
Guidance and information

ACCC Chairman, Professor Allan Fels, to step down 30 June 2003

Professor Fels will resign as Commission Chairman on 30 June 2003 to become Foundation Dean of the new Australia and New Zealand School of Government (ANZSOG).

ANZSOG is a major initiative by the governments of Australia, New Zealand, Victoria and Queensland in conjunction with nine university and business school members (ANU, Griffith, Melbourne, Monash, Melbourne Business School, New South Wales, Queensland, Canberra, Victoria University of Wellington).

Professor Fels said:

Whilst I would have otherwise been keen to continue as ACCC Chairman until June 2004, ANZSOG opens its doors to more than 100 Master of Public Administration students in May and if I am to be Dean, I need to be present from the start.

I decided not to seek reappointment because I have been a fulltime regulator since 1989. Also ACCC Chairmanship is a job which makes heavy demands and involves frequent absences from home which causes some family difficulties. I would like, however, to be able to do at least one more substantial job as part of my career and ANZSOG provides an exciting opportunity.

There has been a series of major challenges since 1989—making the Prices Surveillance Authority, then the Trade Practices Commission, more effective and visible; launching the ACCC and the Hilmer reforms; overseeing Goods and Services Tax transitional pricing. 2003 is a suitable time to leave with the ACCC in a strong position.

It is expected that after his resignation Professor Fels will continue to play an ACCC advisory role on a transition basis, and maintain his Australian chairmanship of the important OECD Trade and Competition Committee.

Professor Fels served as Chairman of the Prices Surveillance Authority from March 1989 until October 1992.

He served as Trade Practices Commission Chairman from July 1991 until November 1995.

Following the Hilmer report, Professor Fels was appointed as inaugural Chairman of the Commission in November 1995. This was formed from a merger of the TPC and the PSA. The *Competition Policy Reform Act 1995* extended the coverage of the Act to such new areas as the professions, state public utilities, agricultural marketing boards and unincorporated bodies trading within the states. An important activity of the newly formed body was to educate these sectors about the Act and to apply it. An access regime was introduced in Part IIIA of the Act.

There are currently 80 cases before the Federal Court of Australia. There were only five in the year Professor Fels became chair of the TPC in 1991. At the international level, he has been deputy chairman of the OECD Competition Committee and since 1996 co-chair of the Trade and Competition Committee, an important post for an Australian to hold. He is a member of the interim steering committee of the International Competition Network.

Professor Fels was also a part-time member of the Prices Justification Tribunal from 1973 until 1981; of the Prices Surveillance Authority from 1984–89; was Prices Commissioner Victoria 1982–91; and held a number of other part-time regulatory positions.

He was Professor of Administration at Monash University from 1985–96 and now will continue as Honorary Professor, Faculty of Economics and Business, a post he has held since 1996 (in addition to his new position as Professor at the University of Melbourne).

Country of origin guide for the food and beverage industry

The Commission recently issued guidelines on country of origin claims made by the food and beverage industry. They are to help food and beverage manufacturers, wholesalers and retailers when making country of origin claims.

Commissioner, Ms Jennifer McNeill, commented:

Consumers are increasingly aware of buying Australian products and have the right to be confident that claims made on food and beverage labels are accurate.

The guidelines result from extensive research, consultation and a cooperative approach between members of government and the private sector. They were produced by a working party, which was led by the Commission and included representatives of the Department of Industry, Tourism and Resources, AFGC, ACCI/Australian Made Campaign Ltd and ANZFA.

The guide is the third in a series of six Commission publications designed to help various industries comply with the Act's country of origin rules, and more specifically, provide guidance on the Commission's interpretation of defences set out in Part V, Division 1AA of the Act.

Division 1AA sets out what characteristics the goods must have to ensure that a claim about the country of origin does not amount to misleading and deceptive conduct under the Act.

The 'Made in Australia' defence, in Division 1AA, has two components:

- the goods must have been substantially transformed in the country claimed to be the origin
- 50 per cent or more of the cost of production must have been carried out in that country.

The 'Product of Australia' defence has two rigorous criteria:

- the country of the claim must be the country of origin of each significant component of the goods
- all, or virtually all, processes involved in the production or manufacture must have happened in that country.

The food and beverage industry—country of origin guidelines to the Trade Practices Act can be found

on the ACCC website or by contacting the ACCC Publishing Unit on (02) 6243 1143.

Fair and square: real estate industry guide

The Commission and the Real Estate Institute of Australia recently issued a guide for the real estate industry to help it understand the benefits and responsibilities associated with the Trade Practices Act.

The guide is for owners, managers and advisers to the real estate industry and includes an easy-to-understand summary which outlines the 'do's and don'ts' for the industry, and examples showing how the Act applies to various market circumstances faced by real estate agents.

In the highly competitive real estate market, it is sometimes tempting to cut corners in an effort to 'go one better' than a competitor. Knowing their rights and obligations under the Act will help those in the real estate industry to be professional when dealing with other businesses and avoid problems.

The release of the guide builds on the success of *Real estate agents and the Trade Practices Act* which was launched earlier in 2002. Thirty-five thousand of these free brochures were distributed to the real estate industry nationally through the REIA.

To obtain copies of *Fair and square* (\$10) and *Real estate agents and the Trade Practices Act* (free) contact the ACCC Infocentre on 1300 302 502 or visit the ACCC website.

Retail tenancy round table

In September 2002 the Commission convened a round table meeting of key retail leasing industry stakeholders, including landlords, industry associations and state and Commonwealth regulators. The meeting was held in response to ongoing retail tenancy issues raised with the Commission by both tenants and landlords.

A significant number of complaints received by the Commission in relation to unconscionable conduct concern the relationship between retail tenants and landlords. These complaints are about disclosure of information between landlords and tenants, particularly turnover figures, the issues facing sitting tenants when negotiating lease renewals, and market rental valuations. The Commission has already taken a number of cases dealing with commercial leases. The round table discussion was convened as a way to explore options for addressing these issues.

Also discussed were the interaction of retail tenancy issues with the Trade Practices Act, current state regulations, and the potential for a nationally consistent approach to retail tenancy regulation.

Several positive initiatives were identified, particularly the steps taken by the Australian Retailers Association (ARA) and the Shopping Centre Council for adopting a nationally uniform approach to casual mall leasing.

Guide on telecommunications dispute resolution processes

On 10 October 2002 the Commission issued a guide on the resolution of telecommunications access disputes. The guide describes the Commission's powers, and its approach to exercising them.

Release of the guide follows a period of public consultation on a draft of the guide. The Commission also released a discussion of its response to issues raised by submissions on the draft guide.

Commission Chairman, Professor Allan Fels, commented:

The timely resolution of telecommunications access disputes continues to be of critical importance to the development of competition in the telecommunications industry.

The guide incorporates incremental changes to the ACCC's process, consolidating the lessons learned by the ACCC in conducting telecommunications arbitrations since 1997, legislative changes to the access regime, and the key findings of an independent review by Phillips Fox and Resolve Advisors of the ACCC's processes for handling telecommunications access disputes.

The Commission is also seeking further industry comment on a proposed 'standard form' confidentiality undertaking for arbitration processes.

Commission Chairman, Professor Allan Fels, also said:

The release of the proposed confidentiality undertaking in draft form allows for industry consultation on the undertaking that the ACCC will use when sharing 'confidential' information between the parties in dispute. Disputes, between the parties to an arbitration, about the nature and extent of such undertakings have previously contributed to delays in the completion of arbitrations.

The Commission is currently considering submissions on the guide before finalising the undertaking and releasing it as an addendum to the guide.

The guide, the Commission's response to submissions, and the proposed confidentiality undertaking will all be available from the ACCC website at <<http://www.accc.gov.au>>.

Research report into competition and consumer issues in Indigenous communities

On 18 October the Commission issued a research report *Competition and consumer issues for Indigenous Australians*.

Commission Chairman, Professor Allan Fels, said:

The report by the Centre for Aboriginal Economic Policy at the Australian National University is part of the ACCC's approach to trade practices compliance and awareness issues within Indigenous communities.

It provides better awareness of relevant Indigenous cultural issues and market practices which affect Indigenous communities.

CAEPR researchers reviewed Australian and overseas literature and comment on the role of stores in remote Indigenous communities and the Indigenous visual arts industry.

While the views expressed in the report are those of the researchers and not necessarily of the ACCC, the report will be valuable in helping the ACCC, and other consumer agencies, develop future Indigenous strategies. Early phases of the research have already assisted in the development of *Storecharter—a service charter serving remote and Indigenous communities* and in the development of community-focused education materials. It is hoped that the report will stimulate further research in this area.

Visits by ACCC staff to remote communities in central and northern Australia have indicated that Indigenous consumers and businesses are often unaware of their rights and obligations under the *Trade Practice Act 1974*. This reflects the broader need for information by business and consumers in rural and regional communities which gave rise to the ACCC's Rural and Regional Program.

The ACCC has responded to this need by developing targeted educational materials and establishing the Regional Network which is comprised of more than 450 regional supporters.

The Regional Network has been established to improve access for people in country Australia to relevant and topical trade practices information.

Copies of the report are available from the ACCC for \$25 or may be downloaded for free from the ACCC website at <<http://www.accc.gov.au>>.

Final decision on postal prices

On 25 October 2002 the Commission announced its final decision not to object to Australia Post's request to increase the price of the basic postage stamp from 45 to 50 cents.¹

The increase, effective from January 2003, will raise the price of the basic postage stamp rise for the first time in 10 years. It was found that ordinary small letters are currently priced below cost.

The Commission also decided not to object to the proposed price structure for bulk PreSort mail.

The Commission expects the decision to enable Australia Post to achieve a reasonable rate of return over the five-year period to 2006–07. Australia Post had argued that the increases were necessary because of falling volume growth, reduced opportunities for productivity gains, the need to fund its community service obligation and the need to ensure a commercially viable rate of return.

The Commission issued a preliminary decision in September, in which it opposed Australia Post's initial proposal to increase the prices for large letters and bulk PreSort mail.

Australia Post subsequently lodged a revised submission on 7 October 2002. This document recognised the Commission's concerns and proposed prices consistent with the general position expressed in the Commission's preliminary decision.

The final decision maintains the most appropriate balance between the interest of consumers and the sustainability of basic postal services throughout Australia including obligations in rural and remote areas.

Throughout the review the Commission considered numerous submissions from interested parties, including major users of mail services, retailers and private citizens. It also held a series of community forums around Australia and a technical forum in Melbourne.

The final decision should be read in conjunction with the preliminary view, which forms an appendix to the document. It is available on the ACCC website at <<http://www.accc.gov.au>>.

Price displays and advertising in the automotive aftermarket industry

Price is one of the most important influences on a consumer's purchasing decision.

Some businesses attempt to get a step ahead of their competitors by advertising prices that exclude the GST. This puts them at risk of breaching ss. 52, 53(e) and 53C of the Trade Practices Act and similar provisions of state fair trading laws, which prohibit misleading and deceptive conduct and the making of false or misleading representations about prices.

Price advertising since the GST has been a primary focus for the Commission. The Commission firmly believes that when prices are displayed or advertised they should be GST-inclusive. Some businesses have wanted to use GST-exclusive prices in their price displays or advertisements, so their prices seem lower. Doing this means that buyers only receive part of the price information. As such, sellers who advertise GST exclusive prices run the risk of misleading consumers about the total price to be paid and therefore breaching the Act.

¹ Under the Australia Postal Corporation Act, some postal services are 'reserved' to Australia Post. This means that Australia Post has the exclusive right to provide them. In particular, Australia Post has an exclusive right to deliver letters within Australia and to issue postage stamps.

There are several exceptions to the reserved services. Most notably, letters weighing more than 250 g are not reserved, nor are letters that are carried for a charge more than four times the basic postage rate. Since the current postage rate is 45c, this means that letters carried for a fee of more than \$1.80 are not reserved.

Australia Post also has a universal service obligation. This means that it must carry and deliver standard letters at a uniform postage rate—currently 45c—to anywhere in Australia.

In April 2002 Australia Post lodged with the ACCC a draft price notification to increase the cost of various postal services from January 2003. After the ACCC issued a preliminary view on the draft notification, Australia Post revised its proposed prices.

The Commission generally urges all sellers to adopt a level of best practice when choosing to advertise prices. The Commission considers best practice in price advertising means providing all consumers, whether they be business or private, with a high level of disclosure to help them make informed pricing decisions. Best practice advertising also provides a level playing field for all competitors across all markets and industries. As such, the Commission's preferred approach is for all prices to be advertised on a GST-inclusive basis.

Businesses that choose to advertise on a GST-exclusive basis without adequate disclosure run the risk of misleading consumers and contravening the Act. A competitor who uses GST-inclusive pricing and feels disadvantaged by those who use GST-exclusive pricing may also take their own private action under the Act. Indeed, many cases that are instituted for breach of the Act are private actions.

The automotive aftermarket industry is not being singled out by the Commission; rather the Commission is responding to complaints it has received about pricing in this industry. Recently the Commission published guidelines for all-inclusive pricing in the airline and travel industries. The Commission is also preparing a guide on all-inclusive advertising in the motor vehicle industry.

Businesses that insist on using GST-exclusive prices when supplying to other businesses are encouraged at the very least to make the price basis absolutely and prominently clear, and to clearly state that GST-exclusive prices would generally only be available to businesses. They would also be wise to use GST-exclusive prices in conjunction with GST-inclusive prices.

The Commission's view is that in any industry suppliers must remember that if a price is advertised or promoted, it must be clear to the buyer exactly how much he or she will be expected to pay.

Further information about advertising in general can be obtained from the ACCC Infocentre on 1300 302 502 or by visiting the ACCC's website at <<http://www.accc.gov.au>>.

Australian presidency of IMSN

The Commission currently holds the presidency of the International Marketing Supervision Network (IMSN) (renamed, from 1 January 2003, International Consumer Protection and Enforcement Network (ICPEN)) which is a network of consumer protection enforcement agencies from more than 31 countries around the world. The IMSN was established in October 1992 to help prevent and redress cross-border deceptive marketing practices. The network also aims to find ways of cooperating to tackle consumer problems connected with cross-border transactions in both goods and services and to help ensure exchanges of information among participants for mutual benefit and understanding.

The network's key activities include:

- joint investigations to enforce the rights of consumers in cross-border transactions
- identification of major obstacles to effective cross-border consumer protection law and enforcement
- sharing of information about consumer protection issues and complaints
- encouragement of closer links between member agencies
- showcasing innovative consumer protection law and/or enforcement.

IMSN members include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Latvia, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, UK and USA.

First Australian meeting of the IMSN

In September 2002 the Commission hosted the first meeting of the IMSN in the southern hemisphere. More than 60 participants attended the three-day meeting which focused on key issues in consumer protection enforcement, and allowed sharing of 'trade secrets' in combating fraudulent and deceptive conduct targeted at consumers around the globe.

Address by Justice Catherine Branson

Keynote speaker, Justice Catherine Branson of the Federal Court of Australia, presented a paper entitled 'Judicial views on cross-border consumer protection enforcement'.

Justice Branson outlined the difficulties faced in cross-border law enforcement particularly the extent to which e-commerce calls for new ways for dealing with old problems. Her paper noted that, although the concept of territoriality is deeply embedded in the laws of most countries, in Australia (as in other countries) there is no constitutional or other limit on the power of the parliament to enact a law having extra-territorial operation. Accordingly, she identified the real problem of cross-border consumer protection as not being simply related to the powers of parliament to pass relevant laws but to the capacities of authorities to enforce them.

She considered that e-commerce causes jurisdictional problems because it is difficult to localise Internet misconduct. Physical borders do not function in cyberspace so as to alert individuals to the particular legal regime to which they have become subject. She believes that there does exist a commonality in the approach of the courts in western democracies to e-commerce. There is general international agreement that judgments of foreign courts that are part of a basically fair judicial system, and that are founded on an acceptable basis of jurisdiction over the defendant and the subject matter, ought to be enforced and recognised.

Justice Branson noted that there is great pressure to find effective ways to regulate the large and growing area of economic activity encompassed in e-commerce, and commented that networks such as the IMSN would seem to provide an ideal basis for the development of public regulatory frameworks.

International Internet sweep days

Since 1997 the Commission has coordinated the International Sweep Day which is a joint compliance activity undertaken by IMSN members. Various websites are 'swept' (or surfed) to look for specific types of conduct.

A prime aim of the sweep is to educate businesses using the Internet about consumer protection laws and to deter those who are violating laws from continuing to do so. Low cost and ease of access make the Internet an attractive medium for entrepreneurs who may be starting up their first business and may not be aware of their legal

obligations. Equally, unscrupulous traders take advantage of the notion of the Internet being an 'unpoliced' forum for trading.

Websites that are 'swept' are sent educational or warning e-mail messages about their obligations under the Trade Practices Act or other relevant legislation. In previous years sweep days have focused on a variety of topics including get-rich-quick schemes, miracle health cures and compliance with OECD guidelines on consumer protection.

At the Sydney meeting a press conference was held at which the results of the January 2002 sweep day on misleading and deceptive claims about health products were revealed. The sweep identified more than 1400 suspect websites globally. Of these, nearly half used testimonials as their main way to convince consumers to purchase their products. Of the testimonials used, only a third claimed to be from relevant experts. Only 37.7 per cent of the suspect sites mentioned clinical studies.

As a result 18 companies are facing legal action, and more than 200 investigations are still running in 19 countries that participated in the Internet sweep.

In Australia, with the help of state fair trading authorities and health commissioners, the Commission has reached out-of-court settlements with:

- a business based in Sydney promoting pheromone products claiming the benefits of increased eye contact, smiles, dates, sex, and self-confidence
- a Victorian business promoting the use of magnetic fields and colloidal silver suspended in water to cure AIDS and boost the immune system
- a Perth business promoting lamps made from salt crystals as being 'used by health practitioners for many years to enhance immune systems', when this claim could not be substantiated
- businesses in New South Wales and South Australia promoting magnets and magnetic devices as effective in treating headaches, back injuries, circulation problems, insomnia, arthritis and sprains
- a Melbourne business claiming to test, diagnose and treat ageing, thereby reversing the ageing process
- a Victorian business marketing a multi-coloured shirt claimed to relieve stress, make the wearer more intelligent and perceptive, improve

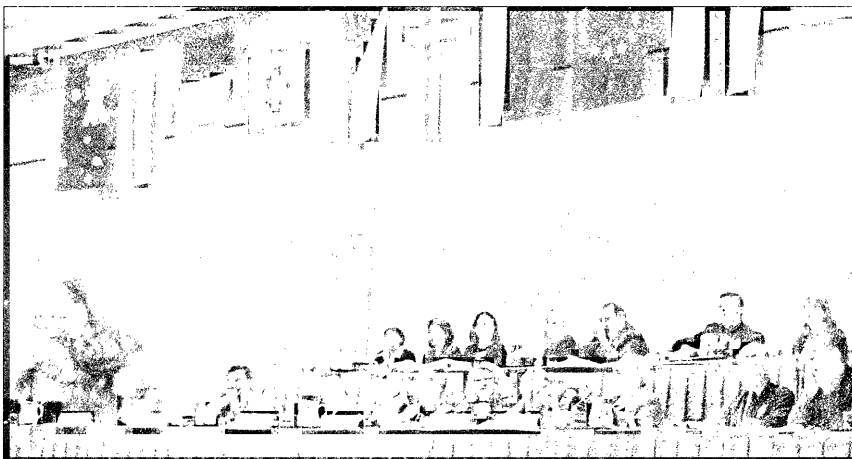
concentration, allow the wearer to continuously exercise, and stimulate and strengthen the immune system

- a New South Wales business promoting computer software designed to assist visualisation and affirmation techniques, claimed to treat disease
- a Queensland business promoting herbal products for 'curing colds overnight', and curing hangovers, morning sickness, and stomach ulcers, as well as adjusting menstruation cycles to make them more regular and reversing the effects of osteoarthritis
- a Queensland business promoting colloidal silver as being a treatment for gastritis, malaria, parasitic infections, psoriasis, and yeast infections
- a New South Wales business promoting a slimming device claimed to, for example, 'tone your muscles in a one-hour session (while laying down) to be equivalent to a seven-hour workout in the gym'.

All representations have been removed from the website entirely or altered after proposed court action by the Commission. Some websites were deleted from the Internet entirely without any further action. The Commission also has cases still running. If the concerns are not addressed satisfactorily, it will take the matters to the Federal Court.

Similar actions are taking place in countries all around the world.

The Sydney meeting of the IMSN also provided the opportunity to further plan for the 2003 sweep day, which will seek to have similar outcomes as the 2002 sweep in increasing consumer confidence and demonstrating an active presence of authorities in the Internet space.



Lodging your cross-border e-commerce complaints

IMSN participants took the opportunity to launch a new and improved version of the cross-border consumer protection complaint website <<http://www.econsumer.gov>>. The multilingual website, originally launched in April 2001, was developed in response to the challenge of multi-national Internet fraud.

The website features an online complaint form, provides general information and tips about consumer protection in the on-line environment and contact information for all IMSN member agencies. So far, more than 2500 consumer complaints on cross-border e-commerce have been received since the launch. These provide IMSN members with valuable information about trends in Internet conduct, and provide the basis for enforcement action in particular cases.

Looking forward

One of the key priorities of the IMSN in the next 12 months is to increase the number of multilateral enforcement actions in the field of cross-border consumer protection. The Commission will be hosting another meeting of the IMSN in April 2003, which will provide another opportunity for consumer protection enforcement agencies to plan offensives against unscrupulous traders around the world.