in a better position to handle issues affecting small business (see *ACCC Journal* no. 35). One change that benefits small business is the 'drawing down' of the unconscionable conduct provisions in the Act, s. 51AC. This amendment will remove any doubt that States can use legislation in relation to unconscionable conduct.

Conclusion

The impact of commercial unconscionable behaviour in business is destructive and costly for all concerned. The role of the Trade Practices Act and the Commission in no way rules out aggressive and innovative competition. Quite to the contrary, we see it as the path to prosperity. However, all businesses can benefit from practices that seek to avoid excessive conflict and deal reasonably with suppliers and customers. The equipment leasing sector has achieved a good record in its dealings with small business. This can be re-enforced in your industry by:

- adhering to the spirit as well as the letter of the unconscionable conduct laws even to the extent of promoting their virtues; and
- continuing to encourage corporate members to promote the AELA code of practice to all employees and interested parties and make compliance with the code a top corporate priority.

Governments and trade practices compliance

The following article combines two presentations by Commissioner Sitesh Bhojani on effective compliance systems for governments.

The first, Effective compliance systems for governments, *was given in Canberra on 7 September 2000 at the Setting the Course: Integrating Conformance with Performance conference.*

The conference was organised by the ACCC, Attorney General's Department and Department of Finance and Administration. Other speakers were Mr Pat Barrett, Auditor-General for Australia; Dr Peter Boxall, Secretary, Department of Finance and Administration; Commission Chairman, Professor Allan Fels; Mr Ian Govey, General Manager, Civil Justice and Legal Services, Attorney-General's Department and the Hon. Darryl Williams AM QC Attorney General.

There are some copies of the proceedings of the conference available on CD-ROM. Contact Lindsay Blundell on (02) 6243 1067 or email <lindsay.blundell@accc.gov.au> if you would like a free copy.

The second part of this article comes from a speech by Commissioner Bhojani on The Trade Practices Act: compliance and risk factors *to a gathering of departmental and business enterprise executives of the Queensland Government, which was organised by the Queensland Treasury.*

The importance placed by all governments in achieving compliance with competition laws for the Australian economy is underlined by the expansion, in July 1996, of the reach of the provisions in Part IV of the Trade Practices Act to cover all business activity in Australia; that is, universal application to unincorporated businesses including the professions and also state and territory governments and authorities.

Having a compliance program or system is part of good government, particularly good corporate governance. An effective system will reduce the risks of litigation, and if there is litigation can markedly reduce penalties that might otherwise be imposed by a court.

Good government, ethics and corporate governance

In considering good government in contemporary Australia, you need to be aware of the following developments.

Back row from left: Mr Allan Cameron, (at that time, Chairman, ASIC); Professor Allan Fels; Mr Pat Barrett. Front row: Mr Ian Govey; Mr Robert Cornall (Secretary Attorney-General's Department); The Hon. Darryl Williams AM QC; Mr Sitesh Bhojani. One of the speakers, Dr Peter Boxall, was unavailable for the photograph.

Right: delegates during a break;
Below: Professor Allan Fels addressing the conference.
Below right: delegates during an address.

- The new *Public Service Act 1999* (Cwlth) introduced on 5 December 1999 emphasises APS values and devolution of powers to agency heads.
- The *Auditor-General Act 1997*, the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* were introduced on 1 January 1998 and together replace the old *Audit Act 1901* and provide the modern framework for the financial management of the Commonwealth public sector.
- The Commonwealth's Model Litigant Policy contained in directions issued on 1 September 1999 by the Hon. Daryl Williams AM QC MP Attorney-General for the Commonwealth pursuant to the *Judiciary Act 1903* allows the Attorney-General to maintain standards in delivery of legal services and to ensure coordination between agencies for claims and litigation involving the Commonwealth.

The Government has emphasised the priority that it gives to leadership in the APS. To succeed in this new environment we need leaders who can establish a shared vision and sense of purpose, and inspire, coach and enable their achievement. Agency heads and the SES need to grasp fully the opportunities that the new APS reform framework provides.

Ethics

The recommendation on improving ethical conduct in the public sector was issued on 23 April 1998 by the Council of the Organisation for Economic Cooperation and Development (OECD). It represents a consensus of its 29 members and suggests using the following principles for managing ethics in the public service.

- Ethical standards for public service should be clear.
- Ethical standards should be reflected in the legal framework.
- Ethical guidance should be available to public servants.
- Public servants should know their rights and obligations when exposing wrongdoing.
- Political commitment to ethics should reinforce the ethical conduct of public servants.
- The decision-making process should be transparent.
- There should be clear guidelines for interaction between the public and private sectors.
- Managers should demonstrate and promote ethical conduct.
- Management policies, procedures and practices should promote ethical conduct.

- Public service conditions and management of human resources should promote ethical conduct.
- Adequate accountability mechanisms should be in place within the public service.
- Appropriate procedures and sanctions should exist to deal with misconduct.

Australian professions constantly focus on ethical conduct as a feature that distinguishes them from other occupations or trades. However, even in that context there seems to be a misunderstanding of what does and does not constitute ethical conduct.

The Commission is aware of allegations of unethical and unprofessional conduct being used in the mid-1990s to discipline professionals. For example, a professional who had wanted to present a paper at a conference to a related group of professionals (but not part of the same profession) and another who had advertised the fee that he would charge for his services.

I believe it is important to ensure there is a greater understanding of what ethics is and is not. I set out below extracts from a paper delivered by Dr Damian Grace at a joint conference on 14 October 1999, organised by the Commission and the NSW Health Care Complaints Commission. Dr Grace's paper was entitled 'Commercialisation, ethics and accountability'.

> *What ethics is and is not: five propositions*
>
> First, ethics is not a kind of tool for dealing with corruption problems. It is not a sermon to be preached, a process to be initiated, a set of instructions to be followed. It is a way of living one's life in pursuit of excellence. At its best it respects the value of tradition while taking a critical perspective on the status quo. It is hard to pursue excellence if one disdains criticism and regards the present as the pinnacle of that pursuit.
>
> This view cuts across current orthodoxy in professional and organisational ethics, with their stipulations and directives, their exclusions and penalties for infractions, and implied in all this, their denial of autonomy and personal professional judgement.
>
> My second proposition is that far from being a guarantee of success in any area of life, ethics costs. If there were a simple equation between good ethics and good business or successful professional practice, people would be ethical in all their workplace dealings and corruption prevention officers and fraud investigators would be out of jobs. The incentive for ethics cannot be profits, a successful career or high public esteem. The rewards of ethics are more personal: a clear conscience and the knowledge that one has acted with integrity. Good ethics is not always good business — at least not in the short run, and often not in the long run. Regrettably, the corrupt often thrive while the good go to the wall.
>
> Thirdly, ethics is not just a private matter. Of course, it has its public and its private sides, but it cannot be just personal. If it were, we could not offer ethical explanations for our conduct and we would have entirely divergent ethical interests, just as some of us have entirely divergent football interests. A spot audit of moral opinion would reveal a common core of moral values: honesty, integrity, trustworthiness, fairness, consistency and caring. Of course, there are nuances in the meaning attached to these terms, but what is more important than defining them is the general acceptance that they enjoy.
>
> My fourth proposition is that ethics is not mere conformity to rules. Ethics will not take the place of a regulatory environment, and goodness will not take the place of enforcement. Ethical reasoning, of its nature, often allows more than one right decision to be made. This is another way of saying that many ethical decisions are not black and white. But governments and regulatory agencies and managers often wish their organisations to follow a specified set of procedures. Hence they issue directives. Ethics will not substitute for those directives. On the other hand, not everything important in an organisation can be directed from above. Hence the need for trust, but for trust to operate there must be an ethical culture, i.e. one in which people have confidence that others in the organisation will display: integrity, honesty, fairness, consistency, trustworthiness and caring. Note also that it is the mix of values that matters here. Such a mix of values cannot be got by direction or mere conformity to rules.
>
> Finally, ethics in professional life is not a sub-set of professional courtesy or professional authority. Ethics is about personal judgement based on publicly justifiable criteria first and foremost; then it might be about professional and contractual obligations; and then it might be about the civilities which hold a profession together. It is certainly not about protecting professional turf from the neighbours, such as might be the case between optometrists and ophthalmologists or dermatologists and plastic surgeons. Nor is it about professional self-defence. Legal ethics was for a very long time a matter of strict bookkeeping on trust funds for solicitors and observing the dress code for barristers. Narrowing ethics to self-protection or etiquette indicates a need for more openness.

Corporate governance

For the purposes of this paper an appropriate meaning of corporate governance is that used by Shann Turnbull in his paper on 'Best Practices in the Governance of GBEs' [government business enterprises]:

> ... to describe all the influences which affect the operations of a firm.

He went on to say:

> Economists use the word 'governance' to describe how economic transactions are controlled. Traditionally, they have assumed that transactions are governed by either markets or the authority system found in the hierarchy of a firm. They have ignored the role played by personal relationships and associations and so have not yet developed a theory to understand how some types of firms systematically obtain competitive advantages, e.g. from the introduction of employee and other forms of stakeholder governance.
>
> Many Anglo business commentators use the word 'governance' to describe how a company is controlled by its board. This meaning is far too limiting for understanding how shareholders can add value; international best practices; or providing a basis for analysing the flaws in Australian operations and devising remedies. To understand best practice, we need to consider all the mechanisms which govern the operations of corporations. The mechanisms may be either external or internal to the corporation. External influence which govern the behaviour of firms could include — shareholders, auditor, accounting standards, corporations law, media, stock-exchange listing rules, bankers, customers, suppliers, federal, state and local government laws and regulations concerned with industrial relations, environment, health and safety etc. Internal influences would include employees, unions, and the materials, technology and process used in producing goods or services.

In a contemporary context I would certainly include Australia's competition laws as an express external influence governing the behaviour of firms.

There has recently been a call for a 'new approach to corporate governance'. In an article entitled 'Stan Wallis is on a mission to smash a sacred cow'[1] Ivor Ries writes that the 'new decade is seeing a push to loosen the '90s obsession with corporate governance and bring some flexibility back into the boardroom'.

His article includes the following comments.

> Since the governance push of the early 1990s, board meetings have become longer and more focused on compliance. Where a typical board meeting in the 1980s might have lasted between one and three hours, meetings today are often spread over two days. And at some, questions of strategy — the key driver of future wealth creation — are almost an afterthought.
>
> Wallis' call for greater flexibility in corporate governance was born out of a growing sense of frustration.
>
> According to Wallis and many other professional directors, the increased workload of directors is unproductive. Much of the extra time is spent on so-called box-ticketing exercises, which means double checking that the management team has done everything it claims to have done.

and

> As boards have spent more time at the table, their appetite for risk has dropped commensurately, Wallis says. 'I have watched directors become more and more risk averse. There is a tendency for boards to run a kind of due diligence process, examining everything in detail.'
>
> Wallis says Australian boards are obsessed with 'conformance rather than performance'. He points to the US and Europe, where corporate governance expectations are much lower but shareholder returns have been much higher.

The comments certainly raise the question of what are the objectives of good corporate governance? As a general response I believe that still apposite are:

- enhancing corporate performance;
- simplifying and reducing directors' duties and liabilities;
- protecting reputation of directors and the enterprise;
- minimising government interventions; and
- having public acceptance of the corporate sector.[2]

The question would realistically appear to be one of balance rather than an 'obsession with conformance' (at the expense of performance) or an 'obsession with performance' (at the expense of conformance). The leadership challenge for the foreseeable future, really would appear to be as

[1] *The Australian Financial Review, Weekend* 22–23 July, 2000 at pp. 21 and 23.

[2] Shann Turnbull, supra note 5 at p. 100.

stated in the title of this seminar — integrating conformance with performance!

Tensions between directors and management do exist in most structures established for corporate governance. It is important to appreciate some of these tensions for their potential impact on establishing effective compliance programs or systems. For example, there can be information distortion and loss. As Turnbull reports:[3]

> In a corporatised GBE, distortion and loss of information can cause embarrassment, loss of position and even personal legal liabilities to senior executives, directors and ministers. It can even contribute to a change of government, as has occurred in some states in recent years. The degree to which information can be distorted is illustrated by the game involving a message being passed on in whispers by people sitting next to each other around a table. The final message can be significantly changed, even with the best intentions. However, when office politics and careers are at stake there may be an irresistible incentive to manipulate information.

and

> A fundamental problem for directors is that most of the information which is available to them to evaluate the business and management is processed and provided by management.

and

> Osborne and Gaebler [(1992), *Re-inventing Government*, Addison–Wesley, Massachusetts (pp. 177–9)] suggest 17 different ways of 'listening to the voice of the customer'. However, in every case, management has the discretion of interpreting and reporting the findings up the chain of command. Directors and ministers who are responsible for problems may never be informed. As noted by Osborne and Gaebler (p. 152), 'If you can't recognise failure, you can't correct it'.

and

> The conflicts of interests in hierarchies arise because it is never in the self-interest of a manager to report on defects for which she or he may be seen to have some responsibility. Unless operating shortcomings, problems, mistakes and fraud are reported they cannot be corrected.

A solution to this problem may be a greater contribution by other stakeholders to governance or at least greater consultation with other stakeholders by directors. As Turnbull suggests:

> The people who have the most knowledge about a business and its industry are its operational stakeholders. Employees have the most intimate knowledge of supply, production, marketing and other problems and may well have the knowledge as to how such problems can be solved or ameliorated. Customers are the world's experts on the competitive standing of a firm's output and what innovations would provide additional advantages. Suppliers are in the position to identify how efficiencies can be generated in procurement policies, practices and improving competitiveness through changing the design or nature of inputs.[4]

and

> It is not in the self-interest of management to report their shortcomings to their superiors. Senior executives, directors and shareholders/minister may not be properly informed. GBEs with boards made up of non-industry specific individuals such as lawyers, accountants, financiers and others are not likely to be in a position to add value in either identifying or solving industry specific problems. It is the lead employees, customers and suppliers who can provide competitive advantages in this regard.[5]

and

> By harnessing the energy of such committed stakeholders, directors could protect themselves and their stakeholder/minister. Instead, management typically tries to oppose and discredit stakeholder activism.[6]

Summary of issues on compliance from judicial consideration

Over the years the courts have made various comments on trade practices compliance programs. Cases that provoked the more relevant comments include the following.

- *TPC v CSR Ltd*, a Perth case of misuse of market power and exclusive dealing in the ceiling materials market by CSR through a refusal to supply its plasterboard and related products for anti-competitive purposes.

[3] Shann Turnbull, supra note 5 at pp. 102–3.

[4] Shann Turnbull, supra note 5 at p. 104.

[5] Shann Turnbull, supra note 5 at p. 105.

[6] ibid.

- *TPC v TNT Australia Pty Ltd & ors*, a Sydney case of anti-competitive arrangements and price fixing in the express freight market between three corporate respondents, namely TNT Australia Pty Ltd, Ansett Transport Industries (Operations) Pty Ltd and Mayne Nickless Ltd. Many of the executives of the companies were also sued as having been involved in an accessorial capacity to the contraventions.
- *ACCC v Australian Safeway Stores Pty Ltd & ors*, a Melbourne case in which George Weston Foods Limited admitted contravening the Act in five ways ranging from price fixing to resale price maintenance and attempted resale price maintenance for its bread products.
- *NW Frozen Foods Pty Ltd & ors v ACCC*, a Hobart case of price fixing of food service line products to restaurants, hotels and take-away outlets in Tasmania.
- *ACCC v J McPhee & Son (Australia) Pty Ltd & ors*, a Melbourne case of anti-competitive agreements, price fixing arrangements and attempted price fixing arrangement for road freight transport services.
- *ACCC v Real Estate Institute of Western Australia Inc. & ors*, a Perth case involving anti-competitive provisions in Rules of REIWA, exclusionary provisions, agreements substantially lessening competition by restricting real estate agents from competing with each other and price fixing agreements with TAFE colleges on fees for a real estate training course.
- *ACCC v George Weston Foods Ltd*, a Hobart case of attempting to induce a price fixing arrangement for some biscuits known as 'Lots 'O'-Cookies'. As the arrangement had not occurred in fact no actual loss or damage could be shown. Justice Goldberg found that even if the arrangement had been made the amount in issue was $5000. He awarded penalties of $900 000 and in doing so commented extensively on George Weston's compliance regime.

From these cases the following issues emerge.

- A role of imposition of penalties was to secure compliance with the requirements of Part IV of the Trade Practices Act.
- Parliament has thought those provisions (Part IV) to be greatly in the public interest.
- A most important factor in mitigation of penalty is acceptable evidence of a corporate culture of compliance.
- If the Commission established to administer the Act is satisfied that an appropriate program has been undertaken, or the undertaking of it is proved to the court, that is a most important matter to take into account on penalty.
- You need to look at compliance programs in two ways. First, was there an actively implemented, substantial compliance program in place. Second, was the implementation of the compliance program successful (if it failed was it an isolated failure?).
- There is more reason to reduce penalty when acceptable evidence is adduced, or the Commission agrees:
  - that a program has been instituted to ensure an understanding by executives of the requirements of the Act and of their obligations under it; and
  - when a corporation has committed itself to future expenditure upon such a program.
- Much will have been achieved if the threat of penalties can be translated for businesses into a firm program aimed at:
  - eradicating ignorance and disregard of the national competition laws; and
  - instituting an open system in which the reach and purposes of the law are expounded and its observance inculcated.
- Does the evidence establish a lack of commitment by senior executives to the principles of the Act?
- It may be accepted without reservation that corporate education in trade practices through wide-ranging compliance programs and the fostering of a culture of compliance is good.
- If it is established that there is an entrenched culture of non-compliance, there can be a need to develop within an organisation an institutional sensitivity and understanding of the principal provisions of Part IV of the Trade Practices Act. This is indispensable to the culture of compliance needed to minimise the risk of further contraventions.
- The development of a culture of compliance does not happen overnight.

- Organisations need to build up appropriate infrastructure, supporting internal practices and procedures which over time will build up a culture of compliance.
- The following two aspects must be part of a compliance regime from the start. All newly appointed or newly promoted employees in positions of risk must obtain appropriate trade practices training before they begin their duties. And compliance training must effectively reach every aspect of the organisation.
- It is important that persons subject to trade practices compliance should not think that a failure of a compliance program for a second time and a commitment to review and strengthen it will result in the mitigation of a penalty as if the compliance program had failed for the first time.
- Did any senior executive or manager aware of proposed conduct at risk of breaching the Act give appropriate guidance to his subordinate and did such senior executive or manager 'turn a blind eye' to the proposed conduct?
- Organisational records showing employees attending a compliance program seminar or reading a compliance manual will be ineffective in establishing a corporate culture of compliance if the reality is that an employee has no recollection of the events or that the events made no impression.

Effective compliance systems for competition law risks by public agencies

There are numerous sources of information on what constitutes an effective compliance system or program. These include *Australian Standard AS3806* issued by Standards Australia and *Corporate Trade Practices Compliance Programs* March 1999 of the Commission. Professional sources of assistance include members of the Association of Compliance Professionals Australia Inc. and special legal advice from various law firms specialising in competition law and consumer protection law.

I urge those responsible for the effectiveness of their department's or agency's compliance systems to consider the following checklist or questionnaire.

Checklist/questionaire

1. *Can you show a commitment (though your department or agency) to compliance with competition laws?*

For example:

- Is there a genuine commitment by the departmental secretary or agency chairperson for the department or agency to comply with the requirements of the competition laws?
- What has the secretary or chairperson said and done on the issue to indicate to staff and to outside agents, his or her view on the compliance issue?
- Can the secretary's or chairperson's actions be properly characterised as 'leading by example' or are they better characterised as mouthing some platitudes (the 'do as I say not as I do' mentality)?
- Is there a competition law compliance committee reporting directly to the department's secretary or agency's chairperson or the board?
- Is competition law compliance a standing agenda item at executive or board meetings; or of the audit committee of the department or board?
- Is there a compliance manager or senior manager with overall, day-to-day responsibility for compliance?
- What resources have been committed for compliance with competition laws?

2. *Can you demonstrate through the Commonwealth's department or its agency a policy of compliance with the competition laws?*

For example:

- Is there a clear policy setting out the department's or agency's commitment to compliance with competition laws?
- How widely has the policy been distributed?
- How readily could relevant staff access the policy?
- How readily could the department's or agency's contractors, sub-contractors, agents or distributors access the policy?

3. *How do we demonstrate the Commonwealth's adoption (through its departments or agencies) of the principles of management responsibilities?*

For example:

- Are all managers aware of and responsible for compliance activities in their business unit?
- Are all managers also responsible for all staff in their business unit being aware of their (the staff's) compliance responsibilities?
- Are managers responsible for alerting departmental or agency heads of competing pressures, or conflicting priorities and incentives within the department or agency? Is this part of their performance appraisal?

4. *Have compliance activities been adequately resourced and compliance staff appointed with adequate authority to achieve outcomes?*

For example:

- Is the compliance system properly financed?
- Has the department or agency allocated other resources at an adequate level (e.g. personnel) focused on compliance? Manuals on compliance procedures? Internal and external support mechanisms and networks (including staff newsletters)?
- What about initial and ongoing training through seminars, classes or workshops, interactive computer compliance material, discussions with professional advisers?
- How is the compliance system reviewed or updated? How regularly?
- How are the outsourcing elements of the department's or agency's activities dealt with by the compliance system?
- Can we show that the department's contractors, sub-contractors, distributors or agents are aware of and obliged to follow the department's or agency's standards on compliance? And that they observe the department's or agency's commitment to compliance?
- What incentives or penalties are incorporated into outsourcing contracts to ensure compliance?
- Is there proper monitoring to ensure that the department's or agency's standards and obligations imposed are being observed by the third parties or agent?

Operational aspects of the compliance system

5. *Can you show that compliance issues are assessed properly?*

For example:

- Has a proper link been drawn between the requirements of the competition laws and the activities of the department or agency?
- Have the relevant personnel at risk of breaching the competition laws been identified, educated and trained? Has this been documented?

6. *Can you show that adequate records of compliance activities are being kept, that there is proper reporting of any compliance failures and how the compliance system is maintained?*

For example:

- Is there continual education and training to pick up new staff and update experienced staff?
- Is there a formal commitment to regularly monitor and evaluate the performance of the compliance system?
- Is the compliance system regularly reviewed or audited by people formally responsible for the day-to-day working of the systems?
- Are the reasons for any non-compliance identified and understood?
- Have steps been taken to identify and design measures to improve compliance?

7. *How do you show that the compliance system is accountable?*

For example.

- Have the reviews, audits or performance evaluations for the system been reported to the CEO, departmental secretary or agency chairperson or the board?
- Do job descriptions or duty statements include obligations for compliance?
- How are staff who breach the system dealt with?
- Are staff or managers who can demonstrate effective ongoing compliance by their business unit rewarded by the Commonwealth department or agency?

I note that chief executive officers of the Western Australian Government are required to enter into performance agreements with their minister. I understand that this obligation is set out in the WA *Public Sector Management Act 1994*. A proforma of the performance agreement for 30 June 1999 sets out under 'Part C — Financial Management' a requirement that as a CEO I will provide:

> ... confirmation of an audit of the agency's exposure to the competition laws and the implementation of an effective compliance program for identified high risk areas by 30 June 1999.

This requirement imposed in CEOs' performance agreements is clearly an important and commendable leadership signal from the leaders in the Western Australian Government, demonstrating the seriousness with which the Government views its obligation to comply with and manage the legal risks of exposure to the competition laws. It also helps to demonstrate a desire on the part of the WA Government to be accountable for its compliance objectives and activities.

Conclusion

By their nature it is likely that businesses or business activity undertaken by the Commonwealth Government or agencies will have a public interest component or underpinning rationale. It is also likely that taxpayers funds will be utilised at least to some degree in most if not all such business activities.

Commonwealth, state and territory governments and parliaments have enacted laws also in the public interest, to ensure that governments involved in businesses are subject to the same competitive disciplines as private sector businesses. The community would therefore expect that, at the very least, public sector businesses including Commonwealth public sector businesses comply with the law.

The community would also expect that the law is enforced even handedly and without fear or favour by the Commission. It seems only sensible therefore that Commonwealth departmental secretaries or agency CEOs provide a leadership role in actively ensuring, establishing or maintaining a culture of compliance with the requirements of Australia's competition laws to manage the legal risks of the Commonwealth Government's exposure to the competition laws.

In a more general sense it seems clear that creating a 'culture of compliance', to use the judicial terminology, starts at the top. Without strong leadership and commitment at the highest levels of an organisation it will not be possible to create an effective compliance program or system, let alone an organisational culture of compliance.

It is inevitable that the spotlight will focus on the leaders and senior executives if the effectiveness of a compliance program or organisational culture of compliance is being assessed. Ultimately, compliance focuses on the behaviour and choices of individuals when confronted by challenging choices. That is, choices or circumstances that require an individual to implicitly or explicitly consider 'whether the end justifies the means'.

It is at those critical decision-making moments that the context provided by an organisation's culture as well as the context of the individual's circumstances will be crucial in measuring the effectiveness of a compliance program or system. To borrow from the words of Dr David Kemp, achieving an organisational culture of compliance that is integrated with the performance of the organisation will require leaders who can establish a shared vision and sense of purpose, and inspire, coach and enable their achievement.

Consumer protection, advertising and the ACCC

Following is a summary of a presentation by Commissioner Sitesh Bhojani to the Australian Federation of Advertising Forum in Melbourne on 25 October 2001 and Sydney on 29 October 2001.

After outlining the aims and relevant provisions of the Trade Practices Act, Commissioner Bhojani demonstrated the interaction between advertising and consumer protection laws and some cases for which the law and advertising conduct have come into conflict.

Mobile phones

Nationwide News conducted a promotion in its newspapers and also in advertisements on television and radio offering a 'free' mobile telephone. However, as a condition of receiving the 'free'