

## Boost in funds triggers more investigations

Since the boost last year in ACCC funding to set up a dedicated Professions Unit, the number of investigations involving professionals and professional associations has risen dramatically.

The ACCC received \$1 million in extra funding, and now has the resources to pursue those professionals who have little regard for the law.

The vast majority of professional people and their representative bodies comply with the law, but there are occasions when appropriate action must be taken.

In 1995 the Trade Practices Act was changed to apply not only to professionals in a corporate business structure, but also to individuals. The area of the Act that was extended to include both incorporated and unincorporated professionals deals with anti-competitive conduct, such as fixing prices and sharing markets—practices which result in less choice and higher prices for consumers.

The ACCC then conducted a concentrated education strategy for the professions about their rights and obligations under the Act. This included publicity, publications, seminars and speeches, supplemented by an extensive educational program by private sector law firms and professional associations.

The message for professionals was that the ACCC is applying the Act to the professions in the same way as for all other businesses.

In the past few years the ACCC has taken action against different professional groups for breaching the Act.

This includes court actions against the Australian Society of Anaesthetists and four NSW anaesthetists, the AMA in Western Australia (both of which dealt with allegations of price fixing), and against three Rockhampton obstetricians, which is currently in court.

The ACCC instituted proceedings in October 1997 alleging that a group of anaesthetists at three private hospitals had reached an agreement to charge \$25 per hour for on-call services. The ACCC also alleged certain anaesthetists reached an agreement to tell hospital administrators that, unless the hospital agreed to pay for the supply of on-call services, they would not supply such services (a boycott agreement). The anaesthetists and the Australian Society of Anaesthetists gave undertakings to the court that they would not engage in similar conduct in the future and the matter was settled.

The ACCC currently has several matters in court relating to breaches of the misleading and deceptive conduct provisions of the consumer protection provisions of the Act by various health funds.

Some types of conduct by professionals and professional associations can raise anti-competitive concerns.

### Reserving specific work for specific professionals

Some State Governments and/or professional associations have considered introducing regulations to restrict types of work to particular groups of professionals. That is, reserving entire fields of activities to a particular group of professionals which limits competition with other professionals. For example, only lawyers are allowed to do conveyancing work in some States thereby restricting licensed conveyancers from providing these services in competition with lawyers. The ACCC's concern is that these sorts of restrictions may prevent competition from other categories of professionals who are adequately trained and/or qualified to provide such services.



## Entry restrictions

Entry restrictions can be defined as regulating entry into the market,

specifically by imposing educational and competency standards, licensing and certification requirements, and restricting entry by foreign professionals or para-professionals.

For example, the ACCC has investigated allegations that the Royal Australasian College of Surgeons restricted entry to advanced medical and surgical training and allegations that this restriction breached the Act. Following the investigation, the college applied for authorisation of its processes in selecting, training and examining surgical trainees; accrediting hospital posts as being suitable for training positions; and assessing the qualifications of practitioners trained overseas.

### Authorisation:

Sometimes the ACCC will authorise corporations or organisations to enter anti-competitive contracts or arrangements if the public benefit outweighs the anti-competitive detriment.

## Recommended fee schedules

The ACCC has consistently taken a strong stand against recommended fee schedules issued by professional or trade associations. The inevitable purpose of issuing fee schedules is that the association expects many, if not all, of its members to follow the recommendation. This could constitute an anti-competitive agreement.

### The AMA's recommended fee schedules

The ACCC acknowledges that the AMA publishes a recommended fee schedule. The only reason why the ACCC has not taken action against the AMA for publishing this schedule is because there does not appear to be evidence that the association expects its members to adhere to it. However, if this were to change in the future, the ACCC would investigate. This has been acknowledged by the federal AMA, which has stated, 'Further problems could occur with the ACCC if there was greater adherence to the AMA fee' (Gap insurance: bridging the gap without contracts, AMA Federal Secretariat, Canberra, April 1999 found at <<http://www.ama.com.au>>).

### Joint negotiations

Generally professional associations are not allowed to negotiate fees on behalf of their members with any buyer of their members' services. Professional associations can advise their members, but the final decision about the appropriate level of fees is up to the professional and their client. Practitioners and their associations need to be aware that there is a fine line between discussing or consulting on the one hand and negotiating on the other.

### Visiting medical officer contracts

Doctors considering Visiting Medical Officer contracts with hospitals would be able to approach their representative organisation for advice about the contract's terms or the remuneration offered, but the representative organisation could not negotiate on behalf of the doctors with the hospital for better terms.

## Prohibition on advertising or promotion

If the form and content of advertising material is restricted beyond the prohibitions in the Act, it may prevent consumers from receiving useful information about particular professional services. Some state governments, in the aftermath of concerns about rising insurance premiums and pay-outs, are keen to ban or restrict advertising of legal services and to curb contingency fees. The ACCC believes that as long as it is honest and accurate, advertising helps consumers make a genuine and informed choice about professional services.

Professional services are now advertised over the Internet. Even if advertising restrictions were imposed in one state, it would not stop consumers in that state from viewing advertising from professionals in other states.

International studies have shown that bans on advertising limit price competition by lawyers and lead to higher prices for legal services: when advertising bans are lifted prices have fallen sharply.

The Commission considers that all professionals, including doctors, lawyers and engineers and their associations, should be treated the same as others engaged in supplying services and goods to the public and who choose to operate a business.

It is important that professionals and their associations consider their trade practices obligations and not engage in anti-competitive conduct.

