike Carney Motors had placed two advertisements on 5 July 2001 for 15 Toyota Diesel Hilux 4 x 4 utilities with a steel drop side body. The advertisements showed a photograph of a utility with a bull bar and advertised the vehicles at a 'GST inclusive on the road drive away' price of $25 990. Subsequent inquiries showed the price did not include the GST nor the bull bar and the price was neither a GST-inclusive one nor an 'on the road drive away price'.

Mike Carney Motors provided court enforceable undertakings to:

- supply the motor vehicle at the advertised price to the consumer who had been genuinely affected by the representations;
- place a corrective advertisement in the papers; and
- implement a comprehensive trade practices compliance program.

## Purple Harmony Pty Ltd

*Misleading or deceptive advertising (s. 52)*

On 9 August 2001 the Federal Court, Melbourne, found Purple Harmony Plates Pty Ltd to have made unsubstantiated health and other claims about its products on the Internet.

The Commission alleged, and the court ruled, that Melbourne based Purple Harmony Plates had made unsubstantiated claims about the future benefits of its products, which were made of anodised aluminium in various shapes, sizes and colours.

The claims included that the plates:

- protect against electromagnetic radiation from computers, televisions, mobile telephones etc;
- energise water and free it from odour and chlorine;
- lower body stress and fatigue levels;
- group together heavy metals and other impurities [in water] into larger molecules so that they could not be absorbed by the body;
- help strengthen the immune system;
- increase general health;
- accelerate healing;
- reduce less severe aches and pains or niggly coughs and colds;
- improve plant growth; and
- ionise car fuel to allow a more complete fuel burn.

The judge found that Purple Harmony Plates could not reasonably demonstrate a basis for any of the above claims.

The Federal Court orders included:

- declarations that the business engaged in misleading and deceptive conduct prohibited by the Trade Practices Act;
- injunctions preventing the business from engaging in similar conduct;
- corrective statements in writing to customers; and
- refunds to consumers who believe they were misled.

The court found that Purple Harmony Plates had the authority to instruct others to place material on its website. It has subsequently been ordered to publish a corrective statement on its website within 14 days. The statement shall appear immediately upon accessing the website's homepage and the order form and consumers must disable the pop-up statement before using the site. The business is also required to offer consumer refunds.

This case sets an important legal precedent in relation to misleading conduct on the Internet.

Federal Court orders have not been complied with and the Commission has instituted proceedings in the Federal Court for contempt.

## Entee Food & Beverage Wholesalers & Distributors Pty Ltd

*Misleading or deceptive conduct (s. 52), misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services (s. 53(aa))*

On 21 August 2001 Entee Food & Beverage Wholesalers & Distributors Pty Ltd was ordered by the Federal Court to stop selling orange juice containing 15 per cent Brazilian orange juice concentrate under labels claiming that the orange juice is a 'Product of Australia' and 'Australian Squeezed'.

The court held that Entee breached the misleading and country of origin provisions of the Trade Practices Act by making inaccurate claims on the labels of their 'Darwin Squeezed Orange Juice' and 'Orange Juice — Australian Squeezed'.

The labels stated the orange juice was a 'Product of Australia', 'Australian Squeezed', 'Darwin squeezed', 'Pure Australian fruit' and 'Locally squeezed'. However, from January 2001 to June 2001, the products contained 15 per cent orange juice reconstituted from orange juice concentrate imported from Brazil and were packaged using orange juice prepared in Brisbane. Also, there has been no Entee juice squeezing plant in Darwin since about June 2000. The labelling on the 'Darwin Squeezed Orange Juice' also did not list sugar as an ingredient or state that it contained added sugar.

The ACCC acknowledged that Entee had been fully cooperative in quickly resolving the matter. Entee gave the ACCC a court enforceable undertaking to ensure all management and relevant staff undertake trade practices compliance training. The court also ordered that Entee become a signatory to the code of practice and administration rules for the fruit juice industry and pay $5000 towards the ACCC's costs.

## Chubb Security Australia Pty Ltd

*Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(e))*

On 22 August 2001 the Federal Court, Sydney, ordered that Chubb Security Australia Pty Ltd had engaged in false, misleading and deceptive conduct. The action was initiated by the Commission because of radio and print advertising that claimed Chubb's Vitalcall personal response system cost about $1 a day. However, customers wanting to connect to Vitalcall had to pay an initial installation fee of between $80 to $279, depending upon their home State. The continuing monitoring fee is between $1.16 and $1.26 per day.

Madgwick J also ordered, by consent:

- an injunction restraining Chubb from making future representations about the cost of Vitalcall without disclosing all associated costs;
- corrective letters to be sent to all Chubb customers identified as having become aware of Vitalcall through the print and radio advertisements to offer a refund of the installation costs if the consumers were misled by the advertisements;
- corrective advertisements to be printed in the *Daily Telegraph* and *Herald-Sun*; and
- corrective pre-recorded and 'live read' radio advertisements to be broadcast on all the radio stations where the original advertisements were broadcast.

The Vitalcall system is specifically targeted towards people over 75 years of age or people with a disability aged 65–74 years. It is a small pendant (radio transmitter) and a talkback unit connected to the telephone. The user wears the pendant around the neck and can press it to activate a signal to the talkback unit. The unit will automatically telephone the Vitalcall monitoring centre. The monitoring centre staff assess the call and provide assistance.

Chubb broadcast many radio advertisements, including about 74 live reads between July and November 2000 and 1–15 April this year.

## Skybiz Pty Ltd (Skybiz 2000)

*Pyramid selling (s. 61)*

On 22 August 2001 the Federal Court, Perth, handed down orders by consent declaring that Kevin Ryan, a Perth participant in a scheme called Skybiz 2000 Home Based Business, promoted by SkyBiz.com Inc., breached the Trade Practices Act by promoting a pyramid selling scheme. The Commission had instituted legal proceedings against Mr Ryan on 4 August 2000 alleging he contravened the Act by attempting to induce others to join the scheme and pay Skybiz US$100 per website.

In settlement, Mr Ryan has consented to orders in which the court:

- declared that he attempted to induce persons to take part in a pyramid trading scheme called the Skybiz 2000 Home Based Business Scheme by representing to them that they would receive payments if they in turn introduced other persons into the pyramid scheme, in breach of the Act;
- accepted his personal undertaking that he will not take part in, or induce or attempt to induce others to take part in, the pyramid scheme; and
- ordered that he pay a contribution to the ACCC's costs.

## Hospitals Contribution Fund of Australia Ltd (HCF)

*Misleading or deceptive conduct (s. 52), misrepresentations about the performance characteristics of goods (s. 53(c))*

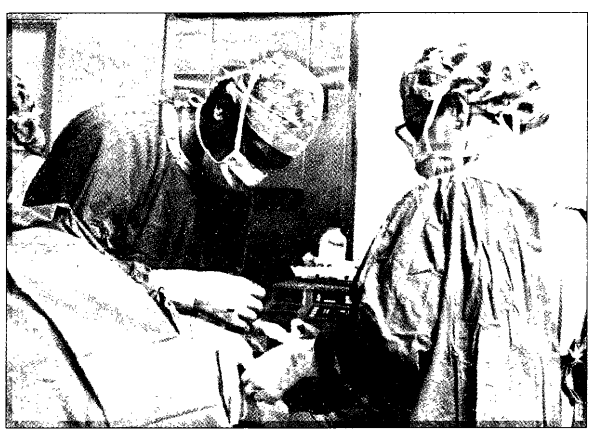
On 30 August 2001 HCF agreed, in court enforceable undertakings to the Commission, to drop waiting periods for 1207 new members, effectively giving them instant cover. The undertakings were given under s. 93AA of the *Australian Securities and Investment Commission Act 2001* which covers health insurance, a product defined as being a financial one. However, ASIC has delegated the regulation of all consumer protection aspects of health insurance to the Commission.

The Commission took action because of a television advertisement that stated, 'Join HCF before June 30th and receive instant cover' in bold, large print. It also included an audio statement that the two-month and six-month waiting periods were waived, and a visual statement in fine print that 'the waiver does not apply to waiting periods of more than six months, including those for pregnancy and related conditions. Pre-existing ailments and conditions are also excluded'.

The Commission was concerned that the advertisement may have misled or deceived, or been likely to mislead or deceive, the public about the benefits, conditions and characteristics of HCF cover. The Commission believes the advertisement represented that by joining HCF before 30 June 2001, the public would be entitled to receive HCF benefits from HCF from the time of joining for all hospital, medical and ancillary services included in the cover.

The Commission considers the potential to mislead arose from the fine print statement being insufficient to dispel the misleading impression given by the words 'instant cover' as it was not on the screen long enough to be read.

The Commission acknowledged HCF's cooperation in quickly stopping the broadcast of the advertisement and providing effective redress to consumers.



### Orbit Homes Australia Pty Ltd

*False or misleading representations in relation to the sale of land (s. 53A)*

On 14 September the Commission instituted proceedings against Orbit Homes Australia Pty Ltd for alleged misleading advertising of its homes. The Commission alleges that between March and May 2001 Orbit Homes advertised home packages with representations that some features were to be provided at no cost to purchasers. The Commission alleges these features included an H-class slab foundation, timber fencing, front landscaping, carpet, driveway and path. It alleges Orbit Homes passed on some or all of the cost of those features to the homebuyer. The advertisements appeared in a Melbourne newspaper and also on Orbit Homes' Internet website.

The ACCC is seeking:

- declarations from the court that the advertising contravened the Trade Practices Act;
- injunctions restraining Orbit Homes from making similar representations in future;
- an order requiring Orbit Homes to publish a public disclosure notice in a major Victorian newspaper and also on its website; and
- an injunction requiring Orbit Homes to implement a trade practices compliance program.

A directions hearing is listed for 29 October 2001 in the Federal Court, Melbourne.

### SkyBiz.Com Inc. (Skybiz)

*Misleading or deceptive conduct (s. 52), referral selling (s. 57), misrepresentations about the profitability or risk of a home-based business (s. 59), pyramid selling (s. 61)*

On 18 September 2001 the Commission instituted legal proceedings in the Federal Court, Perth, against SkyBiz.Com Inc. (Skybiz) the US company in charge of the Skybiz home business scheme.

The court documents were served through the US court-appointed receiver for SkyBiz.

The Commission alleged that SkyBiz breached the Act by operating and promoting the Skybiz home business scheme as a pyramid selling scheme. It is alleged participants in the scheme paid SkyBiz.Com Inc. US$100 for a website and that SkyBiz claimed participants could then earn a substantial income for introducing new consumers into the scheme.

A directions hearing was set for 2 October 2001 in the Federal Court, Perth.

## Product safety (Part V)

### Apollo Optical (Aust) Pty Ltd

Product safety standard and unsafe goods (s. 65C(1)(a))

On 4 July 2001 the Commission instituted proceedings in the Federal Court, Perth, alleging that Apollo did not comply with the vertical field of view requirements of AS1067.1-1990: *Sunglasses and fashion spectacles* in supplying the 'CAB 55 002' models of fashion spectacles.

The Commission is seeking declarations, injunctions, the withdrawal of the spectacles from sale, refunds to consumers and retailers, the placement of product safety notices in newspapers and stores, implementation of a trade practices compliance program, and costs.

A directions hearing was listed for 8 October 2001.

### Monza Imports Pty Ltd

Product safety standard and unsafe goods (s. 65C(1)(a))

As for Apollo Optical (Aust) Pty Ltd in the matter above, the Commission instituted proceedings in the Federal Court, Perth, against Monza Imports Pty Ltd on 4 July 2001. It is alleging the same product safety infringement and seeking the same remedies as for Apollo, but for the 'SPY iSiS' models of fashion spectacles.

A directions hearing was held on 1 August and a further one listed for 2 October 2001.

### Pauls Victoria Limited

*Country of origin claims (s. 65)*

On 6 August 2001 the Commission instituted legal proceedings against Pauls Victoria Ltd for alleged misleading labelling of fruit drinks.

The Commission has alleged that between February 1999 and May 2001 Pauls supplied

Coles Supermarkets Australia Pty Ltd with the Savings orange, and orange and mango 2 L fruit drinks which were labelled 'Product of Australia'. However, it is alleged that the drinks contained imported juice.

On 13 September 2001 the Federal Court in Melbourne granted the following orders by consent:

- declarations that the labels were misleading;
- injunctions preventing Pauls from making similar representations in the future.

The court orders were made on the basis that Pauls undertook to publish corrective advertisements in newspapers in Victoria informing consumers of the misleading conduct; and to implement a corporate compliance program.

Pauls also agreed to provide consumers with a special one week discount on the products concerned.

### Berri Limited

*Country of origin claims (ss. 53(eb), 65)*

On 13 August 2001 the Commission instituted legal proceedings against Berri Limited over alleged misleading labelling of fruit juice and fruit drink products.

It is alleged that between March 1999 and June 2000 Berri supplied Coles Supermarkets Australia Pty Ltd with Farmland brand orange juice concentrate that was labelled 'Made in Australia from Australian Fruit Juice'. It is alleged that the product contained imported juice.

The labelling on the Farmland brand orange juice concentrate product was changed around June 2000 to 'Made from a blend of quality Australian and imported fruit juices depending on seasonal availability'. It is alleged this and similar labelling, which has also appeared at various times on a number of other juice varieties sold under the Farmland, Just Juice and Sunburst brands was misleading because Berri failed to use so far as available, a majority of Australian produce in these products. It is alleged in one instance that the Farmland 200 ml apple juice contained no Australian juice.

The Commission is seeking:

- declarations from the court that the labelling was misleading;
- injunctions restraining Berri from making similar representations in the future;
- a court order requiring Berri to publish corrective advertisements in national daily newspapers informing consumers of the misleading conduct; and
- a court order requiring Berri to implement a corporate compliance program.

Directions hearings were held on 17 August 2001 and 17 September 2001 and a further one is listed for 3 December 2001.

## GST compliance and enforcement (Part VB)

### Domaine Homes Pty Ltd

*Price exploitation under the New Tax System (s. 75AU)*

On 11 July 2001 the Commission instituted legal proceedings in the Federal Court, Sydney, against Domaine Homes (NSW) Pty Limited for making misleading representations about the effect of the New Tax System on the construction of new homes, and unconscionable conduct.

The Commission also instituted legal proceedings against Mr Robert Grant, managing director and Mr Terry Sofos, contracts manager of Domaine for their involvement in the conduct.

The Commission alleges that Domaine promoted 'Guaranteed Fixed Price' contracts in 1999 and subsequently sought to charge almost 300 customers a total of approximately $1.9 million in additional GST payments when the homes were not completed before 1 July 2000. The average amount of GST which Domaine sought to charge each customer was approximately $6500 and the maximum $22 900.

The Commission also alleges that Domaine informed some customers their homes would be built before the GST was implemented. When building was not completed by 1 July 2000 Domaine sought to recover GST from these new home buyers. The Commission asserts that the true interpretation of the contract does not entitle Domaine to claim GST from these customers.

The Commission further alleges that Domaine has acted unconscionably towards some of their customers who refused to pay the additional GST.

It claims Domaine acted unconscionably by insisting on payment of the additional GST component before handing over the keys to completed homes and falsely claiming that consumers were legally obliged to pay the additional GST.

The Commission raised its concerns with Domaine in late 2000 on behalf of affected consumers but was unable to reach a satisfactory resolution.

The Commission is seeking the following orders from the court:

- injunctions restraining Domaine from making misleading representations in the future;
- declarations that the conduct of Domaine and senior Domaine staff was unlawful;
- refunds totalling approximately $1.9 million paid in GST by 291 Domaine customers;
- corrective action, including corrective newspaper advertisements and apology letters to Domaine consumers;
- consequential damages for a number of Domaine customers to compensate new home buyers for additional expenses such as rental for temporary accommodation;
- implementation of a trade practices compliance program; and
- costs.

The Commission is also concerned that Domaine informed customers that it uses a standard Housing Industry Association contract. The Commission believes that the Domaine contracts differed sufficiently from the standard Housing Industry Association contract that describing them as such was misleading. The Commission has sought undertakings from Domaine that it cease referring to their contract as a standard Housing Industry Association one.