

However, the progress of this Bill was interrupted with the change of government late last year.

At present it is unclear what legislative changes will be made by the new Labour/Alliance Coalition Government although the Labour Party indicated in its pre-election policy statements that it would bring s. 36 and s. 47 of the Commerce Act into line with the Trade Practices Act.

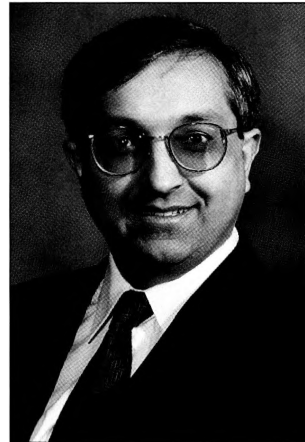
## The way ahead

It looks promising that further harmonisation of the competition laws of New Zealand and Australia could occur in the near future. If the new New Zealand Government delivers on its election policy then the most fundamental differences between the Trade Practices Act and the Commerce Act will be reconciled.

If this is achieved, other advances can be considered. A trans-Tasman court or tribunal could be enormously beneficial in ensuring the consistent regulation of trans-Tasman competition laws and would have the potential to considerably add to business certainty while reducing compliance costs. Similarly, it would be beneficial for the ACCC and Commerce Commission to work together more closely.

Most importantly, the harmonisation of competition laws between Australia and New Zealand would be a huge symbolic step. The stage would be set for further developments that could further improve trans-Tasman competition regulation and bring benefit to the businesses and consumers of both countries.

## The professions and whistleblower protections



*Are whistleblowers encouraged within the professions? If not, should they be and how can this be done, given the professions are largely self-regulated?*

*These questions and many more were raised in a speech by Commissioner Sitesh Bhojani at*

*the Australian Institute of Criminology conference, Crime in the Professions. A summary of his speech follows.*

Because the community regards law and order as fundamental, compliance with the law is of great public interest. This extends beyond just the criminal law to include, for example, compliance with Australia's competition and consumer protection laws.

Given their elevated public standing, the professions have an obligation to encourage compliance within their occupations.

Generally, a profession can be regarded as a disciplined group of individuals with high ethical standards and with an understanding that the responsibility for the welfare, health and safety of the community should take precedence over other considerations.

Therefore, ideally the aims of the community and the professions are complementary.

Many of the relationships between professional and client can be seen as either fiduciary relationships or with fiduciary duties superimposed on them. (Fiduciary duties arise from a relationship of ascendancy or influence by one party over another, or dependence or trust on the part of that other.)

But realistically, the professions are made up of human beings and therefore it is inevitable that a small percentage may engage in illegal conduct.

While whistleblowers are not specifically protected under the terms of the Trade Practices Act, they are by default under s. 162A which creates a criminal offence for intimidation. However, the provision has not yet been tested before the courts.

In the absence of such specific legal proceedings, the Commission has nevertheless created an environment that encourages genuine complaints, preserving confidentiality and offering a leniency or indemnity policy. Within that context, it encourages people who may have contravened the Act to come forward and has, on numerous occasions, granted an indemnity from legal proceedings to people who provide full and frank disclosure.

The Commission currently deals with the issue of leniency and indemnity for individuals or corporations on a case-by-case basis. It has published flexible guidelines on the issue because the policy continues to evolve.

But do the professions themselves support and encourage whistleblowing? Given the importance of self-regulation, **how** do professions or their regulating associations encourage whistleblowing from within the profession and support the whistleblowers themselves?

Governing professional associations have a major role in ensuring the public's confidence by adopting a formal whistleblowing policy. That is, a clear statement of the professions' commitment to comply with applicable laws and to report conduct that might breach those laws. In fact, such a leadership approach is consistent with a profession's core attributes — an emphasis on ethical behaviour and putting the community's welfare ahead of other interests. Views of this kind have been expressed in relation to the conduct of the accounting and legal professions.

But actually implementing such a policy can give rise to some possibly competing tensions such as:

- demand on resources;
- guarantees of confidentiality;
- mechanisms for keeping the whistleblower informed of investigation outcomes;
- incentives to come forward;
- mechanisms for distinguishing genuine from non-genuine whistleblowers;

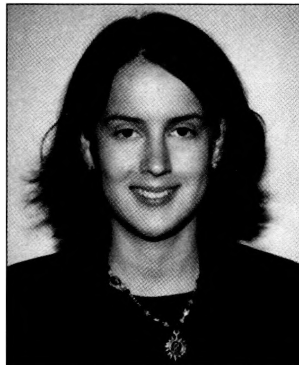
- whether the reporting or disclosure should be internal or external (if external who would the disclosure be to — an appropriate enforcement agency or the media or other person/body); and
- mechanisms for reviewing the policy on a periodic basis.

The challenge for the professions is to take a leadership role, in the public interest, in adopting and publicly committing the profession and its members to support a whistleblowing policy, including protection of whistleblowers.

Leading by example would clearly demonstrate the concern of professionals for high ethical standards and putting the welfare of the community before other interests.

A full copy of the speech is available on <http://www.accc.gov.au>.

## Advertising on the Internet



*The following article by Madonna Parker of the Commission's Brisbane office discusses the risks involved in advertising on the Internet and how the Trade Practices Act is applied.*

The Internet has been wholeheartedly adopted by much of the business community as an essential business tool. Recently, concerns have been raised about how to regulate the conduct of businesses using the Internet to protect consumers from any adverse business activities.

Misleading advertising is generally associated with print, television or radio advertisements, written and oral representations and audiovisual promotions. Although not a new practice, misleading advertising has migrated to a new medium, the Internet.