

# Released under FOI

## **ACCC**

### **Consumer Health Regulators Group**

#### **Pre-meeting update February 2016**

##### **Advanced Medical Institute**

On 30 January 2018 a former director of AMI and NRM, Mr Jacov Vaisman, was declared bankrupt yesterday with the Federal Court granting the ACCC's application for a sequestration order.

NRM refers to both NRM Corporation Pty Ltd and NRM Trading Pty. AMI refers to Advanced Medical Institute Pty Ltd and AMI Australia Holdings Pty Ltd. AMI was sold to NRM which continued to operate the AMI business.

In December 2010, the ACCC instituted proceedings against the companies formerly known as AMI, NRM and Mr Vaisman.

In April 2015, the Court found that AMI and NRM engaged in unconscionable conduct and used unfair contract terms to promote or supply male sexual dysfunction products.

The Court declared that Mr Vaisman aided and abetted and was knowingly concerned in the unconscionable conduct by AMI and NRM. As a result, Mr Vaisman was restrained for seven years from having a role in connection with training, supervising, counselling or terminating employees, agents or contractors of NRM.

In May 2015, NRM and Mr Vaisman filed an appeal with the Federal Court, which was dismissed on 21 July 2016.

In December 2015, the Court found NRM guilty of contempt of court for breaching the injunctions restraining NRM from making representations about the efficacy of its medications (other than by doctors in face-to-face consultations). The Court ordered that NRM pay a penalty of \$350,000.

In September 2017, the Court ordered NRM and Mr Vaisman to pay the ACCC's costs.

As NRM is under external administration and no longer trading, the ACCC enforced the costs order against Dr Vaisman alone. After Mr Vaisman's failure to pay any of the costs ordered by the Court, the ACCC filed bankruptcy proceedings against Mr Vaisman.

Mr Vaisman's bankruptcy took effect from 4 December 2017.

##### **Hearing sector**

The ACCC is concerned about a range of business practices in the hearing services industry, particularly around incentive based sales and commissions that are commonly used to motivate clinicians to sell hearing aids. These arrangements have the potential to cause widespread consumer detriment, especially for consumers who are vulnerable. In March 2017 we issued a concise report setting out our concerns.

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At the same time, we communicated directly with industry participants to encourage further consideration of commissions and sales practices in the context of the Australian Consumer Law. We requested hearing clinic operators review their incentive programs and performance measures to ensure that they do not create a conflict between healthcare advice and sales.

Having placed the industry on notice, we encourage consumers and clinicians to contact the ACCC to report any specific consumer protection concerns about the sale of hearing aids. We also developed information to help consumers make an informed choice when purchasing hearing aids and devices, which is available on the ACCC's website.

We continue to assess consumer and clinician reports to the ACCC. Where we assess there to be misleading or unconscionable conduct we may take enforcement action as a result, including legal proceedings.

We are also working with the Department of Health to share data about the Australian Government's Hearing Services Program (HSP) which may inform our inquiries.

The issues raised in the ACCC's report were subsequently considered by the Standing Committee on Health, Aged Care and Sport during its inquiry into the Hearing Health and Wellbeing of Australia. In September 2017 the Standing Committee presented its report which, among other things, recommended a prohibition on the use of sales commissions in hearing aid clinics taking part in the HSP.

The ACCC is now working with relevant departments to finalise the government's response to the report. We continue to encourage the Department of Health to consider options which prevent the use of commissions and similar sales practices within the HSP.

## **Advertising complaints**

The number of contacts to the ACCC about consumer health issues has increased over the last three years, from 256 in 2015 to 469 in 2017. The majority of these contacts concern misleading and deceptive conduct and false representations, which often relate to advertising materials. The most complained about industries are health insurance, specialist medical services and allied health services.

As set out in the ACCC's *Compliance and Enforcement Policy*, we do not pursue all matters and typically focus on systemic or broad conduct and complaints involving national traders. This is particularly the case where specialist regulators are present and have the relevant expertise to properly assess the issues.