

## **5 HISTORY OF INVOLVEMENT OF INTERSTATE AND FEDERAL REGULATORY AUTHORITIES**

### **5.1 Background**

In November 2006, the Inquiry wrote to the following regulatory authorities seeking information on any involvement Noel Campbell has had with them:

- Dental Board of New South Wales;
- Medicare Australia (previously the Health Insurance Commission);
- Therapeutic Goods Administration (TGA); and
- Australian Competition and Consumer Commission (ACCC).

### **5.2 Responses of regulatory authorities**

#### **5.2.1 *Dental Board of New South Wales***

By letter dated 8 December 2006, the Board provided the Inquiry with a decision of the Board in relation to a complaint against 'Dr Noel Rodney Campbell', who was registered as a dentist in New South Wales.

The complaint, lodged by the Registrar of the Victorian Dental Practice Board, was heard in December 2001. The substance of the complaint was that Noel Campbell had been convicted of an offence in Victoria, which involved him practising dentistry while unregistered.

The Board found Noel Campbell's conviction of an offence in another jurisdiction did not warrant his removal from the register in New South Wales. He was cautioned about practising dentistry while unregistered and was advised to seek registration in Victoria within six months. If the matter was not listed to be dealt with by the Victorian Board before 30 June 2002, he was informed the Health Care Complaints Commission in New South Wales would be approached to determine whether an inquiry pursuant to section 46 of the *Dentists Act 1989* (NSW) should be held.

#### **5.2.2 *Medicare Australia***

By letter dated 8 January 2007, Medicare Australia advised the Inquiry of the following:

Between 1 January 2002 and 13 December 2006, no claims were made for services provided by Noel Campbell (according to the Medicare database) and no pharmaceutical items were prescribed by Noel Campbell (according to the PBS database).

Noel Campbell was investigated by Medicare Australia in Victoria over the period 5 February 2004 to 23 November 2005 in relation to his practice of referring patients for pathology services that were ineligible for Medicare benefits. He changed his practices in 2005 and the case was closed.

#### **5.2.3 *TGA***

By letter dated 16 January 2007, the TGA advised the Inquiry it was unable to release information in relation to Noel Campbell under section 61 of the *Therapeutic Goods Act 1989* or pursuant to the *Privacy Act 1988*.

Accordingly, the Inquiry sought Noel Campbell's consent, by letter dated 27 July 2007, to information being disclosed by the TGA for the purposes of the Inquiry. An authority was enclosed with the letter for him to complete. The Inquiry received his signed authority on 10 December 2007.

By letter dated 12 December 2007, the Inquiry wrote to the TGA again seeking information on any involvement Noel Campbell has had with them and enclosed Noel Campbell's signed authority for information to be disclosed to the Inquiry.

The Inquiry received a response from the TGA on 11 February 2008. In a letter dated 6 February 2008, the TGA released copies of the following documents to the Inquiry:

- An internal memo dated 5 December 2002 from the Chief Investigator of the TGA Surveillance Unit to an officer of the TGA Conformity Assessment Branch in relation to the discovery by officers of the Australian Communications Authority (ACA) of a 'home made' device used in the treatment of humans at the office of 'Professor' Campbell in Melbourne. The Chief Investigator was of the view that the home made device was an excluded therapeutic good for the purposes of the therapeutic goods legislation so no action could be taken by the TGA.
- A newspaper article from the Herald Sun on 4 April 2005 (on page 24) entitled 'Inquiry on cancer clinic's alternative therapy' by Kate Jones, medical reporter.
- A letter dated 6 January 2006 from a medical officer in the Drug Safety and Evaluation Branch of the TGA to 'Professor' Campbell at the 'Hope Medical Research Centre' in relation to the use of intravenous ozone therapy to treat cancer patients at the Centre. As the medical officer responsible for the regulation of medicines for the treatment of cancer, he advised that ozone is not approved in Australia as a therapeutic good. Information was sought from Noel Campbell as to how the Centre obtains or generates the ozone used and the method of administration to the patient. Details were given about the Special Access Scheme which permits medical practitioners to supply an unapproved medicine in certain circumstances. Depending on the type of patient, either permission has to be sought from the TGA to supply the medicine or the TGA has to be notified about the supply. According to the letter, the TGA did not appear to have received any requests or notifications for ozone from the Centre. A response from Noel Campbell was sought on this point.
- A letter dated 28 August 2006 from the same medical officer in the Drug Safety and Evaluation Branch of the TGA to 'Professor' Campbell advising he had not received a reply to his January letter and seeking a response to the issues raised.

The Inquiry was advised these documents originate from two separate files containing additional information which has not been released as the documents/correspondence in question contain the names of individuals other than Noel Campbell.

Reference was also made to a letter dated 9 November 2004 sent by the Chief Investigator of the TGA Surveillance Unit to the OHSC in relation to another allegation made against Noel Campbell. The TGA was unable to release a copy of the letter to the Inquiry as it contains the names of individuals other than Noel Campbell. The letter outlines complainant E's complaint to the TGA in October 2004 regarding, *inter alia*, two machines supplied by 'Professor' Campbell to his friend. The Chief Investigator advised that whilst the TGA regulates medical devices, the 'home made' medical devices in question appeared to be custom-made devices which are exempt from regulation under the therapeutic goods legislation. The letter goes on to state that information was downloaded from the clinic's internet website indicating 'Professor' Campbell and Dr Ralph Ballard were actively treating seriously ill persons. Contact was made with the Medical Practitioners Board of Victoria in October 2004. The Board advised the TGA it

had no jurisdiction to act at the time as 'Professor' Campbell was not a doctor and was not claiming to be a doctor.

#### **5.2.4 ACCC**

By letter dated 21 November 2006, the ACCC advised the Inquiry it has had no involvement with Noel Campbell.

#### **5.3 New South Wales Health Care Complaints Commission**

The response from the Dental Board of New South Wales led to the Inquiry writing to the New South Wales Health Care Complaints Commission on 19 December 2006. Confirmation was sought as to whether a determination regarding a section 46 inquiry was ultimately made in relation to Noel Campbell.

By letter dated 8 January 2007, the Commission advised the Inquiry of the following:

The NSW Dental Board made a complaint about Noel Campbell to the Commission on 30 August 2002 citing his failure to comply with the Board's decision of 31 December 2001, which was to seek registration in Victoria within six months. The Commission wrote to the Board in April 2003 requesting further information about the extent and particulars of its complaint. The Board's response was that its complaint concerned an incident whereby Noel Campbell had administered ozone intra rectally to a dental patient.

In June 2003, the Board advised the Commission it was not in a position to proceed with the complaint as it had been unable to obtain further information. The Victorian Board had been approached for the information but was unable to assist as all its papers regarding the ozone incident had been subpoenaed. Accordingly, the Commission formally terminated the complaint on 11 May 2004 and no further action was taken.

## 6 OFFENCES UNDER VICTORIAN LEGISLATION

### 6.1 Background

Organisations providing health services in Victoria are subject to a range of Victorian legislation. The Hope Clinic is operated by Operation Hope (Australia) Pty Ltd. Based on the services provided at the clinic and the evidence of the complainants, the Inquiry considered the legislative obligations of the company pursuant to:

- Drugs and poisons legislation;
- Radiation safety legislation;
- Therapeutic goods legislation;
- Health practitioner legislation; and
- Fair trading legislation.

The conduct of Noel Campbell was also examined, where relevant.

### 6.2 Drugs and poisons legislation

The *Drugs, Poisons and Controlled Substances Act 1981*, most of which is administered by the Department of Human Services, sets down controls in relation to the access, use and supply of various medicines, chemicals and drugs in Victoria. The substances regulated are those listed in the Poisons Code or in the Commonwealth's Standard for the Uniform Scheduling of Drugs and Poisons (Schedules 2 to 9). These include pharmacy medicines, pharmacist-only medicines, prescription-only medicines and drugs of dependence. Also included are a number of medicinal herbs (listed in Appendix C of the Commonwealth standard), which are considered unsafe and cannot be prescribed for any therapeutic purpose.

The Hope Clinic utilises the following products for the purposes of treatment:

- Spirulina extract, derived from *spirulina maximus*, for photo dynamic therapy;
- Vitamin C, alpha-lipoic acid and glutathione for radiowave therapy;
- Arginine, ornithine, phenylalanine and tyrosine for neuro-immunology treatment;
- Bovine cartilage as part of the metabolic support therapies regime.

None of these products are regulated under the *Drugs, Poisons and Controlled Substances Act 1981*.

### 6.3 Radiation safety legislation

Radiation safety in Victoria is regulated by the Department of Human Services.

Prior to 1 September 2007, Part V, Division 2AA of the *Health Act 1958* and the *Health (Radiation Safety) Regulations 1994* applied to radiation safety. One of the requirements of this Division of the Act was that radiation apparatus (ie. 'ionizing radiation apparatus' and 'non-ionizing radiation apparatus of a prescribed class') and sealed radio-active sources (containing radio-active substances which emit ionizing radiation) be registered prior to their use.<sup>75</sup> The definition of ionizing radiation apparatus in section 108AB included apparatus capable of producing electromagnetic radiation of a wavelength up to 100 nanometres. The regulations did not prescribe any apparatus as 'non-ionizing'. Such apparatus, defined in section 108AB as capable of producing electromagnetic

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<sup>75</sup> See sections 108AC and 108AD.

radiation of a wavelength greater than 100 nanometres and sonic infrasonic or ultrasonic waves, was therefore not regulated under the former legislative scheme.

The equipment used at the Hope Clinic for the purposes of photo dynamic therapy (which utilises 'red lights' with a wavelength of 662 nanometres) and radiowave therapy (which utilises radio waves with a frequency of 434 MHz) would have been classified as non-ionising radiation apparatus under the Act. As there was no requirement for such apparatus to be registered prior to their use, no offence was committed under the former legislative scheme.

On 1 September 2007, the new *Radiation Act 2005* came into effect in Victoria. Its purpose is to protect the health and safety of people and the environment from the harmful effects of radiation. One of the requirements of the new legislation is that all users of radiation sources be licensed.<sup>76</sup> A radiation source includes radioactive material, radiation apparatus (both 'ionising' and 'non-ionising') and sealed source apparatus (defined as an apparatus that produces ionising radiation).<sup>77</sup> Ionising radiation apparatus still refers to an apparatus that produces electromagnetic radiation of a wavelength up to 100 nanometres, and non-ionising radiation apparatus as an apparatus that produces electromagnetic radiation of a wavelength greater than 100 nanometres.<sup>78</sup> However, only apparatus prescribed by the regulations to be 'non-ionising radiation apparatus' is regulated. The *Radiation Regulations 2007*, made under section 139 of the *Radiation Act 2005*, came into operation on 1 September 2007 and do not prescribe any apparatus as 'non-ionising radiation apparatus'. Accordingly, no offence has been committed under the new legislative scheme by users of the abovementioned equipment at the Hope Clinic.

#### **6.4 Therapeutic goods legislation**

The *Therapeutic Goods (Victoria) Act 1994* is complementary legislation to the Commonwealth *Therapeutic Goods Act 1989* and was developed to facilitate the creation of a national system of controls on therapeutic goods. It applies to all persons supplying or manufacturing therapeutic goods for human use (essentially, medicines and medical devices) as sole traders, partnerships or other unincorporated entities trading solely in Victoria.

As an incorporated entity, Operation Hope (Australia) Pty Ltd is subject to the Commonwealth legislation, not the Victorian Act.

#### **6.5 Health practitioner legislation**

Prior to 1 July 2007, health practitioner legislation in Victoria comprised 12 separate pieces of legislation which regulated different health practitioner groups. For example, the *Medical Practice Act 1994*, which applied to registered medical practitioners, and the *Dental Practice Act 1999*, which applied to registered dental practitioners.

Section 62(1) of the *Medical Practice Act 1994* made it an offence for a person who was not a registered medical practitioner to: (a) take or use the title of registered medical practitioner or any other title calculated to induce a belief that the person was registered under the Act; or (b) claim to be registered under the Act or hold herself or himself out as being registered under the Act. The penalty was 100 penalty units and prosecution would have to have been instituted by the Medical Practitioners Board of Victoria.

Noel Campbell withdrew his registration as a dentist with the Dental Practice Board of Victoria in December 1999. He states he has been using the title 'Professor' since early 2000, an honorary title given to him by a Chinese university. In the complaints the

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<sup>76</sup> See section 13.

<sup>77</sup> See section 3.

<sup>78</sup> See section 3.

Inquiry received about the Hope Clinic, in relation to services provided prior to 1 July 2007, he is referred to as 'Professor' Campbell by complainants A, B, C, D, E, H and I. Complainants A, B, C, G and H state the initial consultation at the clinic, which they attended with their relatives, was conducted by him, in the course of which treatment was recommended to their relatives. According to complainant A, mention was made of his dentistry but she was never told what his qualifications are in relation to the alternate treatment offered at the clinic. Complainant B states she was told he is a professor as he had trained at Swinburne University; however, she did not know what he had trained in. Complainant C believed he had appropriate qualifications to treat people with cancer and only later discovered he was a former dentist who had opened a cancer practice. Complainant G, during the initial consultation, referred to him as 'a doctor like yourself' when asking a particular question but he did not admit to not being one; she was subsequently informed by Dr Holt's clinic in Western Australia that Noel Campbell was not a doctor. Complainant H, however, states she made enquiries prior to the initial consultation and found he was not qualified or registered as a medical practitioner and had qualifications in dentistry only. According to complainant I, who attended the clinic with her son in February and March 2007, the initial consultation did not take place with 'Professor' Campbell but he did administer the more invasive treatments.

Based on the evidence of complainants A, B, C, G and I, it could be argued Noel Campbell's use of the title 'Professor', his presence at the Hope Clinic (be it conducting the initial consultation with patients and their families or administering treatments to patients) and his apparent failure to make clear to patients and their families that he was not a registered medical practitioner so as to avoid potentially misleading them, may have constituted an offence under section 62(1) of the *Medical Practice Act 1994*. This Act, however, was repealed on 1 July 2007.

The *Health Professions Registration Act 2005*, as amended by the *Health Professions Registration Amendment Act 2007*, came into force on 1 July 2007. It replaces the 12 separate Acts with a consistent and uniform process for the regulation of the following registered health practitioners: medical practitioners, dental practitioners, pharmacists, nurses, psychologists, Chinese medicine practitioners, medical radiation technologists, physiotherapists, chiropractors, osteopaths, optometrists and podiatrists. The Medical Practitioners Board of Victoria continues to be the responsible board for medical practitioners in Victoria.

Section 169 of the *Health Professions Registration Act 2005* enables the Medical Practitioners Board of Victoria to conduct a proceeding into activities which occurred before 1 July 2007 if no proceeding into those activities was commenced under the *Medical Practice Act 1994* prior to its repeal. The activities however must be in relation to '...a person who is deemed by section 170 to be a health practitioner...registered under this Act...'. Noel Campbell does not satisfy any of the criteria set out in subsections (1) to (19) of section 170 as he was not registered in Victoria as a health practitioner during the period services were provided to relatives of complainants A, B, C, G and I. Despite the evidence of these complainants, it would appear the Board does not have power under the new legislation to commence prosecution proceedings against him in relation to his activities at the Hope Clinic prior to 1 July 2007.

**Recommendation:**

- 1. The Minister gives consideration to whether there is a need for amendment to section 169 of the *Health Professions Registration Act 2005*.**

In relation to claims by persons as to registration, the Inquiry notes the current offence provision under section 80(1) of the *Health Professions Registration Act 2005*, which seeks to capture both intentional and reckless conduct, is wider than the repealed *Medical Practice Act 1994* offence provision outlined above. Under section 80(1)(b) of

the new legislation, a person who is not a registered health practitioner must not intentionally or recklessly take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate: (i) the person is a health practitioner in a regulated health profession; or (ii) the person is authorised or qualified to practise in a regulated health profession. Under section 80(1)(c), a person who is not a registered health practitioner must not intentionally or recklessly claim to be registered under the Act or hold himself or herself out as being registered under the Act. The penalty for a natural person committing such an offence is 60 penalty units, which amounts to \$6607.00 for the 2007-2008 financial year.<sup>79</sup>

The Inquiry also notes the wider power of responsible boards to receive notifications about health practitioners under the *Health Professions Registration Act 2005*. Section 42(3) states as follows: 'A person may notify the responsible board about the professional conduct of a person who was a registered health practitioner but has ceased to be or is no longer a registered health practitioner or whose registration has been cancelled or is suspended if the notification relates to a matter arising at a time when that other person was a registered health practitioner.' This provision will go some way towards deterring current registered health practitioners from allowing their registration to lapse or voluntarily withdrawing their registration in order to avoid investigation by the responsible board.

## **6.6 Fair trading legislation**

The *Fair Trading Act 1999* (the 'FTA'), which is administered by Consumer Affairs Victoria, contains consumer protection provisions in Part 2 prohibiting a range of unfair trade practices. These essentially mirror the consumer protection provisions of the Commonwealth *Trade Practices Act 1974*. The Victorian legislation, however, is wider in scope, in that it does not only apply to incorporated traders. Accordingly, conduct and representations of Operation Hope (Australia) Pty Ltd, the entity which operates the Hope Clinic, as well as those of Noel Campbell, could be captured by the FTA.

### **6.6.1 False, misleading or deceptive provisions**

Consumer transactions involving conduct and representations which are false, misleading or deceptive are covered, *inter alia*, by sections 9 to 12 of the FTA.

Section 9 states: 'A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.' The terms 'misleading' and 'deceptive' are not defined in the FTA. Nevertheless, the provision is said to be directed at conduct that consists of a misrepresentation of some kind<sup>80</sup> or that gives a false impression.<sup>81</sup> An objective test is applied in assessing whether the section has been contravened. Consideration is also given to the class of consumers likely to be affected by the conduct.

While the prohibition in section 9 is of a general nature, reference is made in sections 10 to 12 of the FTA to specific conduct and representations. Section 10 prohibits conduct liable to mislead the public in relation to 'the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity' of goods. Section 11 prohibits conduct liable to mislead the public in relation to 'the nature, the characteristics, the suitability for their purpose or the quantity' of services. Section 12 prohibits the making of particular representations about goods or services, which are

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<sup>79</sup> According to the *Monetary Units Act 2004*, the value of a penalty unit for 2007-08 is \$110.12.

<sup>80</sup> 'Consumer protection legislation' in Harbour C (ed), *The Law Handbook 2008*, Fitzroy Legal Service Inc, Fitzroy, 2007, p 537.

<sup>81</sup> *Preventing misleading and deceptive conduct in trade or commerce – an Australian standard on commercial behaviour: guidelines on the false, misleading and deceptive provisions of the Fair Trading Act 1999*, Consumer Affairs Victoria, Melbourne, 2005, p 10.

outlined in subsections (a) to (n). These include falsely representing that the goods or services are of a particular standard, quality or value (subsections (a) and (b)); representing that the goods or services have a sponsorship, approval, performance characteristics, uses or benefits they do not have (subsection (e)); and representing that any person has a sponsorship, approval or affiliation that the person does not have (subsection (f)). Subsection (n) is described as a 'catch all' provision, in that it prohibits the making of a representation 'that is false, misleading or deceptive in any material particular'.<sup>82</sup> The penalty for a contravention of sections 10, 11 or 12 is 600 penalty units for a natural person (which amounts to \$66,072.00 for the 2007-2008 financial year) and 1200 penalty units for a body corporate (which amounts to \$132,144.00 for the 2007-2008 financial year).

The FTA also makes provision for representations as to future matters. Section 4(1) states: 'For the purposes of Part 2, if a person makes a representation about a future matter, including the doing of, or the refusing to do any act, and the person does not have reasonable grounds for making the representation, the representation is deemed to be misleading.' Accordingly, this section is said to apply to all the provisions in Part 2 which focus on 'misleading' behaviour as an element of liability, such as section 9 and subsections (g) to (l) and (n) of section 12.<sup>83</sup> It may also apply to sections 10 and 11, which refer to conduct 'liable to mislead'.

#### 6.6.1.1 *Conduct and representations relating to treatment*

There is evidence from several complainants that Noel Campbell made representations to patients and their families at the initial consultation at the Hope Clinic regarding the treatment offered at the clinic. Complainant G states they were told if her sister did what he said in terms of treatment, it was very probable there would be a cure. According to complainant B, she and her sister were told the treatment would give her sister a better quality of life. Complainant A states she and her husband were told the treatment would, at best, prolong her husband's life. However, according to complainants A and B, Noel Campbell did not make any promises about being able to cure their family members.

The New South Wales equivalent provisions to sections 4, 9 and 10 of the FTA were recently considered in the New South Wales Supreme Court case of *Commissioner for Fair Trading, Department of Commerce v Perrett*.<sup>84</sup> The defendant, Mr Paul Perrett, who is not a registered medical practitioner, had been carrying on a business in New South Wales known as the 'Rutherford Health Clinic'. It was claimed he had made representations to several patients that treatment he provided or substances he supplied could cure, alleviate the symptoms of, or prevent or delay the onset or progression of various forms of cancer or chronic conditions such as multiple sclerosis and Huntington's disease.

In the case of a breast cancer patient, who had undergone a lumpectomy for the removal of a mass from her left breast and had been advised by her specialist to undergo a course of chemotherapy and radiation, Mr Perrett supplied a black ointment and represented to her that it would shrink and remove any cancerous breast tissue. He also supplied her with bags of powder, which he claimed was an anti-cancer treatment, and administered an intravenous drip, which he represented contained peroxide and would be beneficial in the treatment of her condition. The patient followed Mr Perrett's treatment regime for about 12 months. A year later, she was advised by her specialist that she had a new primary cancer in her right breast as well as a recurrence of the original cancer in her left breast.

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<sup>82</sup> Note 81, p 14.

<sup>83</sup> Note 81, p 13.

<sup>84</sup> [2007] NSWSC 1130 (12 October 2007).

In the case of a patient diagnosed with a malignant tumour in her thyroid who had been advised to have radiation treatment, Mr Perrett supplied a liquid substance called 'Stilbetol' and represented to her that if she consumed the substance, mixed with lemon juice and water, once a day, as well as consuming green tea capsules, the substance would stimulate her immune system and prevent the spread of cancerous cells. He subsequently supplied her with additional quantities of Stilbetol together with capsules of a yellow powder, which he described as 'yarrow powder' and as 'EMS-425', and represented to her that if she consumed the Stilbetol and the capsules over the course of a period of six months, any cancer cells in her body would be killed and her health would be restored. The patient followed Mr Perrett's treatment regime for about six weeks.

In the case of a patient diagnosed with prostate cancer who had been given a life expectancy of between two and four years, Mr Perrett supplied certain tablets, which he referred to as 'Chinese herbs', and represented to him that the tablets would assist in delaying the onset of his cancer for up to ten years. The patient followed Mr Perrett's treatment regime for about 12 months.

The plaintiff relied principally on section 41 of the New South Wales *Fair Trading Act 1987* (equivalent provision to section 4 of the FTA) in support of its submission that each of the alleged representations related to a future matter.

Justice Harrison found the representations made by Mr Perrett to his patients were framed in terms of what would happen if particular advice were followed or particular courses of conduct were adopted. His Honour was also satisfied that such representations were made in trade or commerce. Accordingly, the orders made included a declaration that Mr Perrett had engaged in misleading or deceptive conduct, and conduct which is likely to mislead or deceive, in contravention of section 42 of the New South Wales *Fair Trading Act 1987* (equivalent provision to section 9 of the FTA). In terms of the substances he supplied, it was declared Mr Perrett had engaged in conduct that is liable to mislead the public as to the nature, characteristics and suitability for their purpose of those goods in contravention of section 49 of the Act (equivalent provision to section 10 of the FTA). In addition, Mr Perrett was ordered to stop making claims that he is able to or that substances supplied by him will cure, alleviate the symptoms of, or prevent or delay the onset or progression of diseases the subject of the proceedings (namely various forms of cancer, multiple sclerosis and Huntington's disease).

In relation to the representations regarding treatment made by Noel Campbell at the Hope Clinic to complainants A and B and their families, given the efficacy of the treatment offered at the clinic is at this stage unproven and that he made slightly different representations to each patient, neither of which included a definitive promise to cure, there is no evidence to suggest Noel Campbell has contravened section 9 (misleading or deceptive conduct), section 11 (misleading conduct in relation to services) or section 12 (false representations in relation to goods and services) of the FTA. The Inquiry takes note of complainant A's favourable view of the treatment, which her husband underwent at the clinic then at home. According to her evidence, six months after their initial consultation with Noel Campbell at the clinic, her husband's cancer was shown to have grown about seven centimetres only and had not spread to any other major organs, which came as a surprise to his specialist.

The evidence of complainant G suggests a representation was made by Noel Campbell about a future matter within the meaning of section 4 of the FTA. The representation (namely, that if her sister did what he said in terms of treatment, it was very probable there would be a cure) is similar to the representations made by Mr Perrett to his patients in New South Wales, as outlined above. All of Mr Perrett's patients, however, followed his treatment regime for a period of time. Complainant G's sister purchased a bottle of spirulina from the clinic but did not undergo any treatment offered by the clinic. Accordingly, with respect to the representation regarding treatment made by Noel Campbell to complainant G and her family, there is no evidence to suggest

Noel Campbell has contravened section 9 (misleading or deceptive conduct) or section 11 (misleading conduct in relation to services) of the FTA.

6.6.1.2 *Conduct and representations relating to Dr John Holt and Holt therapy*

According to several complainants, representations in relation to Dr John Holt and Holt therapy were made by the clinic on its website and by Noel Campbell to patients and their families. Complainant C asked Noel Campbell if he was part of the Holt Foundation in Perth and he replied he was. According to complainant G, who knew of Dr Holt in Western Australia and conducted an internet search on him, the first result returned stated microwave therapy was now available in Melbourne and offered a link to a website featuring a picture of Noel Campbell. Complainant G further states that at the initial consultation at the clinic conducted by Noel Campbell, in response to a question about his association with Dr Holt, Noel Campbell stated the clinic was not run by Dr Holt but he had been trained by a doctor who had been trained by Dr Holt. Following this consultation, the complainant rang Dr Holt's clinic in Western Australia and was informed they were not associated with Noel Campbell's clinic. The evidence of complainant H is similar, in that a friend conducted an internet search on 'microwave therapy' and discovered a link to the website of a medical centre which claimed to use Dr Holt's treatment (ie. the Operation Hope Clinic). The complainant made enquiries with Dr Holt's support group, which revealed Noel Campbell had no connection or association with the Holt clinic. At the initial consultation at the clinic conducted by Noel Campbell, he specifically stated he was using the Holt treatment and that he had worked with Dr Holt in Perth for 12 months. He then went on to state that he had refined Dr Holt's treatment and that it was a better treatment as it was offered in conjunction with other treatments such as sauna and photo dynamic therapy.

In relation to Noel Campbell's claimed affiliation with Dr Holt and use of Holt treatment at the clinic, the Inquiry accepts the evidence of Dr Holt's personal assistant that Dr Holt had only ever had one telephone conversation with Noel Campbell and that Noel Campbell had never visited Dr Holt's clinic but was granted permission to use one of Dr Holt's documents. The Inquiry also takes note of the website of the 'Dr Holt Support Group' in Melbourne, which refers to claims made by the Hope Clinic in Melbourne and specifically states 'Dr Holt has no involvement nor supports any other organisation or medical practices claiming to use his methods'.

In the circumstances, Noel Campbell may have contravened the following sections of the FTA: section 9 (misleading or deceptive conduct), section 11 (misleading conduct in relation to services), section 12(e) (representing that services have a sponsorship or approval they do not have), section 12(f) (representing he has a sponsorship, approval or affiliation he does not have in relation to services) and section 12(n) (making a representation that is false, misleading or deceptive in any material particular). The Inquiry is of the view this warrants consideration by Consumer Affairs Victoria.

**Recommendation:**

2. **The Minister refers this Report to Consumer Affairs Victoria for further investigation into the conduct of Noel Campbell which may be misleading and deceptive within the meaning of the *Fair Trading Act 1999*.**

In relation to references to Dr Holt and Holt therapy on the clinic's website, the allegation of complainants G and H, essentially, is that such representations are misleading. Responsibility for the contents of the clinic's website falls on the entity operating the clinic, namely Operation Hope (Australia) Pty Ltd. As previously stated, the address <<http://www.smile.org.au>> currently brings up a website for the 'Hope Cancer Research Institute' but which primarily contains information about the Hope Clinic. 'Holt radiowave therapy' and 'Holt microwave therapy' are listed under the heading 'Treatments'. The

clinic's detailed website is still accessible via the address <<http://www.smile.org.au/index.htm>>. The homepage of this website, under the heading 'Cancer Therapies' and the sub-heading 'Our approach to cancers', refers specifically to 'Holt microwave therapy' and 'Holt radiowave therapy'. Both of these are linked to a document entitled 'Holt Microwave Therapy'.<sup>85</sup> The third paragraph of the document states: 'The Hope Clinic initially adopted this treatment approach on the basis of Dr Holt's published results and clinical experience as described in the many personal letters that he sent to Noel Campbell in 1999. We then revised and updated the treatment, as encouraged by Dr Holt, based on information from recently published scientific research on Glucose Blocking Agents.' This document appears to be an update of an earlier version entitled 'Microwave Therapy', which also contained references to Dr Holt.<sup>86</sup> The first line of the earlier version stated: 'Microwave therapy is now available in the Hope Medical Research Centre in Melbourne.'

The Inquiry conducted an internet search in January 2008, using the 'Google' search engine, on the phrases 'Holt microwave therapy' and 'microwave therapy'. In both instances, the first result returned was a link to the 'Holt Microwave Therapy' document on the clinic's detailed website.

There is an additional link on the homepage of the clinic's detailed website, under the heading 'Cancer Therapies', to a document entitled 'Alternate Cancer Treatments'.<sup>87</sup> This outlines the various cancer treatments available at the clinic, one of which is referred to as 'Holt radiowave & microwave therapy'. The entry for this therapy states as follows: 'Dr John Holt encouraged us through providing all of his research papers and writing us numerous letters to improve his technique...'

Taking into account the evidence of Dr Holt's personal assistant and the information on the website of the 'Dr Holt Support Group' in Melbourne, Operation Hope (Australia) Pty Ltd may have contravened the following sections of the FTA: section 9 (misleading or deceptive conduct), section 11 (misleading conduct in relation to services), section 12(e) (representing that services have a sponsorship or approval they do not have), section 12(f) (representing that the company has a sponsorship, approval or affiliation it does not have in relation to services) and section 12(n) (making a representation that is false, misleading or deceptive in any material particular). Again, the Inquiry is of the view this warrants consideration by Consumer Affairs Victoria.

**Recommendation:**

- 3. The Minister refers this Report to Consumer Affairs Victoria for further investigation into the conduct of Operation Hope (Australia) Pty Ltd which may be misleading and deceptive within the meaning of the *Fair Trading Act 1999*.**

*6.6.1.3 Conduct and representations relating to spirulina extract*

According to the evidence of complainant A, she and her husband purchased thirty spirulina tablets from the clinic for the purposes of home treatment. They were charged \$1,200.00, which she thought was a lot of money. Upon making enquiries at a health food store, she discovered a bottle of forty tablets could be purchased for \$20.00. When she questioned Noel Campbell about the price of the tablets supplied by the clinic, he advised the process used by the clinic involved the extraction of chlorophyll from the spirulina, which increased the cost of production of the tablets.

<sup>85</sup> At <<http://www.smile.org.au/holt.htm>>. This document was accessed by the Inquiry on 30 January 2008.

<sup>86</sup> The Inquiry accessed the earlier version at <<http://www.smile.org.au/holt.htm>> on 15 July 2005. It is not clear when that document was replaced by the updated version.

<sup>87</sup> At <<http://www.smile.org.au/OurApproachToCancers/AlternateCancerTreatments.htm>>.

The Inquiry notes the Hope Clinic has since changed its practices. Patients are no longer charged a separate amount for the spirulina extract. The cost is now included as part of the overall therapy fees.

The Inquiry was able to obtain some spirulina extract capsules from two complainants, which had been supplied by the clinic. These samples were not analysed due to the prohibitive costs involved. Accordingly, there is no proof to either verify or disprove the veracity of the claims made by Noel Campbell in relation to the spirulina extract supplied by the Hope Clinic. In the absence of such evidence, it cannot be said Noel Campbell or Operation Hope (Australia) Pty Ltd have contravened section 9 (misleading or deceptive conduct), section 10 (misleading conduct in relation to goods) or section 12 (false representations in relation to goods and services) of the FTA.

### **6.6.2 Unconscionable conduct provisions**

There are two types of unconscionable conduct (relating to consumer transactions) covered by the FTA, namely 'statutory' unconscionable conduct under section 8 and 'common law' unconscionable conduct under section 7.<sup>88</sup>

Section 8 is the primary provision which protects consumers from unconscionable conduct by a business supplier. Subsection (1) of this section states: 'A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services of a kind ordinarily used for personal, household or domestic purposes to a purchaser, engage in conduct that is, in all the circumstances, unconscionable.' Subsection (2) lists five matters a court or Tribunal may have regard to for the purpose of determining whether a person has contravened subsection (1). These include the respective bargaining strengths of the parties, whether any undue influence or unfair tactics were used against the consumer and the extent to which the consumer could have obtained a better deal elsewhere. While the courts have not as yet settled on what amounts to 'statutory' unconscionable conduct, it is said this type of unconscionability appears to be broader than the doctrine of unconscionable dealing as developed in case law (which is said to occur when one party to a contract or transaction is under a special disability and the other party takes unfair advantage of that disability).<sup>89</sup>

Section 7 applies to conduct not covered by section 8 and is accordingly described as a form of 'back-up protection' for consumers.<sup>90</sup> Section 7(1) states: 'A person must not, in trade or commerce, engage in conduct which is unconscionable, within the meaning of the unwritten law, from time to time.' This is intended as a reference to judge-made law on unconscionable conduct. Once again, the courts have not as yet settled on what constitutes unconscionable conduct under the 'unwritten law'.<sup>91</sup> One interpretation of the provision is that it refers to the doctrine of unconscionable dealing. It has also been described by the courts as conduct which shows no regard for conscience and conduct which is irreconcilable with what is right or reasonable.

Statutory unconscionable conduct, based on the Commonwealth *Trade Practices Act* equivalent to section 8 of the FTA,<sup>92</sup> was recently raised in the Federal Court of Australia case of *Australian Competition and Consumer Commission v NuEra Health Pty Ltd* (in

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<sup>88</sup> *Preventing unconscionable conduct in trade or commerce against consumers or small businesses: guidelines on the unconscionable conduct provisions of the Fair Trading Act 1999*, Consumer Affairs Victoria, Melbourne, 2005, pp 7-10.

<sup>89</sup> Note 80, p 539. According to Justice Fullagar of the Federal Court in *Blomley v Ryan* (1956) 99 CLR 362 at 405, types of special disability include '...poverty or need of any kind, sickness, age, sex, infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance or explanation where assistance or explanation is necessary'.

<sup>90</sup> Note 88, p 9.

<sup>91</sup> Note 80, p 538.

<sup>92</sup> Section 51AB(1) of the *Trade Practices Act* 1974.

liquidation) (the 'NuEra case').<sup>93</sup> 'The Rana System' was, *inter alia*, the subject of these proceedings brought by the ACCC against several NuEra companies,<sup>94</sup> Mr Paul John Rana and his sons Mr Christopher James Rana and Mr Micheal Lee Rana.<sup>95</sup> Described as an alternative approach to cancer care offering hope to cancer sufferers, the NuEra companies and the Ranas claimed 'The Rana System' could cure cancer or reverse, stop or slow its progress; would prolong the life of a person suffering cancer; and was based on generally-accepted science. A variety of products and services were offered as part of the program, including vitamin and mineral supplements; diets described as eating according to blood type; devices called parasite/energy zappers, Zen-Chi Massagers and Magnetic Pulsers; coffee enemas; ozone therapy; live blood analysis; and thermal imaging. Only members could participate in the program. The membership fee was based on the length of treatment and, on average, was about \$25,000.00 for a three week program. The ACCC alleged that NuEra Health (largely through the agency of Mr Paul Rana) had engaged in unconscionable conduct in connection with the supply of goods and services under 'The Rana System' to several patients.

In the case of a patient with widespread cancer (in her kidneys, lungs and adrenal glands) who had been given between three and six months to live, it was claimed Mr Rana told her if he could not cure her cancer, he could 'definitely' extend her life by up to five to ten years. A figure of \$2,000.00 was quoted for a 'cancer attack pack' and she was told there would be additional costs for nutritional supplements and organic food. Mr Rana was insistent she start the program straight away. The patient's husband told him he was concerned about the cost of the program as he was on a carer's pension and the patient was on a disability pension. Mr Rana's response was claimed to be along the lines of 'money should be no problem where someone's life is concerned'. The patient and her husband decided, at this meeting, to go ahead with the program. They subsequently made regular payments to Mr Rana or one of the NuEra companies totalling between \$20,000.00 and \$25,000.00. During the course of the program, they told Mr Rana they were having difficulties paying the fees. It was claimed he informed them they could apply for the early release of their superannuation benefits. It was also claimed he told them the patient would be cured if she followed the program and said words to the effect of 'you cannot put a value on life and you should borrow the money required for the treatments from any source you can'. About four months into the program, the patient died after a cesium and vitamin treatment (recommended by Mr Rana at an additional cost of \$16,000.00) was administered to her in Darwin.

In the case of a patient diagnosed with ovarian cancer who had been having chemotherapy treatments, it was claimed Mr Rana told her (at a preliminary meeting) he could cure her and that the treatment would cost \$10,000.00. The patient and her family subsequently attended a promotional seminar at the NuEra Clinic in Port Melbourne which claimed 'The Rana System' could cure cancer and was supported by generally-accepted science. Attendees were informed two programs were available, one which cost \$10,000.00 (done at home) and the other which cost \$25,000.00 (done at the clinic). Soon after the seminar, the patient and her family met with Mr Rana who told her he had a lot of treatments, all of which he could use and one of which would work to cure her cancer. Before he could help her, she was told she would have to become a member of NuEra and that the membership was for one year. She was also told the \$25,000.00 program was better (as it was aggressive) and was urged to start straight away. The patient told him they did not have \$25,000.00 to pay for the program. Upon learning that her husband had superannuation, he informed them they could access the

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<sup>93</sup> [2007] FCA 695 (9 May 2007). Proceedings initially filed by the ACCC in this matter in November 2006 were for alleged misleading and deceptive conduct. In March 2007, the proceedings were expanded to include claims of unconscionable conduct and the making of false or misleading representations.

<sup>94</sup> In November 2006, proceedings were brought against NuEra Health Pty Ltd (in liquidation), NuEra Care Centre Pty Ltd, Alternative Care Facility Pty Ltd, NuEra Investments Pty Ltd and NuEra Wellness Centre Pty Ltd. Alternative Care Facility Pty Ltd was deregistered in January 2007. In March 2007, NuEra Wellness Clinic Pty Ltd was included as an additional respondent to the proceedings.

<sup>95</sup> Proceedings were brought against the Ranas in their capacity as employees or agents of each of the companies and as directors of some of the companies.

money straight away with the help of someone who worked for him. The patient agreed to do the \$25,000.00 program and paid a \$1,000.00 deposit that day. Over the next four months, additional part payments totalling \$20,000.00 were made to several NuEra companies. The patient received treatment at the NuEra clinic for about six months but her condition did not improve. Mr Rana offered her further cesium treatment at an additional cost of \$35,000.00 but she did not take this up. She subsequently resumed chemotherapy treatment.

In the case of a patient with advanced colon cancer who had been given only a few months to live, it was claimed Mr Rana said he could see no reason why she 'couldn't go another fifteen years'. He gave her a copy of an instruction manual about 'The Rana System' which, in effect, claimed the program could cure cancer, prolong life and was based on generally-accepted science. She was told she needed to start the treatment immediately and that it would cost \$25,000.00. The patient said it would take her a few days to get the money. Mr Rana requested a \$500.00 deposit (which she paid using her credit card) and the balance to be paid as soon as possible. She was given a membership agreement to sign, which she did. About four days later, the patient paid the balance of the money owing (\$24,500.00) by cheque made payable to NuEra Health. After about two weeks of participating in the program, the patient's condition deteriorated to the point she was unable to hold down food or liquids. The patient's daughter was told by Mr Rana to take her to a doctor as soon as possible. Shortly after, the patient's daughter sought a refund of the membership fee or a reasonable amount thereof from Mr Rana, to which there was no response. The patient died about two months later. No refund was subsequently made.

In the case of a patient diagnosed with liver cancer who had been given about four months to live, the patient attended a seminar in Mildura presented by Mr Rana during which claims were made that 'The Rana System' could cure cancer and prolong life. The patient and his wife met with Mr Rana the following day. It was claimed Mr Rana said his treatment (at a cost of \$25,000.00) would 'treat the tumours down to almost nothing' and that the patient would live for years and years. The patient wanted some time to discuss it with his family but Mr Rana was insistent he sign up on the spot (with the entire fee payable immediately) or lose his chance and be put on a waiting list for the program. He was given a membership agreement to sign, which he did, and wrote out a cheque for \$25,000.00 made payable to NuEra Health. He was told if he was not happy with 'The Rana System', he had seven days to get his money back. Mr Rana then told him he was too busy to fit him in for at least another month. About two months after commencing treatment, the patient was offered further cesium treatment at an additional cost of \$35,000.00. The patient did not take this up and died about a month later.

In the case of a patient diagnosed with liver and pancreatic cancer which was inoperable and terminal, the patient had an initial consultation with Mr Christopher Rana at the NuEra clinic during which claims were made that 'The Rana System' could cure cancer, prolong life and was supported by generally-accepted science. The patient then had a telephone conference with Mr Paul Rana, who was overseas at the time and was said to have been working on a new product. It was claimed Mr Rana told him 'what you have sounds very bad' but 'I think you're in with a really good chance'. He was told he would need to be started on the intensive program at once, which would cost \$30,000.00, and that there might be a job for him at the end of his treatment. When Mr Rana returned from overseas, the patient and his partner met with him at the clinic. He was told the \$30,000 had to be paid upfront, after which he could start having the treatment. The offer of a job at the end of the treatment was also repeated. In the presence of Mr Rana, the patient called his mother and requested the \$30,000.00 to pay for the treatment. He assured her he would be able to repay the money as he was likely to have a job with Mr Rana once he was better. The patient subsequently entered into a membership agreement and paid the \$30,000.00 to Mr Rana. He only received treatment at the clinic for a few days before he died. Shortly after, the patient's parents met with Mr Rana and requested a refund of some of the money paid. It was claimed Mr Rana refused outright

as the patient knew what he was signing up for and the seven day refund period, stipulated in the contract, had passed.

The ACCC specifically alleged, in relation to Mr Rana's conduct when 'signing up' these patients to pay for treatment under 'The Rana System', that he exerted undue influence and pressure upon them by denying them the opportunity to properly consider and obtain advice on the terms of the membership agreement, prior to entering into it. The ACCC also alleged that the fee charged for participating in the program was excessive, given Mr Rana knew the patients and their families were in strained financial circumstances.

The allegations made by the ACCC were uncontested at the hearing on 18 April and 9 May 2007. Justice Ryan, in his reasons for judgment, stated that the conduct alleged against NuEra Health and Mr Paul Rana:

*'...was conduct which was unconscionable in the full sense in which that word is used in s 51AB(1) of the Trade Practices Act. Indeed, it is difficult in many respects to envisage conduct which is more deserving of that description.'*<sup>96</sup>

His Honour made the declarations sought by the ACCC, namely that NuEra Health, in trade or commerce, in connection with the supply of goods and services to the five patients described above, had engaged in unconscionable conduct in contravention of section 51AB(1) of the *Trade Practices Act* and that Mr Paul Rana was involved in the contravention.

The Inquiry notes the following observations made by Justice Ryan in his reasons for judgment:

*'...the unanswered case for the applicant reveals a consistently cynical and heartless exploitation of cancer victims and their relatives when they were at their most vulnerable. This conduct was not like that which is sometimes encountered in this context of a well-meaning but misguided administration of a single cure or treatment which the promoter genuinely believes, in the face of a body of opposing scientific opinion, to offer a prospect of arresting or delaying the progression of the disease. In this case, the evidence reveals that Mr Paul Rana, who has been the controlling mind and will of the corporate respondents, has personally taken the leading role in promoting and administering the so called 'treatments' and extorting from the patients, or their relatives, substantial upfront fees amounting to as much as \$25,000 to \$35,000.'*<sup>97</sup>

In relation to the Hope Clinic, the evidence of each complainant is that the patient diagnosed with cancer, who attended the clinic, was at the stage of their illness where conventional medicine was unable to offer them any treatment and/or they were seeking 'natural' or alternative therapies. In the circumstances, they would fit the description of highly vulnerable consumers. The evidence is that the clinic could offer treatment to each of these patients.

As to whether any undue influence or unfair tactics were used to encourage patients to obtain treatment at the clinic, there is evidence claims were made on the clinic's website and by Noel Campbell about the use of Holt therapy at the clinic and about Noel Campbell's affiliation with Dr Holt. Earlier press coverage by the Australian media regarding this therapy had suggested it had had some measure of success in treating patients with cancer. According to the evidence before the Inquiry, it was the discovery that such therapy was available at the clinic that led some of the patients to contact the clinic seeking treatment. This could be construed as an unfair tactic towards unsuspecting patients. This is particularly so given the therapy available at the clinic is

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<sup>96</sup> [2007] FCA 695 at [10].

<sup>97</sup> [2007] FCA 695 at [7].

said to be a 'revised' and 'updated' form of Dr Holt's original treatment with no proof as to its efficacy. Another example could be Noel Campbell's use of the title 'Professor' and his failure to advise the patients that this was only an honorary title and that he trained as a dentist but was not registered to practise dentistry in Victoria. The use of the title 'Professor' by a person in a clinical setting tends to denote someone with academic standing within the medical fraternity. The presence of such a person at a clinic offering alternative therapies, the efficacy of which are unproven, lends a measure of credence to the treatments available as it suggests there is a scientific basis to them.

In terms of the fees for treatment, the Inquiry was advised that prior to July 2007, patients were charged a weekly fee of \$2,500.00 for the three-week program at the clinic and \$3,000.00 for the three-month supervised home treatment program (which, prior to 2006, did not include the cost of the spirulina extract). Since 1 July 2007, the weekly fee for the three-week program at the clinic has been \$3,500.00 and the fee for home treatment \$4,000.00 (which appears to have increased in February 2008 to \$5,500.00). Based on these figures, patients who completed the program prior to July 2007 would have been charged at least \$10,500.00 for treatment and those who commenced on or after 1 July 2007, would have been charged at least \$14,500.00. The Inquiry takes note of Noel Campbell's comment that the fees charged by the clinic are reduced or waived in circumstances where a person is financially unable to afford the standard fees.

Based on the evidence before the Inquiry, the patients offered treatment by the Hope Clinic were highly vulnerable people and some unfair tactics were (and continue to be) used. The fees charged for treatment are also significant. Given that the meaning of 'statutory' unconscionable conduct and unconscionable conduct 'within the meaning of the unwritten law' has not been settled by the courts, the question as to whether Noel Campbell and/or Operation Hope (Australia) Pty Ltd may have engaged in unconscionable conduct in contravention of sections 8 or 7 of the FTA warrants consideration by Consumer Affairs Victoria.

**Recommendation:**

4. **The Minister refers this Report to Consumer Affairs Victoria for further investigation into the conduct of Noel Campbell and Operation Hope (Australia) Pty Ltd which may be unconscionable within the meaning of the *Fair Trading Act 1999*.**