

The Monash Health Law and Society Group and the
Monash School of Public Health and Preventative Medicine
present

“The Advertising of Therapeutic Goods and Services (and its regulation)”
Melbourne - 8 September 2017

**Is the multi-regulator model for Australian Consumer Law
effective or useless in maintaining and/or enforcing standards for
advertising health, medical or therapeutic goods and services?**

By Sitesh Bhojani¹ and Jodie Valadon²

INDEX

CONTENTS	PAGES
Paper	1 - 17
Annexure A: Sealed Orders in Noone, Director of Consumer Affairs v Operation Smile (Australia) Inc & Ors [2012] VSCA 91	18 - 30
Annexure B: Sealed Orders in Director of Consumer Affairs v Gibson (No 2) [2017] FCA 366	31 - 38

Introduction

1. Australia is a federation. That important fact must be borne in mind when considering the effectiveness of a regulatory scheme. In particular, where the Commonwealth does not have Constitutional power over the persons subject to the regulation, or subject matter of the regulation. For example, the regulation of practitioners providing health and medical services and their conduct towards customers, clients or patients.

¹ Barrister – Lyneham, Canberra. sitesh@bhojani.com.au; [Owen Dixon Chambers East](#), Melbourne sbhojani@vicbar.com.au Formerly Commissioner Australian Competition and Consumer Commission (1995 - 2003), responsibilities included enforcement, health sector and the professions.

² [Research Assistant](#) – Owen Dixon Chambers East; Graduate Diploma in Legal Practice (Practical Legal Training), College of Law, Melbourne.

2. An example of law reform endeavouring to deal with Constitutional limitations is Consumer law reform. Consumer law reform in 2011 led to the enactment of uniform general consumer laws at the Commonwealth, State and Territory level from laws that the High Court had previously described as “a measure of concurrent and overlapping operation of the normative structure of the federal and state laws dealing with misleading or deceptive conduct in trade or commerce and the remedies for such contraventions.”³ The uniform nature of Australia’s generic consumer laws means that jurisprudence developed through litigation in any one State or Territory will be applicable across Australia. This is certainly an improvement from the past. Multiple Australian Consumer Law (ACL) regulators each administering and enforcing their own version of the uniform law and co-ordinating their activities to avoid duplication also means greater availability of compliance and enforcement resources for consumer laws across Australia. Again, in general, this is a good outcome for the Australian community.
3. The general consumer law regulators are supplemented by various industry or sector specific regulators. Relevantly, these include, the [Therapeutic Goods Administration \(TGA\)](#) and the [Australian Health Practitioner Regulation Agency \(AHPRA\)](#). The TGA is a Commonwealth agency which is responsible for regulating the supply, import, export, manufacturing and advertising of therapeutic goods. It does not regulate healthcare practitioners, their services or practices.
4. The Commonwealth Parliament does not have constitutional competence to regulate health practitioners. An [Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions was signed by the Council of Australian Governments](#) (COAG) in March 2008. All States and Territories became part of the new scheme from 18 October 2010. The scheme was implemented by a suite of uniform state legislation that was initially introduced in Queensland as the *Health Practitioner Regulation National Law Act 2009 (Qld)*. The [Health Practitioner Regulation National Law \(the National Law\)](#) is Schedule 1 to the legislation.⁴ Initially, the National Law transferred responsibilities for registration, accreditation, performance and conduct of a

³ [Houghton -v- Arms \[2006\] HCA 59](#); (2006) 225 CLR 553 at 563 [25].

⁴ [Health Practitioner Regulation National Law Act 2009 \(Qld\)](#).

practitioner from 80 state and territory boards to 10 national boards, (one for each of the registered professions). Currently the scheme regulates 14 professions.⁵

5. AHPRA supports the national boards by providing secretariat services, publishing registers of health practitioners, managing registrations, managing investigations and liaising with health complaints entities.
6. AHPRA, in partnership with the national boards, aims to protect the public from practitioners whose conduct falls below the standards set by the national boards. It also facilitates health practitioner mobility across Australia, the provision of high quality education and training of health practitioners, and rigorous assessment of overseas trained practitioners.⁶
7. Given their relatively narrower and more focused role for specific industries or sectors of the economy one could reasonably assume they would be able to provide a greater level of compliance and enforcement activity for particular industries or sectors. This should also be a good outcome for the Australian community.
8. Whether the good outcomes for the Australian community that:
 - (a) the “one law – multiple regulator – multiple courts and tribunals” model for the ACL;combined with
 - (b) the TGA as the regulator for the supply and advertising of therapeutic goods; and
 - (c) the AHRPA (and National Boards) as the regulator of healthcare practitioners, their services and practices

potentially provides is being delivered may depend on a number of other factors rather than the virtue or otherwise of the ACL “one law – multiple regulator” model, the model for

⁵ 14 Registered professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, nursing and midwifery, occupational therapy, optometry, osteopathy, pharmacy, physiotherapy, podiatry, psychology. A 15th paramedicine is being added as a registered profession. See www.paramedics.org/registration.

⁶ [AHPRA Annual Report 2015/2016 at p1.](#)

regulation of therapeutic goods and the streamlining of regulation of health practitioners under the National Law.

9. These factors include:
 - (a) the resources available to the regulator to achieve voluntary compliance (through guidelines and educative measures);
 - (b) the resources available to the regulator to investigate non-compliance and to take enforcement action for non-compliance;
 - (c) the investigative powers available to the regulator in its investigation of non-compliance;
 - (d) the investigative and enforcement culture of the regulator;
 - (e) the laws available for enforcement by relevant industry/sector specific regulators;
 - (f) the remedies for contravention of industry specific laws; and
 - (g) the courts or tribunals before which matters can be taken.
10. The effectiveness or otherwise of regulation maintaining and/or enforcing standards for advertising health, medical or therapeutic goods or services relies on much more than the one-law multi-regulator model for the ACL.

Representations or conduct relating to Health and Medical Benefits

11. Establishing that advertising or discussions in consultations conveys false or misleading representations or otherwise constitutes misleading or deceptive conduct requires the following considerations:
 - (a) Is the advertisement of therapeutic goods and services or the discussions in consultations accurately described as conduct “in” “trade or commerce”?
 - (b) Does the advertising convey a representation?
 - (c) Is the representation false or misleading and deceptive?
 - (d) Is the representation in relation to future matters?

Is the advertisement of therapeutic goods and services or discussions in consultations accurately described as conduct “in” “trade or commerce”?

12. As defined in the [ACL](#), “trade or commerce” refers to conduct within Australia or between Australia and places outside Australia and includes any business or professional activity (whether or not it was carried out for profit). Thus, advertising or supporting material for the purposes of promotion for sale of therapeutic goods and the business or professional activities of supplying therapeutic services in Australia, by Australian businesses and health practitioners would fall within this realm of conduct.⁷
13. “Conduct” or “engaging in conduct” is defined in s 4(2) of the [Competition and Consumer Act 2010 \(Cth\)](#) (CCA), and means the doing or refusing to do any act, making a contract or arrangement giving effect to a provision of a contract or arrangement, arriving at an arrangement, giving effect to a provision of an understanding, and giving or acquiring a covenant. The term “engaging in conduct” has the same meaning as “conduct”.⁸ It is important to bear in mind that “conduct” is not confined to “representations”.⁹

Does the advertising convey a representation?

14. It can be critical to identify from the words or images used in an advertisement or other communications what representations have been conveyed.¹⁰

⁷ [Australian Federation of Consumer Organisations Inc v Tobacco Institute of Australia Ltd \[1991\] FCA 164](#); (1991) 27 FCR 149 at 155-157; Also see [Shahid v Australian College of Dermatologists \[2008\] FCAFC 72](#); (2008) 168 FCR 46; [Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations \[1992\] FCA 962](#) (FC); (1992) 38 FCR 1 at 12 to 16; 23 to 25 and 40 to 44.

⁸ Section 4(2) of the [Competition and Consumer Act 2010 \(Cth\)](#); [ACCC v CG Berbatis Holdings Pty Ltd \[2000\] FCA 2](#); (2000) 96 FCR 491.

⁹ [Campbell v Backoffice Investments Pty Ltd \[2009\] HCA 25](#); (2009) 238 CLR 304 at 341 [102]

¹⁰ [Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc \[1992\] FCA 962](#); (1992) 38 FCR 1 at 4 to 12; 25 to 36 and 44 to 65; and [Noone, Director of Consumer Affairs Victoria v Operation Smile \(Australia\) Inc and Ors \[2012\] VSCA 91](#) at [55] to [134].

Is the representation false or misleading and deceptive?

15. Conduct is misleading or deceptive under s 18 of the ACL if it induces or is capable of inducing error.¹¹ Conduct is likely to mislead or deceive if, at the time the conduct occurred, there is a reasonable or less remote chance or possibility of it being misleading or deceptive regardless of whether it is less or more than 50%.¹²

Is the representation in relation to future matters?

16. Where a representation is posed as a prediction, promise or opinion that relates to future matters, it can amount to misleading and deceptive conduct if the party responsible for the representation lacks reasonable grounds for making the representation.¹³
17. Misleading and deceptive conduct of this nature includes:
- (a) representations where the party making the prediction either knew it to be false or made it with disregard as to whether it was true or false;¹⁴
 - (b) where factual assumptions that are incorrect are relied upon to make a statement of opinion;¹⁵ and
 - (c) where a representation is a promise with respect to a future matter, or the subject matter is a prediction, for which the party making it has no reasonable grounds, unless they can establish that the representation was made on reasonable grounds.
18. Thus, the test is to look to the persons to whom the representation was directed and consider whether any members of that class of person would reasonably understand the statement to be one of fact or opinion.¹⁶

¹¹ [ACCC v TPG Internet Pty Ltd \[2013\] HCA 54](#); (2013) 250 CLR 640.

¹² [Global Sportsman Pty Ltd v Mirror Newspapers Ltd \[1984\] FCA 167](#); (1984) 2 FCR 82.

¹³ s 4 of the [ACL](#).

¹⁴ *Thompson v Mastertouch TV Service Pty Ltd (No 3)* (1977) 29 FLR 270; 15 ALR 487; [TN Lucas Pty Ltd v Centrepoint Freeholds Pty Ltd \(1984\) 1 FCR 110 at 116-117](#).

¹⁵ [Madden v Seafolly Pty Ltd \[2014\] FCAFC 30](#).

¹⁶ [Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc \[1992\] FCA 962](#); (1992) 38 FCR 1; [Seafolly Pty Ltd v Madden \[2012\] FCA 1346](#).

Reliance on Scientific Evidence

19. In the [Operation Smile](#) case, the Director of Consumer Affairs Victoria took action against Dr Campbell and associated companies, the Hope Clinic, for engaging in misleading and deceptive conduct contrary to [s 9 of the Fair Trading Act 1999 \(FTA\)](#). The Director lost at trial and appealed to the Court of Appeal. On the misleading and deceptive conduct issues, Nettle JA wrote the leading judgment with whom Warren CJ and Cavanagh AJA agreed.
20. In that case the four respondents operated the Hope Clinic, which they described as a complementary medicine centre specialising in the treatment of cancer.¹⁷ In summary, the Director's claim was that the impugned statements falsely represented the treatments offered by Operation Smile (1) were effective in treating cancer and (2) had scientific support. Operation Smile admitted making the statements but denied that they were misleading or deceptive.¹⁸
21. Chief Justice Warren and Acting Justice of Appeal Cavanagh noted that:
- “The learned [trial] judge held that the Operation Smile treatments did not have the support of conventional science and, according to conventional science, were of no benefit to cancer sufferers. However, his Honour held that, with one exception, the impugned statements were not misleading or deceptive. Essentially, his Honour determined that readers of the statements would understand them, in their context, as mere expressions of opinion and as claiming no support from conventional medicine or science. His Honour considered that, because of supervening events, the one exception did not require judicial intervention.”*¹⁹
22. In the appeal, the Director challenged the learned trial judge's finding that the impugned statements were not misleading or deceptive.²⁰ The Director alleged that various representations were made by the Hope Clinic on its website, which the Director contended

¹⁷ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [2].

¹⁸ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [3].

¹⁹ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [5].

²⁰ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [6].

consisted of general representations as to the benefits provided, and representations specific to the therapies offered by the Hope Clinic.²¹

23. The Court of Appeal decision is authority for the following propositions:
- (a) To determine whether an advertisement is misleading or deceptive it is necessary to consider the whole of the context.²²
 - (b) A statement is misleading or deceptive or likely to mislead or deceive if there is a real and not remote possibility, be it more or less than a chance of 50 per cent, of the statement leading into error the readers at whom it is directed.²³
 - (c) The reasonableness of grounds for an opinion must be determined objectively as a question of fact as opposed to one of subjective belief.²⁴
 - (d) If a statement is characterised as one of opinion only, as opposed to an existing fact, and it is a statement of opinion from a person purporting to be an expert then it would be likely to convey that the opinion was honestly held on rational grounds involving the application of relevant expertise.²⁵
 - (e) Misleading or deceptive conduct provisions prevent the expressing of an opinion in trade or commerce, in terms which are calculated to convey that they are based upon rational grounds when in fact they are not so based.²⁶
24. The Court of Appeal also upheld the Director's contention that the 34 impugned statements, which were misleading and deceptive, also included 6 representations which were misleading and deceptive. The six representations made by the Hope Clinic were that "the treatments, services, techniques or procedures offered or provided by the Hope Clinic:

²¹ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [54].

²² [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [59].

²³ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [60].

²⁴ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [78].

²⁵ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [101].

²⁶ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [104].

(a) can cure cancer, or reverse, stop or slow its progress; (b) can prolong the life of a person suffering from cancer; (c) can benefit cancer sufferers; (d) were or are supported by generally accepted science; (e) were or are supported by published research findings; and (f) were or are evidence based therapies.”²⁷ The representations, which were implicitly made through the impugned statements, were also misleading and deceptive.

25. The Court of Appeal made orders granting a variety of relief in the form of declaratory orders, injunctions, and corrective publication orders. For your assistance, a copy of the sealed order is at Annexure A.

Regulators’ Enforcement Objectives

26. Achieving compliance with legal obligations by all regulated participants is an ideal or aspiration of regulators. Many will comply voluntarily. Some will not. It is important to be aware of the enforcement objectives being pursued by regulators in taking enforcement action.
27. There are universal enforcement objectives which are mirrored through various regulatory bodies including the ACCC, ASIC, CAV, AHPRA and TGA. These include:
- (a) to detect, investigate and establish unlawful conduct;
 - (b) to clarify the law;
 - (c) to stop unlawful conduct;
 - (d) to deter future contravening conduct;
 - (e) to raise awareness of the law;
 - (f) to obtain remedies that will undo the harm or loss caused by the contravening conduct (including corrective action or compensation);
 - (g) to ensure future compliance, including through use of compliance systems; and
 - (h) to punish offending conduct (see various enforcement objective materials)²⁸

²⁷ [Noone, Director of Consumer Affairs v Operation Smile \(Australia\) Inc & Ors \[2012\] VSCA 91](#) at [132] – [134].

²⁸ Enforcement Objectives:

The extent to which a regulator pursues one or more of its enforcement objectives in any particular matter will vary and be determined on a case by case basis.

28. Despite the similarities in their enforcement objectives, there are limitations to regulators, both specific and generalist, pursuing action in the courts. This is due to a variety of factors, including access to resources to enable the regulator to investigate non-compliance, and to take enforcement action. The regulator's investigative and enforcement culture will also have an impact on its readiness to pursue non-compliance action. Other important considerations include the laws available for enforcement by the relevant industry/sector specific regulators and the remedies available for contravention of industry or sector specific laws; and the courts or tribunals before which matters can be taken.
29. If a regulator consistently fails to take any significant enforcement action it may suggest that the regulator's actions and energy are only focussed on those who are likely to comply voluntarily (for example, by *only or predominantly* focussing on provision of guidelines and educational materials).
30. It is highly likely that any sector or industry will have some participants who are not interested in voluntary compliance. A failure to take enforcement action ignores the harm done to consumers, clients or patients and the broader community by the conduct of these participants. Such a failure may also lead other industry participants to be tempted to not comply with their obligations as there would seem to be no adverse consequence of non-compliance. That could certainly lead to "a race to the bottom" in terms of standard of conduct.

-
- [2017 ACCC Compliance and Enforcement Policy](#), ACCC, February 2017.
 - [Regulatory Approach and Compliance Policy](#), Consumer Affairs Victoria, July 2017.
 - [Compliance and enforcement: How regulators enforce the Australian Consumer Law - Commonwealth of Australia](#), January 2017.
 - [Consumer Law Enforcement and Administration. Productivity Commission Research Report](#), Australian Government, March 2017.
 - [Responsible Advertising in healthcare: Keeping people safe](#) – Advertising compliance and enforcement strategy for the National Scheme - AHPRA, April 2017.
 - [Choosing between general and industry specific regulation](#), Consumer Affairs Victoria, November 2006.

Regulatory Powers for Investigations

31. The Commonwealth Parliament has enacted the [Regulatory Powers \(Standards Provisions\) Act 2014](#) (Act No 93 of 2014) which came into effect in July 2014. It is an Act that provides a framework of powers for general application across regulatory schemes for monitoring compliance with, investigating breaches of and enforcing, Commonwealth laws. The investigation provisions provide a framework for gathering evidence that relates to the contravention of offences and civil penalty provisions.
32. The Act also allows for regulatory schemes to trigger and make applicable provisions for civil penalties, infringement notices, enforceable undertakings and injunctions. So broader remedies can be made available for Commonwealth regulators taking enforcement action.
33. However, query whether the investigation powers that can be made applicable to a regulatory scheme by the governing legislation triggering or engaging the investigation powers provided for in Part 3 of the Act are as effective as some of the existing investigative powers held by regulators such as the ACCC at the Commonwealth level (through s 155 of the [Competition and Consumer Act 2010](#)) and Consumer Affairs Victoria (through s 126 of the [Australian Consumer Law and Fair Trading Act 2012 \(Vic\)](#)). In particular, the power conferred under sub-s 155(1)(c) of the [CCA](#) and sub-s 126(1)(c) of the [ACLaFTA](#). In respect of the value of such powers note the Full Court decision of [Kotan Holdings Pty Ltd & Ors v TPC](#).²⁹

The remedies available for non-compliance and their effectiveness

34. It seems that the remedies available under the ACL legislation far outweigh the potential avenues for redress for other health sector regulatory legislation.
35. Industry specific regulators have the advantage of specialised expertise in their investigations and the ability to enforce remedies outside of litigation. For example, under the National Law, AHPRA has enforcement tools to investigate a practitioner's conduct; impose conditions on the practitioner's registration restricting their ability to advertise their services; take disciplinary action in a panel or tribunal; and prosecute an advertiser of a

²⁹ [1991] FCA 453; (1991) 31 FCR 511.

regulated health service (which may be a registered health practitioner, another person or a business).³⁰ It would be unlikely for generalist regulators such as [Consumer Affairs Victoria \(CAV\)](#) and the [Australian Competition and Consumer Commission \(ACCC\)](#) to achieve these outcomes if not for cooperation with AHPRA in disciplinary action against health practitioners.

36. On the other hand, under the ACL, to help achieve the range of regulatory enforcement objectives there can be available a range of remedies through the courts. These include:
- (a) Declarations³¹
 - (b) Injunctions – restrictive or mandatory (including cease trading injunctions)³²
 - (c) Corrective advertising orders³³
 - (d) Publication orders³⁴
 - (e) Community service orders³⁵

³⁰ [Health Practitioner Regulation National Law \(Victoria\) Act 2009 No 79 of 2009](#).

³¹ The importance or value of declarations in public interest regulatory litigation can be seen from cases like:

- (a) [Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc](#) [1993] FCA 105; (1993) 41 FCR 89.
- (b) [ACCC v Goldy Motors Pty Ltd](#) [2000] FCA 1885.
- (c) [ACCC v Eurong Beach Resort Ltd](#) [2005] FCA 1134.
- (d) [DCAV v DW International Trading Pty Ltd & Anor](#) [2010] VSC 515.
- (e) [DCAV v Gibson \(No 2\)](#) [2017] FCA 366.
- (f) [DCAV v Daiso Industries \(Australia\) Pty Ltd \(No 2\)](#) [2017] FCA 720.

³² The statutory injunctive powers in the ACL have been characterised as “Public Interest Injunctions”. The factors taken into account in granting these injunctions differ from those considered in granting the tradition equitable injunctive remedy. See for example the discussion in [ICI v TPC](#) [1992] FCA 707; (1992) 38 FCR 248. The power conferred by such provisions has been held to be broad enough to enable a court to order a complete prohibition, whether permanently or for a specified period, on a respondent’s engaging in a particular field of commercial activity or industry to protect the public. See [Foster v ACCC](#) [2006] FCAFC 21; (2006) 149 FCR 135 at 149 [35]. And also [DCAV v Midas Trading \(Australia\) Pty Ltd](#) [2009] VSC 141; (2009) 25 VR 1 at [67] – [68].

³³ See the discussion in [Medical Benefits Fund of Australia v Cassidy](#) [2003] 135 FCA 289 at 20 [48]-21 [50] and 23 [58].

³⁴ See for example [DCAV v DW International Trading Pty Ltd & Anor](#) [2010] VSC 515 at [46]-[47] and [Cousins v Merringtons Pty Ltd and Another \(No 2\)](#) [2008] VSC 340.

³⁵ For example, see s 246(2)(a) of the [ACL](#) and [Proposal 19 \(at pp 90-91\) of the Australian Consumer Law Review, Final Report March 2017](#), Consumer Affairs Australia and New

- (f) Orders for implementation of compliance programs³⁶
- (g) Orders to vary or set aside contracts³⁷
- (h) Orders for refunds³⁸
- (i) Orders requiring a contravener to honour promises made³⁹
- (j) Compensatory or redress orders for identified persons⁴⁰
- (k) (Unidentified) non-party redress⁴¹
- (l) Orders for payment of damages⁴²
- (m) Orders for payment of civil pecuniary penalties⁴³
- (n) Convictions for offences payment of fines or imprisonment⁴⁴
- (o) Orders for disqualification from managing a corporation⁴⁵

37. State regulators can, in appropriate cases, take enforcement action in the Federal Court of Australia. See for example, [DCAV v Dimmays Stores Pty Ltd & Ors](#),⁴⁶ [DCAV v Gibson & Ors](#),⁴⁷ and [DCAV v Daiso Industries \(Australia\) Pty Ltd](#).⁴⁸ A copy of the Federal Court order made in the Gibson case is also attached for your assistance.⁴⁹

Zealand, to allow the Court to order that a third party give effort to a community service order where the trader in breach is not qualified or trusted to do so.

³⁶ See for example [ACCC v Valve Corporation \(No 7\) \[2016\] FCA 1553](#) at [96] to [102].

³⁷ See s 243 [ACL](#) and [Akron Securities Ltd v Iliffe](#) [1997] NSWCA 9; (1997) 41 NSWLR 353; and [Awad v Twin Creeks Properties Pty Ltd \[2012\] NSWCA 200](#).

³⁸ See s 232(6)(a) [ACL](#) empowering the Court to grant a mandatory injunction requiring a person to refund money. Also note s 243(d) [ACL](#).

³⁹ See s 232(6)(c) [ACL](#) empowering the Court to grant a mandatory injunction requiring a person to honour a promise. Also note s 243(f) and (g) [ACL](#).

⁴⁰ See s 237 and s 238 [ACL](#).

⁴¹ See s 239 to s 241 [ACL](#).

⁴² See s 236 [ACL](#) (and note Part VIA of the [Competition and Consumer Act 2010](#) setting up a proportionate liability regime in some cases.)

⁴³ See s 224 to 230 [ACL](#).

⁴⁴ See Chapter 4 of [ACL](#) sections 151 to 217 of the [ACL](#).

⁴⁵ See s 248 [ACL](#) and [ACCC v Halkalia Pty Ltd \(No 2\) \[2012\] FCA 535](#) and [Director of Consumer Affairs Victoria v Dimmays Stores Pty Ltd \[2013\] FCA 1371](#).

⁴⁶ [2013] FCA 618; (2013) 213 FCR 559.

⁴⁷ [2017] FCA 240.

⁴⁸ [2017] FCA 683.

⁴⁹ See Annexure B.

38. Apart from the remedies available from the Courts, regulators may also be empowered to issue public warning notices about the conduct of a person. See for example the power conferred on the ACL regulators by s 223 of the ACL. Power to issue Infringement Notices and to accept enforceable undertakings may also be part of the regulatory armoury.

Regulators pursuing contempt of court charges

39. In some instances of persistent or recalcitrant behaviour it can become necessary or essential for a regulator to pursue action for contempt of court to achieve the necessary outcomes and to prevent the authority of the Court from being undermined.
40. The ACCC has been successful in pursuing charges for contempt of court under [s 31 of the Federal Court of Australia Act 1976 \(Cth\)](#). In [ACCC v Halkalia Pty Ltd \(No 3\)](#)⁵⁰, Tracey J acknowledged Hann and associated companies, the Respondents, as offending in the most serious nature in their business sales of cleaning products, with the “specific intention to disobey a court order or undertaking to the court which evidences a conscious defiance of the court’s authority.”⁵¹ For the wilful and contumacious contempt of court charges, the Respondent pleaded guilty to his failure to comply with previous orders of the court. However, Hann was only sentenced to two weeks’ imprisonment due to his advanced age and ill health.
41. Similarly, in [ACCC v Hughes](#),⁵² the Respondent, David Zero Population Growth Hughes trading as Crowded Planet, faced charges for contempt of court through the continued supply of illegal birth control medication without disclosing the illegality of the supply of those products in Australia without prescriptions from doctors. Having previously been imprisoned for a period of two years following non-compliance with restraint orders, Hughes was ordered to be imprisoned for a period of six months.
42. In [ACCC v Purple Harmony Plates Pty Limited \(No 4\)](#)⁵³, the Second Respondent Mr Neal Lyster was eventually imprisoned for his failure to comply with the Court’s orders regarding publication of the Court’s Order on the purple plates.com website and transfer of

⁵⁰ [2017] FCA 522.

⁵¹ [Burwood Council v Ruan \[2008\] NSWLEC 167](#) at [7] per Biscoe J.

⁵² [2004] FCA 519.

⁵³ [2003] FCA 49.

the domain name to the ACCC. In some cases of bogus (health) claims it is better for a notice to be published on a website to inform other potential victims of the bogus nature of the product than to simply shut down the website.

Concerns about Regulatory Inaction

43. Concerns about complaint handling, jurisdictional issues between different regulators and inaction do not necessarily get improved or fixed by a one regulator model. It is unlikely that any single regulator will have enough resources to take action in respect of every complaint. It is likely that there would be an overall net decrease in enforcement actions across Australia if there was a single regulator model. The concerns do raise important questions about:
- (a) the quality and robustness of the regulator's complaint handling systems;
 - (b) whether the regulator is operating with a 'silo mentality';
 - (c) the nature and extent of the communications between the regulators and their understanding of each other's roles and priorities;
 - (d) whether communications between regulators is only at a high executive level or also at the -
 - (i) investigation, compliance and enforcement staff level; and
 - (ii) complaints handling staff level.
 - (e) the level of resourcing for the investigation, compliance and enforcement areas of the regulator; and
 - (f) the nature and extent of training provided to investigators, compliance and enforcement staff within the different regulators.

Conclusions

44. Unless the States are asked and agree to refer their powers for regulation of health or medical practitioners and other providers to the Commonwealth it is unreasonable to expect that regulation of health or medical practitioners, the services they provide or the promotional activity they engage in and the health or medical goods or services other persons or businesses provide will be undertaken by a single regulator.
45. The ACL consumer law reforms and the AHPRA National Law streamlining reforms demonstrate an endeavour to harmonise and standardise and, to the extent possible, unify the relevant regulations across Australia. This may or may not need to go further (including, for example, by way of more remedies for enforcement action under the industry specific laws).
46. However, accepting the existence of multiple laws, multiple regulators and multiple courts and tribunals, there could still be improved and enhanced levels of communication, co-operation and co-ordination between the multiple regulators.
47. Both timeliness of action and a culture of action by regulators is obviously important if the community is going to be effectively protected. This is especially important in respect of those participants in the sector who are not interested in voluntary compliance. Examples of regulatory failure or delay in specific instances may well be a demonstration of the need for one or more of the following:
 - (a) greater attention and action by regulators towards those participants in an industry or sector who do not appear interested in voluntary compliance;
 - (b) providing improved investigative powers to regulators;
 - (c) improving the investigative and enforcement culture of regulators; or
 - (d) providing more options for remedies that can be pursued by regulators taking enforcement action.
48. Effective regulation may not be about the need for more substantive consumer or health law reform. It may well be about the will and the capacity of regulators to take investigative and enforcement action. The willingness to adequately resource, properly

train staff and prioritise investigative and enforcement action is an essential starting point for regulators seeking outcomes in the public interest. Community confidence and developing trust in a regulator is dependent on the actions they take and the outcomes they achieve.

– 2 of 13 –

DECLARATORY ORDERS

3. The Court declares that each of the statements set out in Annexure “A” made by the Defendants, in trade or commerce, was misleading or deceptive, or likely to mislead, contrary to section 9 of the Fair Trading Act 1999 (“the Act”).
4. The Court declares that Operation Smile (Australia) Incorporated (“Operation Smile”), Operation Hope (Australia) Pty Ltd (“Operation Hope”), Hope Research Institute Pty Ltd (“Hope Research”) and Noel Rodney Campbell (“the Defendants”) by representing on the website accessible via uniform resource locator (URL) at the web address www.smile.org.au (“the website”), as part of the business or advertising or promotion of the business of Operation Hope (trading as “Hope Clinic” or “Hope” or “Hope Australia”) that:
 - (a) Photo-dynamic therapy (PDT);
 - (b) Radio-wave therapy;
 - (c) High dose intravenous Vitamin C therapy;
 - (d) Ozone therapy;
 - (e) Electro therapy;
 - (f) Neuro Immunology;
 - (g) Insulin Potentiation;
 - (h) Autologous blood-derived tumour vaccines;
 - (i) Sonodynamic therapy;
 - (j) Ketogenic Diet; and
 - (k) Live Blood Analysis –
offered or supplied by Operation Hope:
 - (i) can cure cancer, or reverse, stop or slow its progress when, in fact, there is no current generally accepted scientific or medical basis for any such claim;
 - (ii) can prolong the life of a person suffering from cancer when, in fact, there is no current generally accepted scientific or medical basis for such a claim;
 - (iii) can benefit cancer sufferers when, in fact, there is no current generally accepted scientific or medical basis for such a claim;
 - (iv) are supported by generally accepted science;
 - (v) are supported by published research findings;



– 3 of 13 –

- (vi) are evidence-based therapies when, in fact, there is no generally accepted scientific evidence to support them –
- have, in trade or commerce, engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 9 of the Act.

INJUNCTIVE RELIEF

Restraint

5. The Court orders, pursuant to section 149 of the Act, that the Defendants and each of them, either directly or by its or his servants or agents, be restrained from representing (either expressly or impliedly), in trade or commerce, that any of the services referred to in paragraph 4(a) to (k) (“the services”):
- (a) can cure cancer, or reverse, stop or slow its progress;
 - (b) can prolong the life of a person suffering from cancer;
 - (c) can benefit cancer sufferers;
 - (d) are supported by generally accepted science;
 - (e) are supported by published research findings; and
 - (f) are evidence-based treatments or therapies –
- unless that Defendant:
- (i) has first obtained from a person who is at that time registered with a medical practitioners board to practise medicine in Australia and who is practising medicine as an Oncology Specialist in Australia identified in the Oncology Specialist Directory of the Cancer Council of Australia website at www.cancer.org.au written advice certifying that the proposed treatment, therapy, or service is, in the opinion of that person, supported by reliable scientific evidence or expert medical opinion and is believed to be effective and safe; and
 - (ii) retains a copy of the written advice and provides a copy of it to the Plaintiff (Director) within 7 days of receiving a request from the Director for a copy of the written advice.



- 4 of 13 -

Mandatory

6. The Court orders, pursuant to section 149A of the Act, that if any of the Defendants continues to offer or supply any of the services, in trade or commerce, then it or he must provide to customers, or potential customers, on each occasion that it or he provides any details of such service or method of providing such service, a copy of Annexure "B".

PUBLISHING PUBLIC NOTICE / CORRECTIVE PUBLICATION ORDER

7. The Court orders, pursuant to section 149A of the Act, that Operation Smile, Operation Hope and Noel Rodney Campbell, for a period of at least 6 months from the date of the Court's Order, continue to own, operate, or maintain the website.
8. The Court orders, pursuant to section 149A and section 153(1) of the Act, that Operation Smile, Operation Hope, Hope Research and Noel Rodney Campbell within 14 days of this order, cause a Public Notice in the form of Annexure "B" to be published on the Internet at the website (or if the URL for the website is replaced or changed, the corresponding website), and maintain it for a period of 6 months, and use their best endeavours to ensure that:
 - (a) the Public Notice is viewable by clicking through a "click-through" icon located on each of the websites;
 - (b) the "click-through" icon referred to in the previous sub-paragraph is located in a central position on the screen first accessed when the user opens the homepage of the website;
 - (c) the "click-through" icon must contain the words "MISLEADING CONDUCT ABOUT OUR SERVICES – PLEASE READ THE IMPORTANT NOTICE ORDERED BY THE SUPREME COURT OF VICTORIA" (in capital letters), clearly and prominently in red on a contrasting background and the words "Click Here" as set out in Annexure "C" to this Order;
 - (d) the Public Notice occupies the entire webpage which is accessed via the "click-through" icon referred to above; and
 - (e) the Public Notice have the content and be in the form of Annexure "B" to this Order.



- 5 of 13 -

APPLICATION TO RESCIND OR VARY INJUNCTIONS

9. Any application, under section 151 of the Act or otherwise, by any of the Defendants or the Director to rescind or vary any of the injunctions contained in paragraphs 5 to 8 of this Order may be made to a Judge in the Trial Division of the Court.

COSTS

10. The Defendants pay the Director's costs of the trial including any reserved costs.

COSTS OF THE APPEAL

11. The Respondents pay the Appellant's costs of the Appeal .

DATE AUTHENTICATED: 11 May 2012

Geoffrey Vetter, J.P.

JUDGE



- 6 of 13 -

ENDORSEMENT

Rule 66.10 of the Supreme Court (General Civil Procedure) Rules 2005

To the Respondents, Operation Smile (Australia) Incorporated; Operation Hope (Australia) Pty Ltd (ACN 006 581 353); Hope Research Institute Pty Ltd (ACN 112 413 135); and Noel Rodney Campbell:

Pursuant to this order, you are required to:

- (a) do the things identified in paragraphs 6, 7 and 8 of this order; and
- (b) refrain from doing the things identified in paragraph 5 of this order.

To the Respondents, Operation Smile (Australia) Incorporated; Operation Hope (Australia) Pty Ltd (ACN 006 581 353) and Hope Research Institute Pty Ltd (ACN 112 413 135)

TAKE NOTICE that, if you default in compliance with this order, you may be guilty of contempt of Court and liable to:

- (i) the sequestration of the your property;
- (ii) the imprisonment of your officers; or
- (iii) the sequestration of the property of your officers.

To the Respondent, Noel Rodney Campbell

TAKE NOTICE that, if you default in compliance with this order, you may be guilty of contempt of Court and liable to

- (i) imprisonment; or
- (ii) the sequestration of your property.



- 7 of 13 -

SCHEDULE OF PARTIES

DIRECTOR OF CONSUMER AFFAIRS VICTORIA	Appellant (Plaintiff)
- AND -	
OPERATION SMILE (AUSTRALIA) INCORPORATED	First Respondent (First Defendant)
- AND -	
OPERATION HOPE (AUSTRALIA) PTY LTD ACN 006 581 353	Second Respondent (Second Defendant)
- AND -	
HOPE RESEARCH INSTITUTE PTY LTD ACN 112 413 135	Third Respondent (Third Defendant)
- AND -	
NOEL RODNEY CAMPBELL	Fourth Respondent (Fourth Defendant)
- AND -	
ATTORNEY-GENERAL FOR THE STATE OF VICTORIA	Intervener



- 8 of 13 -

ANNEXURE "A"**SCHEDULE OF IMPUGNED STATEMENTS**

No.	IMPUGNED STATEMENTS
1.	<i>It [the Hope Clinic] provides peer reviewed and published methods for cancer treatment ...</i>
2.	<i>There are many conditions that are not successfully addressed by conventional medicine. At the Hope Clinic for Integrated Medicine, we offer what we believe is a more balanced and effective approach to the treatment (or support) of such conditions ...</i>
3.	<i>The techniques we use include state-of-the-art medical technology and subtle energy therapies such as homeopathy and acupuncture.</i>
4.	<i>Our philosophy is to tailor a cancer management course for each individual patient that provides optimal control while minimizing the chances for debilitating complications.</i>
5.	<i>These techniques are proving to be the best treatment option for patients that have previously failed conventional therapies.</i>
6.	<i>At the Hope Clinic, we provide an [sic] unique diagnostic processes that can better assess the patient's cancer.</i>
7.	<i>SUCCESSFULLY TREATED DISEASES ... Cancers including Gastrointestinal, Thyroid, Pancreas, Breast cancer with brain metastases, Cervical cancers, Lymphoma, Leukemia and many others ...</i>
8.	<i>In the majority of cases these treatments lead to an extension of life and an improvement in the quality of life.</i>
9.	<i>... Hope offers a balanced combination of the best orthodox and complimentary approaches to healing cancer in the body ...</i>
10.	<i>We tailor a cancer management course for each individual patient in order to improve his/her quality of life and extend his/her life.</i> [...]
11.	<i>Our approach is devoted to the treatment and healing of difficult and complex conditions including cancer and other refractory or complex medical problems.</i> [...] <i>We will advise you on what we think is best for you since we do not practice surgery and radiation nor do we administer chemotherapy. We are thus in a better position to give impartial advice on the efficacy and</i>



- 9 of 13 -

No.	IMPUGNED STATEMENTS
	<i>need for such treatments.</i>
12.	<i>Today, most people continue to equate cancer with death or an excruciating journey back to health filled with physical debilitation and pain. However a variety of complimentary therapies exist at the Hope Research Institute that have proven safe, gentle and effective at reversing and preventing cancer.</i>
13.	<i>... the network of colleagues who make up this Institute are committed to reading and researching all published information. We contact scientists and physicians all over the world to learn at first hand from these eminent colleagues in hospitals, universities and laboratories.</i>
14.	<i>... We investigate and combine support therapies to enhance efficacy and decrease side effects for faster, safer and more comfortable treatment in many different diseases.</i>
15.	<i>Operation Hope was created in 1998 with the goal of offering patients a comprehensive multidisciplinary integrated approach to the treatment of cancer, and other chronic diseases, emphasizing early detection, accurate staging, and a full range of minimally invasive western and complementary options, without significant side-effects, using the latest advances in medical technology against cancer.</i>
16.	<i>Hope endeavours to provide the highest quality of care to patients. We tailor a cancer management course for each individual patient in order to improve his/her quality of life and extend his/her life.</i>
17.	<p><i>Our treatment advice includes sophisticated reviews of all your treatments and diagnostic options, especially when there is a dilemma and you are having difficulty deciding what to pursue. There are complex cases where a patient may be in a bind because of conflicting advices from different professionals such as the surgeon recommends surgery and the oncologist recommends chemotherapy and it is not clear which is the best approach.</i></p> <p><i>We will advise you on what we think is best for you since we do not practice surgery and radiation nor do we administer chemotherapy. We are thus in a better position to give impartial advice on the efficacy and need for such treatments.</i></p>
18.	<p><i>PhotoDynamic Therapy – PDT ... can work in situations where surgery would not be feasible (for example, in certain inaccessible tumours of the neck and throat).</i></p> <p><i>Scientists and Practitioners in Russia, Europe and Japan report many cases of extremely good responses to 'second generation' PDT (PhotoDynamic Therapy) with chlorine-based photo-sensitizers in a variety of cancers (including cases of advanced pancreatic cancer, advanced metastatic breast cancer, advanced local as well as metastatic prostate cancer, and metastatic bowel cancer). It is hoped that similar benefits will be seen in individual cancer patients who attend our treatment program.</i></p>
19.	<i>'The Hope Clinic has designed a special light (patent pending) to use with a Russian Photo Dynamic Therapy technique which does not cause incontinence or impotence. ... It is a very powerful technique reducing the PSA in one patient from 960 to 100 in 10 days of treatment. This treatment can be performed daily at home at a low cost of \$20/day.'</i>
20.	<i>'Anecdotally there has been success using PDT with breast cancer and prostate cancer. There have been encouraging results with several types of brain tumour including glioblastoma multiforme, and many brain tumours significantly regressed during photodynamic therapy. One case of glioblastoma multiforma showed a total disappearance of tumour.'</i>
21.	<i>'... This tumour destructive treatment is based on the work of Dr John Holt, who claimed that glucose blocking agents with 434MHz radio waves (microwaves) were an effective cancer therapy.'</i>



- 10 of 13 -

No.	IMPUGNED STATEMENTS
22.	<i>'Radio-wave Therapy & Glucose Blocking Agents may be applied in many cases of cancer where surgery, chemotherapy and X-ray radiation are contra-indicated ... Treatment with Radio-wave Therapy & Glucose Blocking Agents may work in situations where surgery would not be feasible.'</i>
23.	<i>'Active oxygen therapies have been used in Germany for over 50 years and are very effective against cancer. We use saunas, cupping and insufflation.'</i>
24.	<i>'Ozone boosts the immune system and kills infections and cancer cells:'</i> <i>'... Ozone is not a cure, it is only a complementary measure applied in addition to standard methods. Having said this, case histories have shown that Ozone can produce impressive results due to its function as an immunostimulatory agent.'</i>
25.	<i>'With the recent discovery of Papilloma virus in breast cancer the ozone and electro therapies used by Hope are very valuable in the treatment of breast cancer.'</i>
26.	<i>'We have also developed and researched the Bio-Lyfe machine which boosts the immune system by increasing the number of CD4, CD8, & NK cells, which are often low in the majority of cancer patients so that they do not have enough soldiers to fight the fight against cancer.'</i>
27.	<i>'Most cancer patients have lowered lymphocyte levels ... In this situation the Bio-Lyfe is the simplest and most cost effective device for starting home treatment.'</i>
28.	<i>'Professor Lechin showed through 30 years of research that the chemicals coming from the brain dramatically affect the immune system and thus cancer.'</i>
29.	<i>'By implementing insulin in conjunction with chemotherapy drugs, the cancer cells are highlighted as being different based on receptor concentration and are promoted to grow, which makes it likely that more of them will be in the S-phase cycle. These effects allow for the powerful chemo agents to target the cancer cells more specifically, sparing healthy cells and therefore chemo-related side-effects.'</i>
30.	<i>'We are combining Photodynamic therapy with Sonodynamic therapy. This uses low-level ultrasound, which kills cancer cells using a non-thermal effect, especially cavitations ...'</i>
31.	<i>'PDT has several advantages over surgery and radiotherapy; it is comparatively non-invasive, it can be targeted accurately and repeated dosages can be given without the total dose limitations associated with radiotherapy, and the healing process results in little or no scarring.'</i>
32.	<p>'BRIEF SUMMARY OF RESULTS FOR TEN RECENT CONSECUTIVE PATIENTS IN A COLLEAGUES CLINIC WHO HAS USED SDT OVER THE PAST 12 MONTHS:</p> <ol style="list-style-type: none"> 1. Stage III breast cancer. Primary breast tumour plus metastases in the axillary lymph node, the other breast and the liver. After PDT and lumpectomy: no evidence of cancer in all four sites. 2. Stage IV breast cancer with rampant body metastases. Very low energy, not enough to work in the garden. In bed by 7:30pm. After PDT (ongoing) weight increased 3kg and now normal. Normal sleeping time and energy levels. Resumed gardening. Scan shows that the tumours have stopped spreading. 3. Metastatic melanoma grade IV. About 80 metastases visible. Oncologist predicted 2 more months of life. After PDT (ongoing). Alive and well 4 months after prediction. Metastases down to about 20. Energy, appetite and weight improved. Physician estimates that about 80% of the cancer is gone. Further treatment needed. 4. Prostate cancer (large tumour mass), grade IV, urinary infections, bowel infections, inability to urinate without catheter, impotent. After SDT/PDT (ongoing) Prostate shrinking and softening, urination



- 11 of 13 -

No.	IMPUGNED STATEMENTS
	<p>better, impotence easing. Needs further treatment but improving.</p> <p>5. Ovarian cancer Grade IV. Had hysterectomy and other surgery. No symptoms other than elevated cancer marker. After PDT cancer marker now normal. No evidence of cancer.</p> <p>6. Squamous cell carcinoma grade 1. Lump on upper lip removed surgically. PDD showed 6 metastases on upper lip. After SDT all metastases have disappeared.</p> <p>7. Prostate grade IV. Hard prostate with 2 nodules, metastasized outside the gland. After SDT (ongoing) Prostate shrunk, softened, one nodule disappeared. Better urination. Clear or almost clear of cancer.</p> <p>8. Mesothelioma lung cancer. Symptoms include coughing at night, disturbed sleep. Painful breathing, not allowing deep inhalations. Photodynamic diagnosis showed over 12 metastases in the thorax. No noticeable benefits from chemotherapy. After SDT (ongoing): Coughing at night has stopped, giving much better sleep. Breathing not as painful, allowing deeper inhalation. 'I have an amazing increase in energy.' Visible metastases have dropped from 12 or more to one.</p> <p>9. Breast cancer grade IV. Lumpectomy. PDD showed metastases in the breast and the axillary lymph nodes. After SDT (ongoing) Cleared metastases from the breast. Those in the lymph glands remain. Next treatment will be PDT/SDT.</p> <p>10. Breast cancer grade IV with extensive liver metastases. PDT failed to halt the progress of the illness. SDT was not available at the time and she has chosen other treatment.'</p>
33.	<p>'The ketogenic diet is designed to reduce the capacity of cancer or malignant cells to produce energy and thus induce either death of the cancer cell or reduce the rate of progression.'</p>
34.	<p>'Vitamin C is most commonly used as an antioxidant. Recent work has shown that it can be used to destroy cancer cells in a non-toxic way when used in very large doses, and these large doses can only be achieved by intravenous use. In this situation vitamin C acts as a pro-oxidant, and destroys cancer cell membranes, and produces hydrogen-peroxide. The reason that cancer cells are more vulnerable to this approach, is that they have 10-100 times less catalyse enzymes present in them. Therefore vitamin C tends to concentrate in cancer cells when given at this high dose, and therefore destroys these cancer cells....We often combine this with B17 intravenously, which also concentrates in cancer cells and can destroy these cells ... All contents Copyright © 1990-2006 Operation Hope (Australia) Pty Ltd all rights reserved.'</p>



- 12 of 13 -

ANNEXURE "B"

**IMPORTANT PUBLIC NOTICE
ABOUT THE SERVICES OF
OPERATION HOPE (AUSTRALIA) PTY LTD (HOPE CLINIC)**

In legal proceedings taken by the Director of Consumer Affairs Victoria, the Court of Appeal of Victoria declared on 11 May 2012 that Operation Smile (Australia) Incorporated; Operation Hope (Australia) Pty Ltd; Hope Research Institute Pty Ltd and Noel Rodney Campbell (the Defendants) had engaged in misleading or deceptive conduct contrary to the *Fair Trading Act* 1999 (Vic) by making representations in trade or commerce, including that the following services: namely, Photo-dynamic therapy (PDT); Radio-wave therapy; High dose intravenous Vitamin C therapy; Ozone therapy; Electro therapy; Neuro Immunology; Insulin Potentiation; Autologous blood-derived tumour vaccines; Sonodynamic therapy; Ketogenic Diet; and Live Blood Analysis ("the services") supplied by Operation Hope:

- (a) can cure cancer, or reverse, stop or slow its progress; or prolong the life of a person suffering from cancer; or benefit cancer sufferers; and
- (b) are supported by generally accepted science, or published research findings and evidence – when there is no reliable, current scientific or medical basis for such a claim.

The Defendants have been restrained by Court Order from making, in trade or commerce, representations of this kind in future, unless they first obtain written advice from an oncologist certifying that there is a proper scientific or medical basis for the claim.

Noel Rodney Campbell is not a qualified medical practitioner.

The Court of Appeal also ordered the Defendants to put this Notice on their website.



- 13 of 13 -

ANNEXURE "C"

**MISLEADING CONDUCT ABOUT OUR SERVICES
PLEASE READ THE IMPORTANT PUBLIC NOTICE ORDERED BY
THE SUPREME COURT OF VICTORIA**

[CLICK HERE](#)



Annexure B



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID535/2016

DIRECTOR OF CONSUMER AFFAIRS VICTORIA
Applicant

ANNABELLE NATALIE GIBSON and another named in the schedule
First Respondent

ORDER

JUDGE: JUSTICE MORTIMER

DATE OF ORDER: 07 April 2017

WHERE MADE: Melbourne

PENAL NOTICE

NOTICE PURSUANT TO RULE 41.06 OF THE FEDERAL COURT RULES 2011

TO: Annabelle Natalie Gibson
Inkerman Road Nominees Pty Ltd (ACN 164 850 748)

IF YOU:

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,**

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

- 2 -

**THE COURT DECLARES THAT:***Misleading or deceptive conduct (s 18 Australian Consumer Law (Cth) and Australian Consumer Law (Vic))*

1. Annabelle Natalie Gibson engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to s 18 of the Australian Consumer Law (Vic) in that, from approximately July 2013, she made claims in connection with the development, promotion and sale of the Whole Pantry App and the Whole Pantry book that she:
 - (a) had been diagnosed with brain cancer in 2009;
 - (b) was given four months to live; and
 - (c) had taken and then rejected conventional cancer treatments in favour of embarking on a quest to heal herself naturally.
2. The Second Respondent engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to s 18 of the Australian Consumer Law (Cth) and s 18 of the Australian Consumer Law (Vic) in that, from about July 2013, it made claims in connection with the development, promotion and sale of the Whole Pantry App and the Whole Pantry book that Annabelle Natalie Gibson:
 - (a) had been diagnosed with brain cancer in 2009;
 - (b) was given four months to live; and
 - (c) had taken and then rejected conventional cancer treatments in favour of embarking on a quest to heal herself naturally.
3. Annabelle Natalie Gibson engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to s 18 of the Australian Consumer Law (Vic) in that between December 2013 and March 2015 she represented that:
 - (a) a portion of all revenue from sales of the Whole Pantry App would be donated to charities or good causes, when in fact that was not the case, as the only donation from sales of approximately \$308,000 was the sum of \$2,790 to the

- 3 -



Bumi Sehat Foundation, attributable to App sales and forming part of a \$5,000 donation to that Foundation;

- (b) the donations from the sale of the Whole Pantry App would be made within a reasonable time of receipt, when in fact the only donation was made over a year later;
- (c) a large part of everything the Second Respondent earned would be donated to charities or good causes, when in fact that was not the case, as under \$10,000 was donated from its earnings of approximately \$420,000;
- (d) the proceeds of the sale of “virtual tickets” to the launch of the Whole Pantry App would be donated to:
 - (i) the Birthing Kit Foundation;
 - (ii) One Girl;
 - (iii) the Asylum Seeker Resource Centre; and
 - (iv) the Schwarz family;

when in fact that was not the case as One Girl received \$1,000 over a year later and the remaining three groups received no donation from the sale proceeds;

- (e) one hundred percent of the proceeds of the sales of the Whole Pantry App for a week in December 2013 would be donated to the Schwarz family, when in fact no such donation was ever made; and
- (f) the full amount of each purchase of the Whole Pantry App, and an additional \$1 for posts with a family theme for a week around Mother’s Day 2014 would be donated, within a reasonable period of time following 22 May 2014, to:
 - (i) The 2h Project; and
 - (ii) the Bumi Sehat Foundation;

when in fact no donations were made within a reasonable period to either cause, and the donation to the Bumi Sehat Foundation was made more than a year later, from funds that were not attributable to the Mother’s Day week sales.



4. The Second Respondent engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to s 18 of the Australian Consumer Law (Cth) and the Australian Consumer Law (Vic) in that between December 2013 and March 2015 it represented that:
- (a) a portion of all revenue from sales of the Whole Pantry App would be donated to charities or good causes, when in fact that was not the case, as the only donation from sales of approximately \$308,000 was the sum of \$2,790 to the Bumi Sehat Foundation, attributable to App sales and forming part of a \$5,000 donation to that Foundation;
 - (b) the donations from the sale of the Whole Pantry App would be made within a reasonable time of receipt, when in fact the only donation was made over a year later;
 - (c) a large part of everything it earned would be donated to charities or good causes, when in fact that was not the case, as under \$10,000 was donated from its earnings of approximately \$420,000;
 - (d) the proceeds of the sale of “virtual tickets” to the launch of the Whole Pantry App would be donated to:
 - (i) the Birthing Kit Foundation;
 - (ii) One Girl;
 - (iii) the Asylum Seeker Resource Centre; and
 - (iv) the Schwarz family;when in fact that was not the case as One Girl received \$1,000 over a year later and the remaining three groups received no donation from the sale proceeds;
 - (e) one hundred percent of the proceeds of the sales of the Whole Pantry App for a week in December 2013 would be donated to the Schwarz family, when in fact no such donation was ever made; and
 - (f) the full amount of each purchase of the Whole Pantry App, and an additional \$1 for posts with a family theme for a week around Mother’s Day 2014 would be donated, within a reasonable period of time following 22 May 2014, to:

- 5 -



- (i) The 2h Project; and
- (ii) the Bumi Sehat Foundation;

when in fact no donations were made within a reasonable period to either cause, and the donation to the Bumi Sehat Foundation was made more than a year later, from funds that were not attributable to the Mother's Day week sales.

Unconscionable conduct (s 21 Australian Consumer Law (Cth) and Australian Consumer Law (Vic))

5. Annabelle Natalie Gibson engaged in unconscionable conduct in trade or commerce in contravention of s 21 of the Australian Consumer Law (Vic) in that between December 2013 and March 2015 she made claims that:
 - (a) a portion of all revenue from sales of the Whole Pantry App would be donated to charities or good causes, when in fact that was not the case, as the only donation from sales of approximately \$308,000 was the sum of \$2,790 to the Bumi Sehat Foundation, attributable to App sales and forming part of a \$5,000 donation to that Foundation.
 - (b) the donations from the sale of the Whole Pantry App would be made within a reasonable time of receipt, when in fact that was not the case as the only donation was made over a year later;
 - (c) a large part of everything the Second Respondent earned would be donated to charities or good causes, when in fact that was not the case, as under \$10,000 was donated from its earnings of approximately \$420,000;
 - (d) the proceeds of the sale of "virtual tickets" to the launch of the Whole Pantry App would be donated to:
 - (i) the Birthing Kit Foundation;
 - (ii) One Girl;
 - (iii) the Asylum Seeker Resource Centre; and
 - (iv) the Schwarz family;

- 6 -



when in fact that was not the case as One Girl received \$1,000 over a year later and the remaining three groups received no donation from the sale proceeds;

- (e) one hundred percent of the proceeds of the sales of the Whole Pantry App for a week in December 2013 would be donated to the Schwarz family, when in fact no such donation was ever made; and
- (f) the full amount of each purchase of the Whole Pantry App, and an additional \$1 for posts with a family theme for a week around Mother's Day 2014 would be donated, within a reasonable period of time following 22 May 2014, to:
 - (i) The 2h Project; and
 - (ii) the Bumi Sehat Foundation;

when in fact no donations were made within a reasonable period to either cause, and the donation to the Bumi Sehat Foundation was made more than a year later, from funds that were not attributable to the Mother's Day week sales.

- 6. The Second Respondent engaged in unconscionable conduct in trade or commerce in contravention of s 21 of the Australian Consumer Law (Cth) and the Australian Consumer Law (Vic) in that between December 2013 and March 2015 it made claims that:
 - (a) a portion of all revenue from sales of the Whole Pantry App would be donated to charities or good causes, when in fact that was not the case, as the only donation from sales of approximately \$308,000 was the sum of \$2,790 to the Bumi Sehat Foundation, attributable to App sales and forming part of a \$5,000 donation to that Foundation;
 - (b) the donations from the sale of the Whole Pantry App would be made within a reasonable time of receipt, when in fact that was not the case as the only donation was made over a year later;
 - (c) a large part of everything it earned would be donated to charities or good causes, when in fact that was not the case, as under \$10,000 was donated from its earnings of approximately \$420,000;

- 7 -



(d) the proceeds of the sale of “virtual tickets” to the launch of the Whole Pantry App would be donated to:

- (i) the Birthing Kit Foundation;
- (ii) One Girl;
- (iii) the Asylum Seeker Resource Centre; and
- (iv) the Schwarz family;

when in fact that was not the case as One Girl received \$1,000 over a year later and the remaining three groups received no donation from the sale proceeds;

(e) one hundred percent of the proceeds of the sales of the Whole Pantry App for a week in December 2013 would be donated to the Schwarz family, when in fact no such donation was ever made; and

(f) the full amount of each purchase of the Whole Pantry App, and an additional \$1 for posts with a family theme for a week around Mother’s Day 2014 would be donated, within a reasonable period of time following 22 May 2014, to:

- (i) The 2h Project; and
- (ii) the Bumi Sehat Foundation;

when in fact no donations were made within a reasonable period to either cause, and the donation to the Bumi Sehat Foundation was made more than a year later, from funds that were not attributable to the Mother’s Day week sales.

THE COURT ORDERS THAT:

7. Pursuant to s 232 of the Australian Consumer Law (Vic), Annabelle Natalie Gibson is prohibited from making any or all of the following claims, in connection with the development, sale or promotion of health and wellbeing advice:

- (a) that she had been diagnosed with brain cancer at any time prior to 24 May 2016;
- (b) that she was given four months to live; and/or

- 8 -



- (c) that she had taken and then rejected conventional cancer treatments in favour of embarking on a quest to heal herself naturally.
8. Pursuant to s 232 of the Australian Consumer Law (Cth) and s 232 of the Australian Consumer Law (Vic), the Second Respondent is prohibited from making any or all of the following claims, in connection with the development, sale or promotion of health and wellbeing advice:
- (a) that Ms Gibson had been diagnosed with brain cancer at any time prior to 24 May 2016;
 - (b) that Ms Gibson was given four months to live; and/or
 - (c) that Ms Gibson had taken and then rejected conventional cancer treatments in favour of embarking on a quest to heal herself naturally.
9. Annabelle Natalie Gibson pay a contribution towards the applicant's costs, fixed in the amount of \$30,000, such amount to be payable within 60 days of the date of these orders.
10. A copy of these Orders be served personally on Annabelle Natalie Gibson in accordance with s 41.07 of the *Federal Court Rules 2011* (Cth).

THE COURT DIRECTS THAT:

- 11. The proceeding be adjourned to a date to be fixed for consideration of penalty and orders relating to public notices.

Date that entry is stamped: 7 April 2017


Registrar