

Interview with Professor Bob Baxt

Partner: Allens Arthur Robinson

By Michele Jury, Solicitor, City Pacific Law Firm Pty Ltd

Professor Baxt is a testament to the ability of lawyers to work, within a single career, in public, private and academic arenas and to make a valuable contribution to each. In his long and prestigious career he has worked as the chairman of the former Trade Practices Commission (now the Australian Competition and Consumer Commission (ACCC)), the Dean of the Faculty of Law at Monash University and in several of Australia's largest commercial law firms. He has recently been honoured for his service to the law by being awarded an Order of Australia at the Queen's Birthday Honours Awards in 2003.

Professor Baxt was born in Shanghai in the People's Republic of China, a country not renowned for its legal tradition. Despite this, from youth, he aspired to become a lawyer. After arriving in Australia, Professor Baxt completed a Bachelor of Laws and a Bachelor of Arts at the University of Sydney. In 1963, he received a scholarship to take post-graduate study at Harvard University in the US. It was at Harvard that Professor Baxt first became interested in competition law.

In the 1960s Australia did not have an established competition law. After learning about the American system of competition law at Harvard, Professor Baxt returned to Australia. He initially worked at Freehills in Sydney. However, he found that his letters were getting increasingly long because of his propensity to consider the theory behind the commercial issues he was working on. He therefore considered it a logical step to move into academia. He took up a senior lectureship at Monash University and was involved in pioneering the first courses on competition law in Australia. He eventually held the position of Dean of the Faculty of Law at Monash for a number of years.

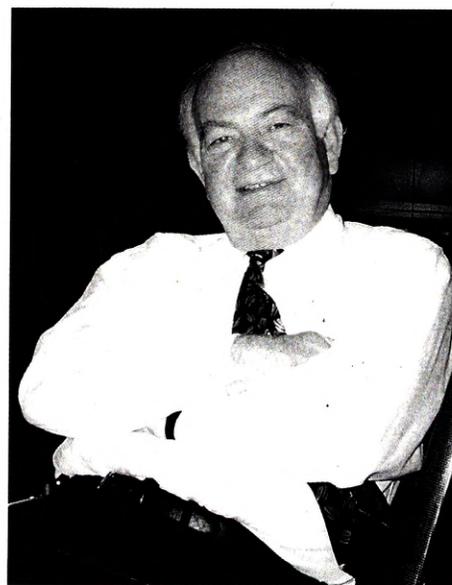
In 1988, Professor Baxt was appointed the Chairman of the Trade Practices Commission (Commission). In his time in this role, Professor Baxt helped

to shape the direction of Australian competition law. Amongst other successes, he persuaded the Prime Minister to implement what were to become the Hilmer reforms, widening the operation of the *Trade Practices Act 1974 (Cth) (Act)* across the whole economy. He also pressured the government to consider widening the reach of the penalty provisions of the Act, amendments which took place after Professor Baxt had finished his term. Furthermore, he instructed the Commission to intervene in *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd (Queensland Wire case)*. Although the Commission was ultimately prevented from becoming a legal party to the proceeding, the Court was able to hear and consider the arguments of the Commission. As a result of the *Queensland Wire case*, the right of the Commission (now applied to the ACCC) to intervene in any proceeding instituted under the Act now forms s87CA of the Act.

Professor Baxt's career progression has been driven by his passion for competition law. It is an area that he would recommend to young lawyers because it permeates most other areas of the law and it provides the opportunity to "get involved in the entrails of the business, and not just the legal side of things".

It is also an area of the law which is relatively new and therefore, constantly evolving. In particular, Professor Baxt foresees that by the end of this year the unconscionable conduct provisions of the Act and the penalty regime will be made stronger. He notes, however, that with respect to the ACCC's power to intervene in the market it is important to maintain a balance between the promotion of vigorous competition and the promotion of Australian business. He points out that some market behaviour will inevitably damage businesses but must be tolerated in the interests of consumers.

More recently, in his role as a partner at Allens Arthur Robinson, Professor Baxt has worked at fostering his other major legal passion: company



law. He is the editor of the *Company and Securities Law Journal* and is currently developing an extensive practice in the area of corporate governance.

His experiences as Commission chair and as an academic have made Professor Baxt, by his own admission, a better lawyer in his current role as a partner at Allens Arthur Robinson. He acknowledges that he probably brings to his examination of issues his experience as a former regulator and is thus able to bring to his clients and colleagues what he regards as probably a more balanced assessment of the matters under consideration. He is of the firm belief that more Australian lawyers should experience working in the public, private and academic sectors of the law because of the opportunities that working in a range of capacities can provide to develop skills and to broaden a lawyer's understanding of both legal and non-legal issues. ■

(continued from page 16)

Conclusion

In summary, an organisation should consider taking the following steps for the purpose of complying with the *Spam Act*:

- determine whether it sends any commercial electronic messages with an Australian link;
- if any such messages are sent by it – ensure that the recipients of all such messages have expressly

or impliedly consented to receiving them (unless they are designated commercial electronic messages) (Spam Rule 1); and

- all such messages include:
 - the organisation's identity and contact details (Spam Rule 2); and
 - a functional unsubscribe facility (unless they are designated commercial electronic messages) (Spam Rule 3); and
- ensure that it is not supplying, acquiring or using

address-harvesting software or harvested-address lists (Spam Rule 4).

If an email message constitutes a commercial electronic message which complies with the above Spam Rules then an Internet user may hit the "send button" without fear of breaching the *Spam Act*. However, before hitting the "send button" a prudent Internet user would also be wise to consider the application of other relevant laws to the email message including privacy and trade practices laws. ■